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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 319 and 322

[Docket No. 98–109–2]

RIN 0579–AB20

Bees and Related Articles

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations for the importation of honeybees and honeybee semen and the regulations governing the importation of bees other than honeybees, certain beekeeping byproducts, and used beekeeping equipment. Among other things, we are allowing honeybees from Australia and honeybees and honeybee germ plasm from New Zealand to be imported into the continental United States under certain conditions, imposing certain conditions on the importation into the United States of bees and related articles from Canada, and prohibiting both the interstate movement and importation of honeybees into Hawaii. This action also consolidates all of our regulations concerning all bees in the superfamily *Apoidea*. These changes are intended to make these regulations more consistent with international standards, update them to reflect current research and terminology, and simplify them and make them more useful.

DATES: November 22, 2004.

FOR FURTHER INFORMATION CONTACT: Dr. Wayne F. Wehling, Entomologist, Pest Permit Evaluations, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 734–8757.

SUPPLEMENTARY INFORMATION:

Background

Under the Honeybee Act (7 U.S.C. 281–286), the Secretary of Agriculture is authorized to prohibit or restrict the importation of honeybees and honeybee semen to prevent the introduction into the United States of diseases and parasites harmful to honeybees and of undesirable species such as the African honeybee. The Secretary has delegated responsibility for administering the Honeybee Act to the Administrator of the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA). Regulations established under the Honeybee Act are contained in the Code of Federal Regulations (CFR), Title 7, part 322 (referred to below as the “honeybee regulations”).

Regulations Covering Bees and Honeybees

The honeybee regulations have allowed the unrestricted importation into the United States of honeybees and honeybee semen from Canada, but placed stringent requirements on the importation of these products from other countries. Honeybee imports from any country other than Canada have been allowed only if the bees are imported by the USDA for experimental or scientific purposes. Honeybee semen could be imported by the USDA for experimental or scientific purposes or by another person or group only if the semen was imported from Australia, Bermuda, France, Great Britain, or Sweden and met certain documentation, packaging, inspection, notification, and port of entry requirements. Honeybees and honeybee semen from New Zealand have been allowed to transit the United States en route to another destination in accordance with certain documentation, packaging, handling, notification, and port of entry requirements, but entry has not been allowed.

Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of plant pests and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. The Secretary has delegated responsibility for administering the Plant Protection Act to the Administrator of APHIS. Regulations

authorized by the Plant Protection Act concerning the importation of certain bees, beekeeping byproducts, and used beekeeping equipment are contained in 7 CFR part 319, §§ 319.76 through 319.76–8 (referred to below as the “pollinator regulations”).

The pollinator regulations have governed the importation of live bees other than honeybees, dead bees of the superfamily *Apoidea*, certain beekeeping byproducts, and beekeeping equipment. These regulations have been intended to prevent the introduction of exotic bee diseases and parasites that, if introduced into the United States, could cause substantial reductions in pollination by bees. Reductions in pollination by bees could indirectly cause serious damage to crops and other plants.

The pollinator regulations have allowed bees other than honeybees; dead bees; used bee boards, hives, nests, and nesting material; used beekeeping equipment; beeswax; pollen for bee feed; and honey for bee feed to be imported into the United States from Canada without restriction, but have restricted the importation of these articles from other countries. Specifically, the pollinator regulations have provided for the importation of these articles from any country other than Canada only if they are imported by USDA for experimental or scientific purposes or if they are imported under permit and meet certain documentation, inspection, treatment, packaging, notification, and port of entry requirements.

Proposed Rule and Responses to Comments

On August 19, 2002, we published in the **Federal Register** (67 FR 53844–53867, Docket No. 98–109–1) a proposal to amend the regulations by revising the honeybee regulations and the pollinator regulations. Among other things, we proposed to allow honeybees from Australia and honeybees and honeybee germ plasm from New Zealand to be imported into the United States under certain conditions, to impose certain conditions on the importation into the United States of bees and related articles from Canada, and to prohibit the interstate movement of honeybees into Hawaii. We also proposed to consolidate the honeybee regulations and the pollinator regulations by

combining both into part 322. These changes were intended to make these regulations more consistent with international standards, update them to reflect current research and terminology, and simplify them and make them more useful.

We solicited comments concerning our proposal for 90 days ending November 18, 2002. We received 308 written comments by that date, most of which expressed opposition to our proposal. They were from beekeepers, beekeepers' associations, researchers, and representatives of State and foreign governments. These comments, as well as oral comments presented at three public hearings on the proposed rule, are discussed below by topic.

The largest group of commenters who opposed the proposed rule expressed the concern that by allowing imports of honeybees from Australia and New Zealand, APHIS risked letting in disease organisms, mites and other bee parasites, hitchhiker insects, and Africanized bees. Issues raised by these commenters included the adequacy of the surveillance programs of Australia and New Zealand, the adequacy of our proposed inspection requirements, the danger of introducing exotic pests into Hawaii, the adequacy of our proposed provisions related to packaging, and the possible precedent that the proposed changes could set for future regulation of honeybee imports.

Some commenters questioned the efficacy of the surveillance programs of Australia and New Zealand, fearing that authorities in those countries might fail to detect common pests or diseases in bees slated for export to the United States. Various commenters discussed the recent outbreak in Australia of small hive beetle, the routing by Australian companies of illegal honey to the United States, and the belated discovery of Varroa mite in New Zealand after New Zealand's Ministry of Agriculture and Forestry (MAF) had conducted a nationwide survey and pronounced New Zealand free of dangerous pests and diseases and after bees certified by the MAF as Varroa-free were shipped from that country to Canada. These episodes were cited as examples of regulatory lapses on the part of Australia and New Zealand. Commenters also expressed reservations about the ability or the willingness of the governments of Australia and New Zealand to implement the inspection regimen spelled out under § 322.6 of the proposed rule. One commenter asserted that the two countries have expressed an unwillingness to pay for or subsidize honeybee inspection programs.

APHIS has worked extensively with the Australian Quarantine and Inspection Service (AQIS) and with MAF both in the preparation of the country-specific pest risk assessments (PRAs) and these revised regulations. The PRAs did not reveal any bee pathogens, parasites, or disease strains in either Australia or New Zealand that are not already present in the continental United States. The Varroa mite found in New Zealand and the European foulbrood found in Australia were both determined to be identical to the strains already present in the continental United States. Moreover, the introduction of exotic bee species or subspecies is extremely unlikely given the importation restrictions and inspection regimes already in place in Australia and New Zealand. Both countries have strong beekeeping organizations with good government support. We are confident, therefore, that the provisions we have developed will prevent the introduction of new exotic bee diseases into the continental United States. If new maladies or problems are detected, appropriate measures will be taken. For reasons that will be discussed in greater detail further on in this document, this final rule, unlike the proposed rule, will not allow bees to be imported into Hawaii from Australia or New Zealand.

A number of commenters raised issues pertaining to the inspection requirements for imported honeybees, specified in § 322.6 of the proposed rule. Proposed § 322.6 required individual inspection of the hives from which the honeybees in each shipment were derived by an official of the appropriate regulatory agency of the exporting region no more than 10 days prior to export. Inspections were also required of individual hives from which germ plasm was derived. Inspectors were further required to identify any diseases, parasites, or undesirable species or subspecies of honeybee found in the hive during inspection and to certify that the bees in the shipment were produced in the exporting region and were the offspring of queens and drones or semen also produced in the exporting region. Additional inspection conditions specific to Hawaii in proposed § 322.6 included a requirement for certification that the pre-export inspections revealed no sign of Varroa mite, tracheal mite, or African honeybee on the day of export.

Citing various reasons, commenters argued that our proposed inspection requirements were inadequate, unworkable, or otherwise not feasible. Some commenters expressed the view that time, personnel, and

methodological constraints would prevent the inspection procedures from being conducted with the rigor necessary to prevent the accidental introduction of unwanted organisms into the United States. A commenter argued that within the prescribed 10-day period preceding export, the exporting country's authorities would only have time to do visual inspections of the bees, and the necessary laboratory procedures would not be performed. Other commenters expressed skepticism that there would be sufficient numbers of inspectors available during a shipping season to conduct even visual inspections of individual hives within 10 days prior to shipment. A minimal inspection of bees for known diseases and parasites, suggested another commenter, requires a combination of field and laboratory examinations. Certain parasites and diseases (e.g., Varroa mites and foulbrood diseases) can be diagnosed in the field by trained personnel, but the absolute identification of the bacteria responsible for American foulbrood disease and European foulbrood disease would require laboratory analyses. Other parasites and pathogens (e.g., Acarapis mites and the parasitic protozoan that causes Nosema disease) are not visible to the naked eye, and their identification would require dissection of adult honeybees followed by microscopic examination. Inspection for parasites and diseases of honeybees not currently found in Hawaii or the continental United States, such as *Tropilaelaps* and *Euvarroa* mites and Thai sacbrood virus, as required by the APHIS proposal, would require additional field and laboratory diagnoses, including molecular characterization of viruses. The detection of some exotic parasites and diseases, it was suggested, will depend upon the development and verification of new field and laboratory methodologies. Similarly, the requirement that the export certificate identify the species or subspecies of honeybee found in the hive during the pre-export inspection to ensure that no undesirable species or subspecies of bees (e.g., *Apis mellifera capensis*) gain entrance into the United States could only be met by developing new laboratory molecular genetic and/or morphometric techniques for subspecies identification. Finally, another commenter asserted that the required certification in § 322.6 that the bees or queens in a shipment originated in the exporting region is not objectively verifiable.

Some commenters discussed what they saw as the need for the final rule to specify a standard detection and inspection protocol for all dangerous honeybee pests and pathogens and ensure that such specified protocols provide accurate detection and identification of each and every dangerous honeybee pathogen or pest. One commenter argued that if new inspection standards are to be adopted for imported honeybees, they should be based upon the inspection protocols of the Office International des Epizooties (OIE). The OIE protocols, according to this commenter, specify specific numbers of bees that are to be examined. The commenter asserted that, under the proposed rule, the OIE guidelines were mandated only for importation certificates for Hawaii.

Other commenters argued that the final rule should provide for port-of-entry inspections and testing of imported bees. One of these commenters also argued for quarantining bees entering the United States.

APHIS is revising the bee regulations, in part, to bring them into alignment with the international standards as set forth by the OIE guidelines for export certification (Article 3.4.2.3). The inspection requirements in the proposed rule were derived from the internationally accepted OIE standard, with some modifications tailored to address the honeybee pest concerns of the United States, Australia, and New Zealand. The requirement for inspection of hives no more than 10 days prior to export is derived directly from the stipulations set forth in the guidelines of the OIE in Appendix 3.4.2, "Hygiene and Disease Security Procedures in Apiaries." Therefore, the inspection standards contained in the proposed rule and in this final rule are no less rigorous than any international standards. In addition, all inspection-related documentation will be examined by APHIS at the port of entry. We are confident, therefore, not only that the requirements for pre-export inspection are adequate to safeguard against the introduction of new honeybee pests, but also that we will be able to enforce these requirements. The comments concerning the requirements specific to Hawaii in § 322.6(a)(2) of the proposed rule are no longer relevant, since we will not be allowing imports of honeybees into Hawaii.

Regarding port-of-entry inspections, the proposed rule, under § 322.12, did allow for port inspections of documentation, including export certificates and notice of arrival, and packaging of shipments of honeybees, honeybee germ plasm, and other bees.

The proposal also authorized inspectors to refuse entry of shipments that failed to meet the requirements of part 322.

The Government of Australia, in its comments, took a different view of the inspection requirements in our proposed § 322.6 than did most of the commenters, arguing that the requirement for individual inspection of hives no more than 10 days prior to export is unwarranted as applied to Australia. This requirement, it was said, does not constitute a risk-management measure relating to any specific disease or pest that could be of quarantine significance to the United States and is not consistent with conditions in the continental United States, as there exists no equivalent inspection requirement for hives for internal movement of bees within the continental United States. Another commenter, not affiliated with the Government of Australia, argued for loosening, rather than eliminating, the 10-day requirement, suggesting that 30 days prior to export would be a more practical timeframe for inspections.

As noted earlier, the requirement that all colonies yielding export material be inspected no more than 10 days prior to export comes directly from the OIE export standards. Loosening this 10-day requirement would result in a corresponding loss of confidence that the export certificate would have identified all of the diseases and pests present at the time of packaging. We do not regulate the interstate movement of honeybees in the continental United States, which we view as a single region for the purposes of sanitary surveillance of apiaries.

The Government of Canada argued against the inspection provisions on similar grounds. The regulations in § 322.1(b) have stated that honeybees or honeybee semen from Canada may be imported into the United States without any further restrictions under the honeybee regulations. The August 2002 proposed rule placed Canada on an equal footing with Australia and New Zealand, subjecting imports from all three countries to the same certification, inspection, and other requirements. The Canadian representative cited the lack of equivalent requirements for bees shipped within the United States in arguing that our proposed inspection requirements exceeded the provisions of international trade agreements. By enacting the proposed requirements, it was claimed, APHIS would be placing new import conditions upon Canada without having first conducted a PRA to justify such an action. Similarly, our proposed requirements for inspection and the associated certification for imported Canadian honeybee germ

plasm were criticized as unwarranted and contrary to the provisions of international trade agreements. Our proposed inspection and certification requirements for bumblebees and leafcutter bees from Canada were said to be unjustified unless APHIS knew of disease agents that affect bumblebees and leafcutter bees in Canada but not in the United States.

Our decision to regulate the contiguous United States as a single sanitary surveillance unit has no bearing on import requirements as they will be applied to Canada. The requirements for Canada directly reflect the international standard as agreed upon through the OIE. APHIS' decision to require certification of honeybees, honeybee germ plasm, and bumblebees from Canada is based on our concerns over the range of countries that Canada imports these commodities from, as well as concerns over smuggling.

Packaging standards were also discussed by commenters as a risk-related issue. General packaging requirements for shipments of honeybees and other bees were contained in § 322.8 of the proposed rule. Proposed § 322.9 pertained to mailed packages of honeybees, honeybee germ plasm, or other bees, and proposed §§ 322.10 and 322.11, to hand-carried packages containing those commodities. Similarly, proposed §§ 322.18 and 322.19 contained, respectively, general requirements for packaging of restricted organisms and specific requirements for mailed packages, and §§ 322.20 and 322.21 set out conditions for hand-carried packages. Proposed § 322.35 contained requirements for mailed packages of restricted articles, and hand-carrying requirements were set out in proposed §§ 322.36 and 322.37. Certain materials, such as brood, comb, pollen, or honey, were specifically prohibited in proposed § 322.8, but shippers were allowed some latitude in packing methods, as long as the overarching objective, stated in § 322.8(a)(1), that shipments must be packaged to prevent the escape of any bees, was met. Proposed § 322.18 did specify acceptable packaging materials for shipments of restricted organisms. Commenters suggested that more detailed requirements for packaging of honeybee shipments were needed in order to prevent the escape of imported bees that may carry diseases or pests. Some commenters also argued that allowing individuals to carry live bees in their personal baggage could present undue risks of spreading disease, as not all individuals could be counted on to package their shipments with adequate care.

We chose, in this instance, to employ a performance standard rather than a list of detailed packaging requirements in order not to place an excessive regulatory burden on shippers. In response to these comments, we are amending § 322.8(a)(1) to state that imported adult honeybees must be packaged to prevent the escape of any bees or bee pests. Packages of bees will be inspected at the port of entry for integrity and security of the packaging. Packaging deemed inadequate can be refused entry by the inspector. Similarly, inadequate packaging would in all likelihood cause the shipper to refuse receipt of the packaged bees at the origin of the shipment. We have also reconsidered our proposed provisions regarding hand carrying, in response to a recent Audit Report of APHIS Permits by the Office of the Inspector General (OIG) of the USDA. This audit has brought about many recent changes to our plant pest permit review and issuance processes, practices, and policies, some of which will be discussed later in this document. In accordance with the recommendations of the audit, we will not be allowing individuals to hand carry live bees, restricted organisms, or restricted articles into the United States. Therefore, this final rule will not include proposed §§ 322.10, 322.11, 322.20, and 322.36. Proposed §§ 322.21 and 322.37 have been amended in this final rule to provide only for importation via commercial vehicles arriving at land border ports in the United States. Other sections of this final rule have been renumbered accordingly.

A number of commenters discussed what they saw as the potential risks specific to Hawaii of allowing the importation of honeybees into the State from Australia and New Zealand. One commenter, noting that Hawaii, because of its isolation, has a fragile ecosystem, suggested that the introduction into Hawaii of *Apis mellifera* from anywhere else on earth could include the introduction of microbiological pathogens that could spill over and adversely affect the 22 species of native bees or hundreds of other hymenopteran or dipteran species that are present in the State. Loss of insects could result in impaired pollination. Other commenters noted that Hawaii is free of parasitic mites, such as the Varroa mite, known to exist in New Zealand. It was suggested that such pests could be introduced to Hawaii by allowing imports of honeybees from New Zealand. Some commenters argued that since APHIS prohibits interstate

movement of honeybees to Hawaii to prevent the introduction of exotic pests there, APHIS should also prohibit international movement of bees to Hawaii for the same reason. Commenters argued that the introduction of a pest like Varroa mite would devastate the Hawaiian bee industry. One commenter asserted that such an outbreak could cause Hawaii to lose half of its managed hives and all of its feral honeybee population. It was also suggested that if Hawaii were to be invaded by the Varroa mite, the use of miticides would mean the end of American organic honey, as Hawaii is the only State that produces it. Other commenters cited the possible introduction of the aggressive Africanized honeybee to Hawaii via imports from Australia and New Zealand as a cause for concern. It was suggested that Africanized honeybees could have a disastrous impact on Hawaii's tourist industry.

After we initiated the process of revising the bee regulations, Varroa mite was found in New Zealand, and the small hive beetle (*Aethina tumida*) was found in Australia. Neither bee pest is present in Hawaii; therefore, this final rule prohibits the importation of adult honeybees into Hawaii. Specifically, § 322.4(a) of this final rule lists Australia, Canada, and New Zealand as regions that are approved for the importation of adult honeybees into the continental United States (i.e., not including Hawaii), and proposed § 322.6(a)(2), which contained conditions for export certificates accompanying shipments of adult honeybees into Hawaii, has been removed.

As a result of our decision not to allow honeybees or other bees to be imported into Hawaii, any bees from Australia or New Zealand that are transiting through Hawaii will be considered restricted organisms and will be subject to the appropriate requirements. The conditions for transiting imported bees through and transloading them in Hawaii, set forth in the proposed rule in Subpart D—Transit of Restricted Organisms Through the United States, also were the subject of a number of comments. Proposed § 322.25 stated that shippers may not transload restricted organisms in Hawaii. The restricted organisms would have to remain on, and depart for another destination aboard, the same aircraft on which the shipment arrived at the Hawaiian airport. This provision represented the most significant change from the current regulations, which do allow transloading. The remaining provisions of the proposed subpart,

which pertained to such matters as documentation, packaging, notice of arrival, and inspection and handling, did not deviate significantly from the existing provisions in § 322.1 of the regulations.

Some commenters, in expressing their opposition to the proposed transiting conditions, cited the same concerns about the possible introduction of diseases and pests into Hawaii that they stated could result from imports of honeybees and honeybee germ plasm from Australia and New Zealand into the State. The possibility of a Varroa mite infestation was given as a reason for not allowing offloading or transloading of bees from New Zealand in Hawaii. One commenter argued that transloading of Australian bees in Hawaii should also be banned until a comprehensive Varroa mite survey verified the absence of that pest in Australia. A commenter suggested that Hawaii's airports lack the operational and procedural safeguards needed to prevent the escape of restricted organisms. Concern was also expressed about the possibility of transiting infected bees escaping into the Hawaiian environment as a result of an accident.

The Government of New Zealand also took issue with our proposed transiting conditions. Unlike the other commenters, however, New Zealand viewed the proposed conditions as too restrictive rather than too lenient. As restricted organisms, honeybees from New Zealand would not be eligible for transloading in Hawaii. The Government of New Zealand asked that consideration be given to retaining the current transiting conditions, which do allow transloading in Hawaii. New Zealand currently ships honeybees through Honolulu to Canada under the existing regulations and expressed a desire to be allowed to ship to the continental United States under the same conditions. It was argued that, due to the distance from New Zealand to the continental United States, restrictions on freight space, and New Zealand's desire to ship honeybees with the least possible stress and to provide premium quality honeybees to the U.S. market, direct shipping of honeybees from New Zealand for import into the continental United States, as required in proposed § 322.5, would be impracticable. New Zealand argued that it needed to be able to transit honeybees through Hawaii and to retain the right to transload shipments there onto aircraft other than the ones in which the shipments arrived. Though the New Zealand Government viewed the current transiting system as having been

successful, additional safeguards were suggested in comments submitted by that government's representatives in order to protect Hawaii's honeybee health status. These included requiring that shipments transit Honolulu at night, when honeybees are least active; requiring shipments to include *Apistan* (fluvalinate) strips; and requiring the *Apistan* strips to have been in contact with the honeybees for at least 24 hours prior to the shipment reaching the airport in Honolulu.

APHIS has taken all comments into consideration regarding the transit of bee shipments through Hawaii and decided not to make any changes to the proposed transiting conditions. As we have already noted, the proposed standards were closely based upon the existing requirements in § 322.1, which have proved effective in ensuring the safe transit through Hawaii of honeybees and honeybee semen from New Zealand. In some instances, the proposed conditions were more stringent. For example, both the existing and proposed regulations require that honeybees be packaged in enclosed containers covered with netting to ensure that no honeybees can escape, but the proposed rule, in § 322.27(a), also specified that the containers must be sufficiently secure to prevent the escape of organisms and the leakage of any contained materials. We are confident that foreign bees and bee products will be able to transit through Hawaii safely under the conditions that we proposed. Allowing shipments of bees to change planes, however, could increase the likelihood of an accidental release of bees or bee pests. Therefore, we find it necessary to retain the prohibition on transloading contained in proposed § 322.25(c).

In addition to the concerns expressed over possible risks resulting from the importation or transiting of live honeybees, some commenters also criticized the proposed conditions for importation of beeswax and honey for bee feed. Those two articles were classified as restricted articles in § 322.31 of the proposed rule. Section 322.33 specified that export certificates for beeswax must state that the beeswax has been liquified and that export certificates accompanying honey for bee feed must state that the honey has been heated to 212 °F for 30 minutes. Commenters argued that liquification of beeswax was not an effective means of preventing the spread of disease through that medium. Similarly, it was argued that heating honey to 212 °F may also fail to kill disease-carrying pathogens, such as American foulbrood spores, in the honey. Commenters also suggested

that the heating process itself could make the honey toxic for bees. Some commenters also worried that contaminated honey imported as bee feed under proposed § 322.33 could find its way into the retail market for human consumption.

American foulbrood (*Paenibacillus larvae*) is the only bee malady that we are aware of that can be transmitted in beeswax that has been liquefied or in honey. Because American foulbrood is widespread in the United States, we do not regulate the internal movement of affected material, and citing the disease as a rationale for barring imports may be problematic under international trade agreements. In order to offer greater protection to the U.S. honeybee population, however, we are tightening the beeswax requirements somewhat in this final rule. As specified in § 322.30(a) of this final rule, the export certificate accompanying beeswax entering the United States must state that the beeswax has been liquified and that slumgum and honey have been removed. For the sake of clarity, we are adding a definition for *slumgum* to § 322.1. We define *slumgum* as the residue remaining after the beeswax rendering process. *Slumgum* is composed of beeswax mixed with debris or refuse that accumulates when wax cappings or comb are melted and may include wax moth cocoons, dead bees, bee parts, and other detritus from the colony. The claim that heated honey may be toxic to bees is not supported by sufficient data to cause us to change the final rule. Regarding the commenters' final point, the Food and Drug Administration would be responsible for ensuring that honey imported for bee feed does not get into the food supply.

In addition to the other risks cited by commenters opposed to the proposed rule, there was concern expressed that it could set a dangerous precedent. Under the rules of the World Trade Organization (WTO), it was suggested, APHIS might have difficulty justifying the prohibition or restriction of imports from other countries that wanted to export honeybees to the United States. The ultimate effect of the proposal, it was feared, would be to allow the importation of bees and queens from almost any country in the world, greatly increasing the risk of spreading diseases and pests to the U.S. bee population.

Regions that are not listed in § 322.4 as approved regions for the importation of honeybees, honeybee germ plasm, or other bees will be required to submit a formal petition to the Secretary of Agriculture for consideration for such approval. Such a petition would be followed by a thorough PRA, which

would then be made available to the public for comment. If the results of the PRA suggest that a regulatory change is merited, i.e., that bees and bee products could safely be imported from the region under consideration, then APHIS may propose such a change. The proposed rule would be published in the **Federal Register**, and the public would have an opportunity to offer comments.

In their discussions of the possible risks of allowing imports of honeybees and related articles from Australia and New Zealand, many commenters focused on what they perceived as the shortcomings of the PRAs that APHIS carried out for those two countries. The PRAs provided the basis for the proposed rule. Various commenters asserted that the PRAs were not conducted in accordance with OIE guidelines; that the PRAs were insufficiently comprehensive in evaluating pest risks, lacking both depth and breadth and relying on old information; that they employed imprecise or unscientific terminology; and that the standards applied to Australia and New Zealand were less rigorous than those we apply domestically.

A commenter, referring to proposed OIE standards for PRAs for honeybees, questioned why APHIS did not use these standards as a basis for conducting its assessments of Australia and New Zealand. The commenter thought APHIS had proceeded in an ad hoc manner rather than relying on specific international standards that were available for use.

The OIE standards in question are proposed standards that have not yet been implemented. It is possible that finalization of the OIE standards could serve as an impetus to future rulemaking. In drafting the August 2002 proposed rule and this final rule, we did use the international standard that was available at the time of writing.

Some commenters stated that the information on which the PRAs were based was no longer current, particularly in the case of New Zealand. Commenters noted that the New Zealand site visit was conducted by APHIS in 1984, which was the year the risk assessment was initiated, and was of relatively short duration. It was suggested that the continued use of the original New Zealand PRA as a basis for the current rulemaking was not warranted. It was also claimed that previous critiques of that risk assessment had been ignored.

As noted in the preamble of the proposed rule, APHIS made the PRAs for both Australia and New Zealand

available for public comment prior to the publication of the proposed rule. On December 9, 1999, we published in the **Federal Register** (64 FR 68984, Docket No. 99-091-1) a notice of availability for the New Zealand PRA. On May 3, 2000, we published in the **Federal Register** (65 FR 25701, Docket No. 00-032-1) a notice of availability for the Australian PRA. We solicited public comment on each PRA for 60 days. During their respective 60-day comment periods, we received 23 comments on the New Zealand PRA and 6 comments on the Australian PRA. We responded to all comments. In March 2002, we updated the New Zealand PRA because, following its publication, Varroa mite was detected on the North Island of New Zealand. The updated New Zealand PRA includes a discussion of the detection of Varroa mite on the North Island of New Zealand and qualitatively assesses the effect of that parasite on importations of bees and bee products from New Zealand. We believe that our PRAs for Australia and New Zealand employed the best available sources of information to document the presence or absence of bee diseases and parasites in those countries. It is true that a site visit of New Zealand has not been conducted in recent years; however, we were repeatedly in contact with AQIS and MAF officials, as well as bee scientists from the USDA's Agricultural Research Service, during the preparation of the PRAs for Australia and New Zealand.

Some commenters argued that the PRAs were lacking in depth and scope. One commenter maintained that no U.S. scientist has yet done an in-depth study on diseases, pests, and viruses of New Zealand or Australian stock. It was suggested that serious study should be given to half-moon disorder, chronic bee paralysis virus, Kashmir bee virus (KBV), melanosis, and *Malphighamoeba mellificae*, all of which are known to occur in New Zealand.

As noted in Appendix II of the revised New Zealand PRA, which contains public comments on the PRA and APHIS' responses to those comments, neither KBV nor half-moon disorder is considered to be a significant disease by the OIE. Therefore, we cannot impose special import requirements on New Zealand queens and package bees based on these diseases. Chronic bee paralysis virus, melanosis, and *Malphighamoeba mellificae* are not known to have an economic impact on honeybees.

A commenter questioned why APHIS did not assess germ plasm and honeybees as separate items in separate risk assessments. The commenter argued that beekeepers are chiefly

concerned about the risks posed by importing live honeybees but would support a standard protocol for imported germ plasm that would control the handling of that commodity.

APHIS does distinguish between live honeybees and honeybee germ plasm in evaluating the risks of importing each into the United States. Like the beekeepers cited by the commenter, we view imported live bees as having a greater potential for introducing bee diseases and pests into the U.S. bee population than imported germ plasm. While germ plasm can transmit genetic maladies, it will not carry viruses, bacteria, or parasites. Section 322.4 of the proposed rule provided for the importation of germ plasm from Australia, Bermuda, Canada, France, Great Britain, New Zealand, and Sweden, while allowing imports of live bees only from Australia, Canada, and New Zealand.

Another criticism of the PRAs was that the standards we applied to New Zealand and Australia were less rigorous than those we apply domestically. It was noted that while the continental United States has pest-free zones, we treat it as a single entity. Pests found anywhere in the continental United States are regarded as existing throughout the country. On the other hand, New Zealand is divided up into regions with and without pests.

Historically, APHIS has chosen not to regulate the interstate movement of honeybees because the frequent peregrinations of American beekeepers make such regulation extremely difficult. We have allowed the State agriculture regulatory agencies to oversee the apiculture industry at the State level. APHIS' Plant Protection and Quarantine and Veterinary Services divisions have been engaged in discussions of domestic honeybee health issues and are working together, along with honeybee-related trade associations and other organizations, such as the Apiary Inspectors of America, to develop solutions to perceived regulatory gaps or inequities.

An additional criticism of the PRAs was that they employed imprecise, inappropriate, or unscientific terminology. One commenter questioned whether the term "negligible," which was employed in the preamble of the proposed rule to describe the level of risk of introducing exotic bee diseases or pests or unwanted subspecies into the United States by means of imports from Australia and New Zealand, was being used purely as a descriptive adjective or whether the term corresponded to numerical ratings. This commenter claimed that a term

such as "negligible" cannot be science-based if it is not based upon a numerical rating.

We do not agree with the commenter's assertion that descriptive terms cannot be science-based. APHIS performs both qualitative and quantitative PRAs. The two types of assessments are similar in most respects; however, in quantitative PRAs, quarantine pests are examined in greater detail, and a quantitative assessment of the likelihood of introduction is provided. Criteria for performing PRAs for regions wanting to export honeybees, honeybee germ plasm, and other bees to the United States were set out in the August 2002 proposed rule. These procedures were followed when we conducted the PRAs for Australia and New Zealand. The primary elements of a honeybee-related PRA, as delineated in the proposed rule, are as follows: Identifying bee diseases and parasites of quarantine significance to the United States, as well as undesirable species and subspecies of honeybees associated with the importation; assessing the likelihood of the introduction of these diseases, parasites, and undesirable species and subspecies of honeybees into the United States, as well as the consequences of introduction; and considering the effectiveness of the regulatory system of the exporting region to control and prevent occurrences of diseases, parasites, and undesirable species and subspecies of honeybees. We evaluated these factors for Australia and New Zealand using information obtained from the governments of the two countries, as well as reviews of the topical scientific literature and site visits. Our conclusion, therefore, that the risks of introducing various pests and diseases into the United States as a result of allowing imports from Australia and New Zealand were low (the term "negligible" was only used in the preamble of the proposed rule and not in the PRAs themselves) was scientifically based.

Finally, one commenter thought that we should have done a "risk/benefit analysis" rather than a "risk assessment," suggesting that the former would have led us to conclude that allowing imports from Australia and New Zealand was not advisable. This commenter claimed that there would be no benefits accruing to the U.S. beekeeping industry as a result of the proposal, only risks.

Risk assessment is the internationally accepted standard for this type of evaluation and satisfies our international trade obligations. Under the international trade agreements to which it is a party, the United States is

obliged to consider imports of honeybees from countries where science-based analyses indicate acceptable risk levels and/or adequate risk management tactics. The methods used to initiate, conduct, and report on the PRAs for Australia and New Zealand are consistent with guidelines provided by the United Nations Food and Agriculture Organization and by the OIE.

A number of researchers took issue with the dead bee provisions in subpart E of the proposed rule. Under proposed § 322.31, dead bees of any genus were considered restricted articles. Commenters objected to this classification, arguing that dead bees do not pose a realistic threat of disease or parasite transmission because bacterial and viral diseases will not survive in dead hosts. Also, the manner in which bee specimens are killed and stored further diminishes the risk of their transmitting diseases or pests to live bees. Killing bees in cyanide or carbon tetrachloride will likely result in the death of any associated disease organisms or bee parasites as well. Dried bee specimens in museums are frozen, which would further reduce the likelihood of the survival of parasites, and housed in Schmidt boxes or museum drawers and are permanently isolated from contact with live bees. One commenter questioned the requirements in proposed § 322.32, under which dead bees entering the United States must be immersed in a solution containing at least 70 percent alcohol, immersed in liquid nitrogen, or pinned and dried in the manner of specific specimens. The commenter favored allowing additional fluids for immersion, arguing that alcohol does not always provide the best means of DNA preservation. Another commenter suggested that the paperwork burden that the requirements would place upon APHIS will inevitably lead to multi-month delays in granting permits, which will seriously impede or even stop taxonomic and ecological research collaborations that underlie bee conservation efforts.

The dead bee provision that most concerned the commenters was the requirement in § 322.32(b) of the proposed rule that such specimens be inspected at the port of entry in the United States. Some commenters suggested that this requirement could hamper scientific research. One commenter, citing an instance in which the British Museum of Natural History refused to lend to his research group samples of type and other bees because of the probability that packages would be opened and repacked inexpertly,

asserted that the proposed inspection requirement would leave U.S. researchers unable to borrow bees from foreign museums. To eliminate the need for opening and repacking packages of dead bees at the port of entry, commenters advocated permitting systems that would allow packages to be shipped to *bona fide* institutional insect collectors without visual inspections of the specimens and viewable shipping boxes.

The proposed import requirements for dead bees in the superfamily *Apoidea* substantially reduce the regulatory burden placed upon importers. The regulations in § 319.76–3 have required a Plant Pest Permit (Plant Protection and Quarantine form 526 and APHIS form 599) for importation of dead bees. Based on the number of comments, many scientists have been in violation of the existing bee regulations, as we issue very few permits for dead bees. Proposed § 322.32 did not require the Plant Pest Permit, mandating only that the bees be properly preserved and declared for possible inspection at the port of entry. We regret any inconvenience that research scientists may experience, but must point out that the periodic inspection of packages at the port of entry by DHS personnel is likely, with or without our inspection requirement. Removal of dead bees from the list of restricted articles would do nothing to reduce that likelihood, so they will remain on the list. We did agree with the commenter who suggested that we needed to accommodate additional preservative (fixative) solutions, and we have amended the final rule accordingly. The amended provision states that imported dead bees must be immersed in a solution containing at least 70 percent alcohol or a suitable fixative for genetic research.

Smaller numbers of commenters raised various other issues. Representatives of the Governments of Australia and New Zealand commented on issues of concern to those countries. Other commenters discussed the proposed ban on the importation of pollen for bee feed and restrictions on the importation of used beekeeping equipment, restrictions on the interstate movement of honeybee germ plasm and bee products into Hawaii, the possible benefits of allowing imports of honeybees from additional regions and other species of bees, the terminology employed in the proposed rule, packaging for bees other than honeybees, requirements for researchers who can import restricted organisms, States' authority to regulate bees and bee pests, and our economic analysis.

The Government of Australia, while generally favoring the proposed rule, had some objections to particular provisions. In addition to the comments on the proposed inspection procedures, which we discussed earlier, Australia also took issue with certain provisions in § 322.6 of the proposed rule pertaining to the importation of adult honeybees into Hawaii. Proposed paragraph (a)(2)(ii) of § 322.6 indicated that the export certificate for bees imported into Hawaii must state that the hives from which the honeybees in the shipment were derived were inspected individually and showed no sign of Varroa mite, tracheal mite, or African honeybee. Subsequent paragraphs specified that the certification must also state that the honeybees in the shipment were (1) derived exclusively from an apiary situated in the center of a zone of 50 kilometers (31 miles) in radius, in which special diagnostic tests, as set forth by the OIE, did not reveal any sign of the presence of Varroa mite for at least the past 2 years; and (2) derived exclusively from an apiary situated in the center of a zone of 5 kilometers (3.1 miles) in radius, in which no case of tracheal mite has been reported for at least the past 8 months. Australia contended that these requirements were unwarranted because it, like Hawaii, is free of Varroa mite, tracheal mite, and African honeybee—a status confirmed by a program of targeted surveillance and routine inspections of hives by Government apiary officers. It was argued, therefore, that official certification that Australia remains free of Varroa mite, tracheal mite, and African honeybee would provide a satisfactory level of assurance that a shipment of Australian honeybees could safely be imported into Hawaii.

These comments are moot now that we have determined that we will not allow the importation of honeybees into Hawaii. It should be noted that our proposed requirements were drawn directly from the OIE security procedures recommended in Article 3.4.2.3.

The Government of New Zealand also supported most aspects of the proposed rule, arguing that imports of honeybees and honeybee germ plasm from New Zealand could offer the U.S. beekeeping industry the opportunity to introduce new genetic stock from a source that poses no disease or pest hazards, and that the resulting increase in the biodiversity of the U.S. honeybee population could reduce its vulnerability to such pests as Varroa mite. Like the Government of Australia, however, New Zealand did offer some criticisms of particular provisions in the

proposed rule. In addition to its comments on the provisions for transiting of honeybees from New Zealand through Hawaii, which we discussed earlier, the Government of New Zealand took issue with proposed § 322.6(a)(1)(iii), which stated that the export certificate accompanying honeybees shipped to the United States must certify that the bees in the shipment were produced in the exporting region and are the offspring of queens and drones or semen also produced in the exporting region. The Government of New Zealand requested that we apply this condition to first-generation bees only. It was argued that the modified requirement would still be sufficiently rigorous to satisfy any concerns that APHIS might have about the possibility of bees of lesser health status or their germ plasm being imported into New Zealand and then exported to the United States. Currently, New Zealand does not allow the importation of adult honeybees or honeybee germ plasm, but it may in the future, and it would like to be able to export offspring or germ plasm from such imported bees provided that they are second generation or more.

We will not be making any changes to the final rule as a result of these comments. The intent of our requirements is to have New Zealand and Australia demonstrate that the bees they are exporting were derived from stock that is genuinely of Australian or New Zealand origin and thereby free from bee maladies widely prevalent in Asia. If New Zealand were to allow imports of honeybees, we would not want these bees exported to the United States without an opportunity to prepare a PRA and seek public comment. We do not view our export certification requirements as excessively onerous. Finally, the New Zealand representative may have overstated the potential benefits to the U.S. honeybee population of allowing imports. It is unlikely that the genetic stock from New Zealand will help to diminish the vulnerability of U.S. honeybees to Varroa mite, as New Zealand has not had Varroa long enough to select for resistance. Similarly, useful genetic stocks that will respond to our growing problem with antibiotic-resistant fowlbrood are not likely to come from New Zealand or Australia.

In addition to the Canadian Government's criticisms of our proposed certification and export requirements, two commenters from Canada, one a Government representative and the other a producer of honey and other products, took issue with our ban on the importation of bee

pollen for bee feed in proposed § 322.2(b)(2) and our restrictions on the importation of used beekeeping equipment in proposed § 322.2(b)(3)(ii). The commenters viewed these proposed changes to the regulations as unjustified. It was suggested that the relative honeybee disease risk from importation of bee pollen and used beekeeping equipment was no greater than that associated with the import of Canadian honeybees, which is currently permitted under the regulations. It was also argued that the ban on pollen could hamper local U.S. companies that depend on Canadian bee pollen to rear bumblebees. One of the commenters suggested that in the final rule we might want to narrow the pollen prohibition, maintaining a ban on pollen for use in rearing honeybees but not for use in rearing bumblebees, since honeybee diseases present in bee pollen do not affect bumblebees. The commenter also suggested that APHIS may wish to consider an import requirement for the irradiation of pollen or other materials for bee feed when the disease risk so warrants.

We are not making any changes to the final rule in response to these comments. This final rule will allow the continued importation of honeybees into the United States from Canada, but such imports will now be subject to the same conditions as will apply to imports from Australia and New Zealand. As specified in § 322.6, export certificates for both honeybees and honeybee germ plasm must include certifications of origin. One reason why we view such certification as necessary for Canadian imports is our concern about the smuggling of bees through Canada into the United States. These same concerns apply to bee pollen and used beekeeping equipment from Canada. If suitable techniques for sterilizing bee pollen and used beekeeping equipment are developed and are validated by means of efficacy studies and proper documentation, the regulations could be amended to accommodate imports of bee pollen and used beekeeping equipment from Canada.

Some commenters from Hawaii questioned the ban on interstate movement of honeybee germ plasm into that State in § 322.2 of the proposed rule and also argued that Hawaiian beekeepers should be allowed to bring in pollen from the continental United States. It was suggested that semen brought in from the continental United States could be used to introduce disease-resistant traits to Hawaiian bees. It was also argued that because the tropics are known for pollen shortages,

the possibility of importing pollen into Hawaii from the continental United States for supplemental bee feeding should not be foreclosed.

The commenters' concerns are duly noted, and the prohibition on the interstate movement of honeybee germ plasm into Hawaii has been removed from the final rule. Under this final rule, honeybee semen is considered a restricted organism and can be imported or moved interstate under permit into Hawaii for research by university, Federal Government, or State officials in accordance with the regulations. The final rule will not allow interstate movement of pollen into Hawaii, however, and will retain the prohibition in § 322.2 on the importation of pollen into the United States for use as bee feed. The risk of disease transmission from bee pollen to honeybees, along with plant disease risks, make the importation of bee pollen into the United States and the interstate movement of bee pollen to Hawaii inadvisable. At some point in the future, under a separate risk assessment, we could amend the regulations to allow interstate movement of bee pollen into Hawaii or importation of bee pollen into the United States if the pollen is irradiated.

Some commenters favored allowing the importation of honeybees from additional regions or allowing in additional bee species. One commenter wrote to advocate allowing the importation of honeybees from Scandinavia and northwestern Russia into Alaska. According to this commenter, it is very difficult at present to start a breeding program in Alaska because there are no local strains of feral honeybees there and because bees imported from southern locations tend not to survive the Alaskan winter. Allowing imports from Scandinavia and northwestern Russia could solve this problem faced by Alaskan beekeepers. The commenter also argued that Alaska, because of its isolation, would be a good location to carry out research on bees. Another commenter favored allowing imports of alfalfa leafcutting bees from New Zealand. The proposed rule allowed such imports only from Canada. The commenter argued that the alfalfa leafcutting bee does not carry enemies or diseases of honeybees or bumblebees and that all species of insects that can occur among leafcutting bee cells are easily eliminated by appropriate management. Allowing these bees to be imported into the United States from New Zealand would give American alfalfa seed growers an alternative to Canada as a supplier of these bees, according to the commenter.

Before APHIS could allow such imports, formal PRAs would need to be carried out for imported honeybees from Scandinavia and northwestern Russia and imported alfalfa leafcutter bees from New Zealand. PRA requirements are contained in § 322.12 of this final rule. As stated in § 322.12(a), requests for PRAs must be initiated by the national government of the region wishing to export bees or bee products to the United States.

One commenter questioned the terminology we used § 322.6(c) of the proposed rule, which stated that for bees other than honeybees, the export certificate must certify that the bees in the shipment were produced in the exporting region and are the offspring of queens and drones or semen also produced in the exporting region. Noting that alfalfa leafcutter bees and some other species do not have queens or drones, the commenter suggested substituting “reproductive females and males” for those terms.

The commenter’s concerns are duly noted, and the oversight has been corrected. In this final rule, § 322.6(c) states that the export certificate must certify that the bees in the shipment were produced in the exporting region and are the offspring of bees or semen also produced in the exporting region.

The same commenter took issue with a provision in § 322.8 of the proposed rule pertaining to the packaging of shipments of bees other than honeybees. Paragraph (b)(2)(ii) stipulates that packages of bees other than honeybees may not contain any soil. Noting that *Osmia lignaria* and *O. cornifrons*, both species that would be allowed importation under the proposed rule, use soil in creating mud partitions in their nests, the commenter questioned whether it was APHIS’ intent to prevent the importation of filled nests of *Osmia* with their mud partitions. The commenter added that she did not know of any information to suggest that there is or is not a risk of importation of pests, including microorganisms, in the mud partitions in *Osmia* nests.

It is not our intent to prevent the importation of filled nests of *Osmia*. While the nest cells of *O. lignaria* and *O. cornifrons* are made of soil, the soil is highly manipulated and combined with secretions that render it a changed substance that is unlikely to serve as a medium for the transmission of diseases or pests. Therefore, § 322.8(b)(2)(ii) of this final rule allows for the importation of soil in packages of bees other than honeybees if the soil is used in nest cells that include developing, immature bees. In addition, § 322.5(d), which contains general conditions for the

importation of bees other than honeybees, will now provide for the importation of “essential nest substrate,” as well as for live adult bees and live brood.

The same commenter also argued for a change to § 322.15(b) of the proposed rule, which specified that restricted organisms may only be imported into the United States by Federal, State, or university researchers. It was argued that importation of restricted organisms by independent researchers should be allowed if such researchers are able to meet the post-entry handling requirements of proposed § 322.24.

We have not made any change to the final rule in response to this comment. The conditions of proposed § 322.15, under which university and State researchers could work for the first time with certain organisms defined in that section as restricted organisms, were substantially more liberal than the regulations that have been in place up to now. For example, the existing § 322.1 has allowed only USDA personnel to import honeybees from any region other than Canada. A decision to conduct research on a restricted organism comes with considerable responsibility, liability, and regulatory oversight. We believe that any further loosening of the restrictions on the importation of restricted organisms could jeopardize APHIS’ ability to safeguard our apiculture industry by tracking disease and pest introductions, should any occur.

One commenter suggested that § 322.17 of the proposed rule, which contained procedures for review by APHIS of permit applications for importing restricted organisms and criteria for denial or cancellation of permits, could infringe upon State prerogatives. Proposed paragraph (a)(1) stated that APHIS may consult with State officials during the permit review process. Proposed paragraph (a)(2) stated, among other things, that APHIS will transmit a copy of the permit application, along with its anticipated decision on the application, to the appropriate regulatory official in the destination State for review and recommendation; that APHIS will consider the State’s response before taking final action; and that if a State makes no recommendation within 20 business days, concurrence with APHIS’ decision is assumed. The commenter argued that States need to be guaranteed a “reasonable” timeframe for review and that the rule must include reference to the State’s authority to regulate bees and pests brought to the State.

We will not be making any changes to the final rule as a result of this

comment. In matters where APHIS is regulating importation and/or interstate transport of a plant pest (7 CFR 330.200), the authority lies with APHIS, as a Federal agency, to issue the necessary permit.

Finally, some commenters disputed our observations in the economic analysis prepared for the proposed rule that continental U.S. beekeepers experience shortages of queens in early spring and that California fruit and nut producers may experience shortages of pollinators at that time of year. We argued that, based on the high demand for pollination services and uncertainty about whether enough bees could be brought into the continental United States from Hawaii to meet that demand, the price of Hawaiian early-spring honeybees would not be likely to fall significantly as a result of allowing imports from Australia and New Zealand.

It is the observation of APHIS’ entomologists working with the bee industry that there are shortages of domestic queen bees and package bees in late winter and early spring, before production in Georgia, Texas, Florida, and other bee-producing States reaches its full capacity.

Miscellaneous

In addition to changes we have made in response to commenters’ suggestions, in response to the OIG audit referred to earlier and to post-September 11 security concerns, we have also made a slight modification to the permitting process for the importation of restricted organisms. On March 1, 2003, the APHIS Permit Unit instituted a requirement that each permit condition on a PPQ Form 526 be initialed by the permit applicant prior to issuance of the permit. Accordingly, § 322.15(b)(1) of this final rule provides, among other things, that the applicant must first initial each condition of the proposed permit and then return the proposed permit to the Permit Unit before we will issue a signed, valid permit.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 604, we have prepared a final regulatory

flexibility analysis, which is set out below, regarding the economic effects of this rule on small entities. The discussion also serves as our cost-benefit analysis under Executive Order 12866.

In the initial regulatory flexibility analysis that accompanied the proposed rule, we solicited comments regarding the number and kinds of small entities that could incur benefits or costs from implementation of the proposed rule and the economic effects of those benefits or costs. We did not receive such information, although, as we have already noted, a few commenters took issue with our discussion in that initial analysis of shortages of domestic queens and pollinators in early spring. We stand by our observation that such

shortages do, in fact, exist at a given price.

This final rule is intended to consolidate and amend the regulations for the importation of honeybees and honeybee semen and the regulations established to prevent the introduction of exotic bee diseases and parasites through the importation of bees other than honeybees, certain beekeeping byproducts, and used beekeeping equipment. Among other things, we are allowing, under certain conditions, the importation into the continental United States of honeybees from Australia and honeybees and honeybee germ plasm from New Zealand. These changes will make these regulations more consistent with international standards, update them to reflect current research and

terminology, and simplify them and make them more useful.

Honey Production in the United States

The United States is the second largest honey producer in the world. In 2003, the United States had a registered stock of close to 2.6 million honeybee colonies, as shown below in table 1. These honeybee colonies were owned by beekeepers with 5 or more colonies and produced 181 million pounds of honey valued at \$255 million. Largely due to bee parasite problems (*i.e.*, Varroa mite), the number of honeybee colonies in the United States decreased from 3.4 million in 1994 to 2.5 million colonies in 2001.

TABLE 1.—HONEYBEE COLONIES, HONEY PRODUCTION, AND VALUE IN THE UNITED STATES, 1997–2003

Year	Honeybee colonies	Honey production (in pounds)	Value of production (in U.S. dollars)
1997	2,631,000	196,536,000	\$147,795,000
1998	2,633,000	220,316,000	147,254,000
1999	2,688,000	205,250,000	126,075,000
2000	2,620,000	220,339,000	132,742,000
2001	2,513,000	185,926,000	127,060,000
2002	2,574,000	171,718,000	228,338,000
2003	2,590,000	181,096,000	255,791,000

Source: Honey Report (several issues), National Agricultural Statistics Service (NASS), Agricultural Statistics Board, U.S. Department of Agriculture.

An estimated 125,000 to 150,000 beekeepers in the United States operate the 2.59 million honeybee colonies (NASS, Honey Report, 2004). Less than 2 percent of these beekeepers in the United States are full-time (commercial) operators (*i.e.*, with 300 or more bee colonies). More than 90 percent are hobbyists (*i.e.*, with fewer than 25 bee

colonies). The remainder are part-time (*i.e.*, with 25 to 299 bee colonies).

According to the 1997 U.S. Census of Agriculture, there were 7,688 commercial apiaries registered in the United States in that year that sold honey and 910 commercial apiaries that offered their honeybees for pollination services (table 2). Total annual sales of honey and other bee products amounted to \$138.23 million that year. California,

Florida, South Dakota, North Dakota, Minnesota, and Texas accounted for more than half of both U.S. bee colonies and honey production. Hawaii, with 38 registered commercial apiaries in 1997, was responsible for 0.5 percent of U.S. domestic commercial sales. However, Hawaii is the only U.S. State that is able to export honeybees because of its disease-free status.

TABLE 2.—HONEYBEE COLONIES AND HONEY, INVENTORY AND SALES IN MAJOR STATES AND HAWAII IN 1997

State	Inventory of all U.S. registered apiaries ¹	Commercial sales of bee colonies and honey					
		(a) Colonies of bees		(b) Honey		Value of sales (a + b)	% of U.S. sales
		Apiaries	Number	Apiaries	Pounds		
California	1,021	68	79,239	733	28,305,056	\$23,167,000	16.8
Florida	645	35	5,524	482	16,471,427	13,461,000	9.7
S. Dakota	219	16	8,305	132	14,225,757	11,351,000	8.2
N. Dakota	144	11	2,184	120	12,803,245	10,330,000	7.5
Texas	989	57	106,028	360	8,418,792	7,906,000	5.7
Minnesota	428	37	9,813	258	9,311,475	7,744,000	5.6
Sum of 6	3,446	224	211,093	2,085	89,535,752	73,959,000	53.5
Hawaii	75	4	16	34	949,769	735,000	0.5
United States	17,469	910	380,463	7,688	158,943,634	138,228,000	

Source: National Agricultural Statistics Service (NASS), 1997 U.S. Census of Agriculture, USDA.

¹ Both commercial and hobbyists' apiaries.

Bee Pollination in the United States

Honeybees, in addition to producing honey, play a vital role in the pollination of U.S. agricultural crops. In 1987, the annual value of agricultural production dependent upon pollination by honeybees in the United States was \$9.6 billion; by 1999, that value had risen to \$14.6 billion. More than 40 percent of fruit and nut production in the United States depends upon honeybee pollination (\$4.76 billion out of \$10.94 billion average annual value), as does more than 70 percent of vegetable and melon production (\$2.98 billion out of \$3.96 billion), and around 21 percent of field crop production (\$6.82 billion out of \$32.06 billion).¹

Other bees besides honeybees also provide important pollination services. The alfalfa leafcutter bee (*Megachile rotundata*), for example, has become the principal alfalfa pollinator in several Western States. Other bee species that are commonly used for pollination purposes are bumblebees (*Bombus occidentalis* and *B. impatiens*), blue orchard bees (*Osmia lignaria*), and horn-faced bees (*O. cornifrons*). Bumblebees are pollinators of many plants, especially those growing at high elevations and in greenhouses. Blue orchard bees are an alternate pollinator species of orchard crops, such as almonds. Apiculture pollination is especially vital to the fruit, nut, and vegetable production of California and

Florida. As the demand for these products increases, so, too, does the corresponding demand for bee pollination services.

International Bee Trade

Reported data on U.S. imports of bees exist only for the alfalfa leafcutter bee, a species used only for crop pollination. The value of U.S. imports of alfalfa leafcutter bees from Canada increased from \$6.5 million in 1996, to \$11.4 million in 1999, and then declined to \$5 million in 2001 (table 3). No imports of alfalfa leafcutter bees were recorded in 2002 or 2003. Alfalfa leafcutter bee larvae have generally been imported into the United States exclusively from Canada.

TABLE 3.—U.S. IMPORTS OF LIVE LEAFCUTTER BEE (NON-APIS) LARVAE, 1996–2001

Year	Exporting country	U.S. customs value (in U.S. dollars)
1996	(1) Canada	\$6,526,580
	World	6,528,680
1997	(1) Canada	9,319,641
	World	9,319,641
1998	(1) Canada	10,382,341
	World	10,382,341
1999	(1) Canada	11,393,247
	World	11,393,247
2000	(1) Canada	7,169,000
	(2) United Kingdom	5,000
	World	1,174,000
2001	(1) Canada	5,033,000
	(2) Belgium	3,000
	World	5,036,000
2002	None	0
2003	None	0

Source: U.S. Department of Commerce and World Trade Atlas. Commodity code (0106005030), Leaf Cutter Bee Larvae, Live.

There are no data available on traded honeybees and honeybee queens, except for exports from New Zealand (table 4) and imports into Canada (tables 5 and 6). These data provide an indication of the size of trade of honeybees amongst the biggest traders. Canada's largest trading partners are the United States for honeybee queens and New Zealand for honeybee workers.² International trade data on honeybees are not readily available, because only when a country requires an import or an export certificate does it report the

corresponding data. For example, Canada requires import certificates for honeybees and thus reports only import data.

Under this rule, an import permit will be required for restricted organisms (honey brood in the comb, all bees and bee germ plasm from nonapproved regions, and species of honeybees not listed in § 322.5(d)(2)). There is no cost for an import permit.

TABLE 4.—NEW ZEALAND'S EXPORTS OF HONEYBEE QUEENS AND HONEYBEE PACKAGES, 1996–2000

Year	Honeybee queens	Honeybee packages (1.5 kg)
1998	20,815	25,722
1999	16,872	17,506
2000	18,113	14,056
2001	14,287	12,631
2002	10,780	18,028

Source: New Zealand Ministry of Agriculture and Forestry (MAF).

TABLE 5.—CANADIAN IMPORTS OF LIVE HONEYBEE QUEENS FROM MAJOR SUPPLIERS, 1996–2001 [in Canadian dollars]

Countries	1996	1997	1998	1999	2000	2001
United States	\$545,392 (52%)	\$708,279 (71%)	\$2,241,361 (81%)	\$1,616,708 (82%)	\$1,758,663 (82%)	\$1,805,442 (82%)

¹ "The Value of Honey Bees as Pollinators of U.S. Crops in 2000." *Bee Culture Magazine*, March 2000.

² Hawaii is the only U.S. State that may export honeybees.

TABLE 5.—CANADIAN IMPORTS OF LIVE HONEYBEE QUEENS FROM MAJOR SUPPLIERS, 1996–2001—Continued
[in Canadian dollars]

Countries	1996	1997	1998	1999	2000	2001
New Zealand	\$325,864 (31%)	\$143,953 (14%)	\$225,176 (8%)	\$102,849 (5%)	\$62,436 (3%)	\$27,475 (1%)
Australia	\$183,540 (17%)	\$150,870 (15%)	\$99,915 (4%)	\$168,356 (9%)	\$77,170 (4%)	\$79,436 (4%)
People's Republic of China			\$178,886 (7%)	\$59,058 (3%)	\$85,483 (4%)	\$125,815 (6%)
Italy			\$7,417	\$17,065	\$7,835	\$8,620
Argentina			0	0	\$28,219	0
France			0	\$187	\$6,446	\$13,014
Germany			\$2,228	\$12,104	\$800	\$3,390
United Kingdom			\$1,384	\$4,818	\$1,033	\$3,304
Taiwan			\$3,353	\$1,114	\$2,254	0
Togo			\$5,832	0	0	0
Denmark			\$274	0	\$67	\$4,477
Brazil			0	0	0	\$2,431
Norway			0	\$419	\$1,951	0
Netherlands			\$413	0	\$1,267	0
Malaysia			0	0	\$404	0
Japan			0	\$145	0	\$153
India			0	\$93	0	0
Total	\$1,054,796	\$1,003,102	\$2,766,239	\$1,982,916	\$2,034,020	\$2,073,557

Source: Agricultural Canada, Horticulture and Special Crops Division, Commodity HS Code 0106.000030.

TABLE 6.—CANADIAN IMPORTS OF LIVE HONEYBEES, EXCEPT QUEENS, 1996–2001
[in Canadian dollars]

Countries	1996	1997	1998	1999	2000	2001
New Zealand	\$1,240,178 (83%)	\$1,931,210 (73%)	\$1,659,455 (74%)	\$778,019 (56%)	\$295,089 (43%)	\$304,074 (41%)
United States*	\$161,077 (11%)	\$346,642 (13%)	\$368,430 (16%)	\$195,102 (14%)	\$166,364 (24%)	\$179,974 (24%)
Australia	\$93,551 (6%)	\$375,476 (14%)	\$176,165 (8%)	\$423,729 (30%)	\$229,089 (33%)	\$262,365 (35%)
Netherlands	0	0	\$45,490	0	0	0
Total	\$1,494,806	\$2,653,328	\$2,249,540	\$1,396,850	\$691,398	\$746,413

Source: Agricultural Canada, Horticulture and Special Crops Division, Commodity HS Code 0106.0000
* The State of Hawaii only.

Potential Effects for U.S. Entities

In 1997, California honeybee producers sold \$18.4 million worth of honeybee queens, package bees, and nucs (i.e., 3, 4, or 5 frames of bees with brood and a laying queen). Sales from the rest of the United States brought the U.S. total sales of honeybee queens, package bees, and nucs to about \$30 million for 1997. Since then, there have been slight increases in prices for honeybee queens and package bees, reflecting increased demand. Domestically produced honeybee queens currently sell for an average of \$10 to \$12 per queen, but their price may range between \$3 and \$40, depending on the season. Queens possessing unique or exceptional characteristics are occasionally auctioned off for hundreds of dollars. Domestically produced package bees

currently sell for between \$30 and \$42 for a 3-pound colony.

This rule places U.S. produced queens and package bees, for the first time, in direct competition in the domestic market with imports of these types of bees from Australia and New Zealand. Imported bees are expected to arrive between early spring (end of March/early April) and the end of May. Because of seasonal differences between the United States and Australia and New Zealand, the adoption of this rule is expected to have a small, if any, negative impact on continental U.S. apiarists whose bees are ready to pollinate crops just as Australian and New Zealand bee imports cease with the beginning of winter in the southern hemisphere.

Because of the expected shipping season for honeybees from Australia and New Zealand, the greatest potential impact of this final rule will likely be on

bee producers in Hawaii who produce honeybees year-round. Honeybees, particularly queen bees, from Australia and New Zealand will probably enter the U.S. market during early spring (i.e., the beginning of active reproduction in bee colonies and a critical time for queen introduction). Traditionally, only Hawaii, because of its tropical climate, has been able to provide queens to U.S. beekeepers during this time period. Therefore, imports of queens from Australia and New Zealand may affect the prices of all queens sold during early spring. However, we do not expect this rule to have a significant economic effect on Hawaiian queen producers or other U.S. beekeepers for two reasons. First, data from imports into Canada of queens and package bees demonstrate that Hawaiian queens have a strong marketability; of the queens imported into Canada between 1997 and 2001, Hawaii supplied on average 80 percent,

while Australia and New Zealand supplied on average only 7 percent and 6 percent, respectively (table 5). Second, there have been reports from U.S. beekeepers of an insufficient supply of queens that are needed to revitalize bee colonies in early spring. California fruit and nut producers, in particular, also experience shortages of pollinators, as honeybees from the continental United States are still in winter hibernation and those from Hawaii are not enough to meet demand at that time of the year. Therefore, based on the high demand for pollination services and the uncertainty regarding the amount of imports to fill this demand, the price of Hawaiian early spring honeybees is not expected to fall significantly with the importation of honeybees. In general, expanded supplies of honeybees made possible through this action may reduce their price only slightly if demand is elastic, with greater price decreases possible if demand is inelastic.

While Hawaiian suppliers may witness some price decline, such losses to suppliers are not expected to exceed gains to purchasers of bees, who in general will benefit by increased availability of honeybees, particularly queens, during early spring. However, despite our requests for information regarding the economic impact of this rulemaking, we were unable to obtain data on the volume of queens or package bees that may be imported into the United States from Australia and New Zealand or on the potential demand for imports of queens and package bees from Australia and New Zealand. Therefore, we cannot quantitatively assess the effects those imports may have on U.S. producers of queen and package bees.

Foreign government inspectors visit their countries' apiaries twice a year and provide their honeybee producers with health certificates for exporting these bees. The price of the export certificate is included in the sale price of these honeybees. The fees that the Australian, New Zealand, and Canadian Governments charge their bee producers for the certificates are small.

Economic Effect on Small Entities

According to the North American Industry Classification System used by the Small Business Administration, honeybee farms and honey production are included under the "other animal production" category 1129, as subcategory 112910 "apiculture." This industry comprises establishments primarily engaged in raising bees; collecting honey; and/or selling queen bees, packages of bees, royal jelly, bees' wax, propolis, venom, or other bee

products. Such entities are considered small if they have annual receipts of \$750,000 or less. Therefore, most of the apiaries that are affected by this rule qualify under this definition of a "small entity." Specifically, only 20 to 50 apiaries out of 17,469 total apiaries in 1997 had more than \$750,000 of annual sales. We do not expect that U.S. apiarists, or importers and distributors of bees and bee equipment, large or small, will be significantly affected by this rule.

As discussed above, the number of honeybee colonies in the United States has fallen from 3.4 million in 1994, to 2.5 million in 2001, due to Varroa mite, an exotic bee parasite. Meanwhile, the demand for honeybees and other pollinating bees continues to increase, especially during the early spring months when continental U.S. bees are not available to pollinate almonds and plums in California. Therefore, greater access to bee imports from more countries will benefit U.S. agriculture in general.

Alternatives Considered

An alternative to this rulemaking was to make no changes in the regulations. After consideration, we rejected this alternative because there appears to be minimal disease or parasite risk, or risk of introduction of undesirable species of honeybees, associated with imports of bees from the regions we are designating as approved regions. Further, the changes to the regulations contained in this document will bring the regulations into accord with international standards for the trade of bees and with international trade agreements entered into by the United States.

This final rule contains various recordkeeping and reporting requirements. These requirements are described in this document under the heading "Paperwork Reduction Act."

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget

(OMB) under OMB control number 0579-0207.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

List of Subjects

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

7 CFR Part 322

Bees, Honey, Imports, Reporting and recordkeeping requirements.

■ Accordingly, we are amending 7 CFR chapter III as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450 and 7701-7772; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

§§ 319.76, 319.76-1, 319.76-2, 319.76-3, 319.76-4, 319.76-5, 319.76-6, 319.76-7, 319.76-8 [Removed]

■ 2. In part 319, "Subpart—Exotic Bee Diseases and Parasites," §§ 319.76 through 319.76-8, is removed.

■ 3. Part 322 is revised to read as follows:

PART 322—BEES, BEEKEEPING BYPRODUCTS, AND BEEKEEPING EQUIPMENT

Subpart A—General Provisions

Sec.
322.1 Definitions.
322.2 General requirements for interstate movement and importation.
322.3 Costs and charges.

Subpart B—Importation of Adult Honeybees, Honeybee Germ Plasm, and Bees Other Than Honeybees From Approved Regions

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Subpart C—Importation of Restricted Organisms

- 322.13 General requirements; restricted organisms.
 322.14 Documentation; applying for a permit to import a restricted organism.
 322.15 APHIS review of permit applications; denial or cancellation of permits.
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Subpart E—Importation and Transit of Restricted Articles

- 322.28 General requirements; restricted articles.
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 322.32 Mailed packages.
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 322.34 Inspection; refusal of entry.
 322.35 Ports of entry.

Authority: 7 U.S.C. 281; 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Subpart A—General Provisions

§ 322.1 Definitions.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or an individual authorized to act for the Administrator.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Bee. Any member of the superfamily *Apoidea* in any life stage, including germ plasm.

Beekeeping byproduct. Material for use in hives, including, but not limited to, beeswax for beekeeping, pollen for bee feed, or honey for bee feed.

Beekeeping equipment. Equipment used to house and manage bees, including, but not limited to, bee boards, hive bodies, bee nests and nesting material, smokers, hive tools, gloves or other clothing, and shipping containers.

Beekeeping establishment. All of the facilities, including apiaries, honey houses, and other facilities, and land that comprise a proprietor's beekeeping business.

Brood. The larvae, pupae, or postovipositional ova (including embryos) of bees.

Destination State. The State, district, or territory of the United States that is the final destination of imported bees, beekeeping byproducts, or beekeeping equipment.

Germ plasm. The semen and preovipositional ova of bees.

Hive. A box or other shelter containing a colony of bees.

Honeybee. Any live bee of the genus *Apis* in any life stage except germ plasm.

Inspector. Any employee of the Animal and Plant Health Inspection Service, or other individual authorized by the Administrator to carry out the provisions of this part.

Office International des Epizooties (OIE). The organization in the Food and Agriculture Organization of the United Nations responsible for the International Animal Health Code, which includes a section regarding bee diseases in international trade.

Package bees. Queen honeybees with attendant adult honeybees placed in a shipping container, such as a tube or cage.

Queen. The actively reproducing adult female in a colony of bees.

Slumgum. Residue remaining after the beeswax rendering process. It is composed of beeswax mixed with debris or refuse that accumulates when wax cappings or comb are melted. The residue can include wax moth cocoons, dead bees, bee parts, and other detritus from the colony.

Undesirable species or subspecies of honeybees. Honeybee species or subspecies including, but not limited to, *Apis mellifera scutellata*, commonly known as the African honeybee, and its hybrids; *Apis mellifera capensis*, commonly known as the Cape honeybee; and *Apis cerana*, commonly known as the Oriental honeybee.

United States. The States, District of Columbia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the Virgin Islands of the United States.

§ 322.2 General requirements for interstate movement and importation.

(a) **Interstate movement.** (1) The following regions of the United States are considered pest-free areas for Varroa mite, tracheal mite, small hive beetle, and African honeybee: Hawaii.

(2) In order to prevent the introduction of Varroa mite, tracheal

mite, small hive beetle, and African honeybee into the pest-free areas listed in paragraph (a)(1) of this section, interstate movement of honeybees into those areas is prohibited.

(b) **Importation.** In order to prevent the introduction into the United States of bee diseases and parasites, and undesirable species and subspecies of honeybees:

(1) You may import bees, honeybee germ plasm, and beekeeping byproducts into the United States only in accordance with this part.

(2) You may not import pollen derived from bee colonies and intended for use as bee feed into the United States.

(3)(i) You may not import used beekeeping equipment into the United States, unless that used beekeeping equipment either:

(A) Will be used solely for indoor display purposes and will not come into contact with indigenous bees; or

(B) Consists of bee boards that contain live brood of bees, other than honeybees, from a region listed in § 322.4(c).

(ii) New, unused beekeeping equipment is eligible for importation into the United States if it complies with all applicable regulations in this chapter.

(c) **Movements not in compliance.** (1) Any honeybees, honeybee germ plasm, bees other than honeybees, beekeeping byproducts, or used beekeeping equipment not in compliance with this part that are imported into the United States will be either:

(i) Immediately exported from the United States by you at your expense; or

(ii) Destroyed by us at your expense. (2) Pending exportation or destruction, we will immediately apply any necessary safeguards to the bees, beekeeping byproducts, or used beekeeping equipment to prevent the introduction of bee diseases and parasites, and undesirable species and subspecies of honeybees into the United States.

§ 322.3 Costs and charges.

We will furnish, without cost, the services of an inspector during normal business hours and at the inspector's places of duty. You will be responsible for all costs and charges arising from inspection outside of normal business hours or away from the inspector's places of duty.¹ You are also responsible for all costs and charges related to any exportation or destruction of shipments, in accordance with § 322.2(c)(1).

¹ Information on costs for services of an inspector are contained in part 354 of this chapter.

Further, if you import bees or germ plasm into a containment facility for research or processing, you will be responsible for all additional costs and charges associated with the importation.

Subpart B—Importation of Adult Honeybees, Honeybee Germ Plasm, and Bees Other Than Honeybees From Approved Regions

§ 322.4 Approved regions.

(a) *Adult honeybees.* The following regions are approved for the importation of adult honeybees into the continental United States (not including Hawaii) under the conditions of this subpart: Australia, Canada, and New Zealand.

(b) *Honeybee germ plasm.* The following regions are approved for the importation of honeybee germ plasm into the United States under the conditions of this subpart: Australia, Bermuda, Canada, France, Great Britain, New Zealand, and Sweden.

(c) *Bees other than honeybees.* The following regions are approved for the importation of bees other than honeybees into the continental United States (not including Hawaii) under the conditions of this subpart: Canada.

(d) If the name of the region from which you want to import adult honeybees, honeybee germ plasm, or bees other than honeybees into the United States does not appear in paragraphs (a), (b), or (c), respectively, of this section, refer to subpart C of this part, "Importation of Restricted Organisms," for requirements.

(e) For information on approving other regions for the importation of adult honeybees, honeybee germ plasm, or bees other than honeybees into the United States, see § 322.12.

§ 322.5 General requirements.

(a) All shipments of bees and honeybee germ plasm imported into the United States under this subpart must be shipped directly to the United States from an approved region.

(b) *Adult honeybees.* (1) You may import adult honeybees under this subpart only from regions listed in § 322.4(a).

(2) The honeybees must be package bees or queens with attending adult bees.

(c) *Honeybee germ plasm.* You may import honeybee germ plasm under this subpart only from regions listed in § 322.4(b).

(d) *Bees other than honeybees.* (1) You may import live adult bees or live brood and essential nest substrate under this subpart only from regions listed in § 322.4(c).

(2) The live bees or brood must belong to one of the following species:

(i) Bumblebees of the species *Bombus impatiens*;

(ii) Bumblebees of the species *Bombus occidentalis*;

(iii) Alfalfa leafcutter bee (*Megachile rotundata*);

(iv) Blue orchard bee (*Osmia lignaria*); or

(v) Horn-faced bee (*Osmia cornifrons*).

(3) If you want to import species of bees other than those listed in paragraph (d)(2) of this section, refer to subpart C of this part, "Importation of Restricted Organisms," for requirements.

§ 322.6 Export certificate.

Each shipment of bees and honeybee germ plasm arriving in the United States from an approved region must be accompanied by an export certificate issued by the appropriate regulatory agency of the national government of the exporting region.

(a) *Adult honeybees.* (1) For adult honeybees, the export certificate must:

(i) Certify that the hives from which the honeybees in the shipment were derived were individually inspected by an official of the regulatory agency no more than 10 days prior to export;

(ii) Identify any diseases, parasites, or undesirable species or subspecies of honeybee found in the hive during that preexport inspection; and

(iii) Certify that the bees in the shipment were produced in the exporting region and are the offspring of bees or semen also produced in the exporting region.

(2) If the export certificate identifies a bee disease or parasite of concern to the United States, including, but not limited to, Thai sacbrood virus, *Tropilaelaps clareae*, and *Euvarroa sinhai*, or an undesirable species or subspecies of honeybee, including, but not limited to, the Cape honeybee (*Apis mellifera capensis*) and the Oriental honeybee (*Apis cerana*), as occurring in the hive from which the shipment was derived, we will refuse the shipment's entry into the United States.

(b) *Honeybee germ plasm.* (1) For honeybee germ plasm, the export certificate must:

(i) Certify that the hives from which the germ plasm in each shipment was derived were individually inspected by an official of the regulatory agency no more than 10 days prior to export;

(ii) Identify any diseases, parasites, or undesirable species or subspecies of honeybee found in the hive during that preexport inspection; and

(iii) Certify that the bees in the hives from which the shipment was derived were produced in the exporting region and are the offspring of bees or semen also produced in the exporting region.

(2) If the export certificate identifies a bee disease or parasite of concern to the United States, including, but not limited to, Thai sacbrood virus, *Tropilaelaps clareae*, and *Euvarroa sinhai*, or an undesirable species or subspecies of honeybee, including, but not limited to, the Cape honeybee (*Apis mellifera capensis*) and the Oriental honeybee (*Apis cerana*), as occurring in the hive from which the shipment was derived, we will refuse the shipment's entry into the United States.

(c) *Bees other than honeybees.* For bees other than honeybees, the export certificate must certify that the bees in the shipment were produced in the exporting region and are the offspring of bees or semen also produced in the exporting region.

(Approved by the Office of Management and Budget under control number 0579-0207)

§ 322.7 Notice of arrival.

(a) At least 10 business days prior to the arrival in the United States of any shipment of bees or honeybee germ plasm imported into the United States under this subpart, you must notify APHIS of the impending arrival. Your notification must include the following information:

(1) Your name, address, and telephone number;

(2) The name and address of the receiving apiary;

(3) The name, address, and telephone number of the producer;

(4) The U.S. port where you expect the shipment to arrive. The port must be staffed by an APHIS inspector (see § 322.11);

(5) The date you expect the shipment to arrive at that U.S. port;

(6) The scientific name(s) of the organisms in the shipment;

(7) A description of the shipment (*i.e.*, package bees, queen bees, nest boxes, etc.); and

(8) The total number of organisms you expect to receive.

(b) You must provide the notification to APHIS through one of the following means:

(1) By mail to the Permit Unit, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1236; or

(2) By facsimile at (301) 734-8700; or

(3) By electronic mail to

Notification@usda.gov.

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§ 322.8 Packaging of shipments.

(a) *Adult honeybees.* All shipments of adult honeybees imported into the United States under this subpart:

(1) Must be packaged to prevent the escape of any bees or bee pests;

(2) Must not include any brood, comb, pollen, or honey; and

(3) May include sugar water or crystallized sugar (e.g., candy) for use as food during transit.

(b) *Bees other than honeybees*—(1) *Adult bees*. All adult bees other than honeybees imported into the United States must be packaged to prevent the escape of any bees or bee pests.

(2) *Live brood*. For live brood of bees other than honeybees, packages:

(i) Must be securely closed;

(ii) May not include any soil, except for that which is present in nest cells that include developing, immature bees;

(iii) May include only packing materials that were grown or produced in the exporting region and that meet all other applicable requirements of this chapter, such as the regulations pertaining to unmanufactured wood in part 319 of this chapter and the plant pest regulations in part 330 of this chapter; and

(iv) May consist of brood housed in new or used bee boards, provided the bee boards meet all applicable requirements of this part.

§ 322.9 Mailed packages.

(a) If you import a package of honeybees, honeybee germ plasm, or bees other than honeybees under this subpart through the mail or through commercial express delivery, you must mark all sides of the outside of that package with the contents of the shipment, *i.e.*, “Live Bees,” “Bee Germ Plasm,” or “Live Bee Brood,” and the name of the exporting region. The marking must be clearly visible using black letters at least 1 inch in height on a white background.

(b) If you import a package of honeybees, honeybee germ plasm, or bees other than honeybees under this subpart through commercial express delivery, you must provide an accurate description of the complete contents of the shipment, *i.e.*, “Live Bees,” “Bee Germ Plasm,” or “Live Bee Brood,” for the shipment’s delivery manifest entry.

(c) In addition to the export certificate required in § 322.6, a package of honeybees, honeybee germ plasm, or bees other than honeybees imported under this subpart by commercial express delivery must be accompanied at the time of arrival in the United States by an invoice or packing list accurately indicating the complete contents of the shipment.

§ 322.10 Inspection; refusal of entry.

(a) Shipments of honeybees, honeybee germ plasm, and bees other than honeybees imported into the United States under this subpart will be

inspected at the port of entry in the United States for:

(1) Proper documentation (see § 322.6);

(2) Timely notice of arrival (see § 322.7); and

(3) Adequate packaging (see § 322.8).

(b) If, upon inspection, any shipment fails to meet the requirements of this part, that shipment will be refused entry into the United States. In accordance with § 322.2(c), the inspector will offer you, or in your absence the shipper, the opportunity to immediately export any refused shipments. If you, or in your absence the shipper, decline to immediately export the shipment, we will destroy the shipment at your expense.

§ 322.11 Ports of entry.

Shipments of honeybees, honeybee germ plasm, and bees other than honeybees imported under this subpart may enter the United States only at a port of entry staffed by an APHIS inspector.²

§ 322.12 Risk assessment procedures for approving countries.

(a) The national government of the region wishing to export must request that we perform a risk assessment for the importation into the United States of honeybees, honeybee germ plasm, or bees other than honeybees from that region.

(b) When we receive a request, we will evaluate the science-based risks associated with such importation. Our risk assessment will be based on information provided by the exporting region, information from topical scientific literature, and, if applicable, information we gain from a site visit to the exporting region. The risk assessment will include:

(1) Identification of all bee diseases, including fungi, bacteria, viruses, mycoplasmas, and protozoa, that occur in the exporting region but not in the United States or that are listed as significant for international trade by the Office International des Epizooties (OIE);

(2) Identification of all bee parasites, including mites, that occur in the exporting region but not in the United States or that are listed as significant for international trade by the OIE;

(3) Identification of all species and subspecies of honeybees that occur in the exporting region but not in the

United States or that are listed as significant for international trade by the OIE, if applicable;

(4) Identification of all pests of bee culture, such as the small hive beetle, that occur in the exporting region but not in the United States or that are listed as significant for international trade by the OIE;

(5) Evaluation of the probability of establishment, including pathway, entry, colonization, and spread potentials, of any diseases, parasites, undesirable species or subspecies of honeybees, or pests identified in accordance with paragraphs (b)(1), (2), (3), or (4) of this section;

(6) Evaluation of the potential consequences of establishment, including economic, environmental, and perceived social and political effects, of each disease, parasite, undesirable species or subspecies of honeybees, or pest identified in accordance with paragraphs (b)(1), (2), (3), or (4) of this section; and

(7) Consideration of the effectiveness of the regulatory system of the exporting region to control bee diseases, parasites, undesirable species and subspecies of honeybees, and pests that occur there and to prevent occurrences of new bee diseases, parasites, undesirable species and subspecies of honeybees, and pests.

(c) Based on the conclusions of the risk assessment, we will either:

(1) Publish in the **Federal Register** a notice of proposed rulemaking to allow honeybees, honeybee germ plasm, or bees other than honeybees to be imported into the United States from that region; or

(2) Deny the request in writing, stating the specific reasons for that action.

(d) We will publish a notice of availability of all completed risk assessments for public comment.

(Approved by the Office of Management and Budget under control number 0579-0207)

Subpart C—Importation of Restricted Organisms

§ 322.13 General requirements; restricted organisms.

(a) For the purposes of this part, the following are restricted organisms:

(1) Honeybee brood in the comb;

(2) Adult honeybees from any region other than those listed in § 322.4(a);

(3) Honeybee germ plasm from any region other than those listed in § 322.4(b); and

(4) Bees other than honeybees, in any life stage, from any region other than those listed in § 322.4(c) or any species of bee other than those listed in § 322.5(d)(2).

(b) Restricted organisms may be imported into the United States only by

²To find out if a specific port is staffed by an APHIS inspector, or for a list of ports staffed by APHIS inspectors, contact Permit Unit, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1236; toll-free (877) 770-5990; fax (301) 734-8700.

Federal, State, or university researchers for research or experimental purposes and in accordance with this part.

§ 322.14 Documentation; applying for a permit to import a restricted organism.

Any restricted organism imported into the United States must be accompanied by both a permit, in accordance with paragraph (a) of this section, and an invoice or packing list accurately indicating the complete contents of the shipment, in accordance with paragraph (b) of this section.

(a) *Permit.* You must submit a completed application for a permit to import restricted organisms at least 30 days prior to scheduling arrival of those organisms. You may import a restricted organism only if we approve your application and issue you a permit. Our procedures for reviewing permit applications are provided in § 322.15. To apply for a permit, you must supply, either on a completed PPQ Form 526 or in some other written form, the following information:³

(1) *Applicant information.* Your name, title, organization, address, telephone number, facsimile number, and electronic mail address (provide all that are applicable). You must also state whether you are a U.S. resident. If you are not a U.S. resident, you must also supply the name, title, organization, address, telephone number, facsimile number, and electronic mail address (provide all that are applicable) of a U.S. resident who will act as a sponsor for the permit application.

(2) *Application type.* New permit, permit renewal, or amendment to existing permit (if a renewal or amendment, provide the current permit number).

(3) *Type of movement.* Select or write "Import into the United States."

(4) *Scientific name of organism.* Genus, species, subspecies or strain, and author (if known).

(5) *Type of organism.* Select or write "Bees and/or bee germ plasm."

(6) *Taxonomic classification.* Family of restricted organisms.

(7) *Life stage(s).* Semen, preovipositional eggs, embryos, postovipositional eggs, larvae, pupae, or adults. If adult queens, please specify.

(8) Number of shipments.

(9) Number of specimens per shipment.

(10) Is the organism established in the United States?

(11) Is the organism established in the destination State?

(12) Media or species of host material accompanying the organism (e.g., pollen, honey, wax, nesting material).

(13) *Source of organism (include any that apply, and list region of origin).* Supplier (provide supplier's name and address), wild collected, or reared under controlled conditions.

(14) *Method of shipment.* Airmail, express delivery (list company name).

(15) Port(s) of entry.

(16) Approximate date(s) of arrival at the port of entry.

(17) *Destination.* Provide the address of the location where the organism will be received and maintained, including building and room numbers where applicable.

(18) *Intended use (include any that apply).* Select or write "Scientific Study."

(19) Has your facility been evaluated by APHIS? If yes, list date(s) of approval. Is your facility approved for the species of bees or bee germ plasm for which you are seeking a permit?

(20) Provide your signature and the date of your signature under the following certification: "I certify that all statements and entries I have made on this document are true and accurate to the best of my knowledge and belief. I understand that any intentional false statement or misrepresentation made on this document is a violation of law and punishable by a fine of not more than \$10,000, or imprisonment of not more than 5 years, or both. (18 U.S.C. 1001)." If you are required to have a sponsor for your permit application, your sponsor must also sign and date under the same certification.

(b) *Invoice.* Any restricted organism must be accompanied at the time of arrival in the United States by an invoice or packing list accurately indicating the complete contents of the shipment and the exporting region.

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§ 322.15 APHIS review of permit applications; denial or cancellation of permits.

(a) *Review of permit applications to import restricted organisms—(1) Consultation.* During our review of your permit application, we may consult with any Federal officials; appropriate officials of any State, Territory, or other jurisdiction in the United States in charge of research or regulatory programs relative to bees; and any other qualified governmental or private research laboratory, institution, or individual. We will conduct these consultations to gain information on the

risks associated with the importation of the restricted organisms.

(2) *Review by destination State.* We will transmit a copy of your permit application, along with our anticipated decision on the application, to the appropriate regulatory official in the destination State for review and recommendation. A State's response, which we will consider before taking final action on the permit application, may take one of the following forms:

(i) The State recommends that we issue the permit;

(ii) The State recommends that we issue the permit with specified additional conditions;

(iii) The State recommends that we deny the permit application and provides scientific, risk-based reasons supporting that recommendation; or

(iv) The State makes no recommendation, thereby concurring with our decision regarding the issuance of the permit.⁴

(b) *Results of review.* After a complete review of your application, we will either:

(1) Issue you a written permit with, if applicable, certain specific conditions listed for the importation of the restricted organisms you applied to import. You must initial each condition on the proposed permit and return the proposed permit conditions to the Permit Unit before we will issue you a signed valid permit; or

(2) Notify you that your application has been denied and provide reasons for the denial.

(c) *Denial of permit applications.* APHIS will deny an application for a permit to import a restricted organism regulated under this subpart when, in its opinion, such movement would involve a danger of dissemination of an exotic bee disease or parasite, or an undesirable species or subspecies of honeybee. Danger of such dissemination may be deemed to exist when:

(1) Existing safeguards against dissemination are inadequate and no adequate safeguards can be arranged; or

(2) The potential for disseminating an exotic bee disease or parasite, or an undesirable species or subspecies of honeybee, with the restricted organism outweighs the probable benefits that could be derived from the proposed movement and use of the restricted organism; or

(3) When you, as a previous permittee, failed to maintain the safeguards or otherwise observe the

³Mail your completed application to Permit Unit, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1236. A PPQ Form 526 may be obtained by writing to the same address, calling toll-free (877) 770-5990, faxing your request to (301) 734-8700, or downloading the form from <http://www.aphis.usda.gov/ppq/ss/permits/pests/>.

⁴If a State regulatory official does not respond within 20 business days, we will conclude that the State has chosen to make no recommendation regarding the issuance of the permit.

conditions prescribed in a previous permit and have failed to demonstrate your ability or intent to observe them in the future; or

(4) The proposed movement of the restricted organism is adverse to the conduct of an eradication, suppression, control, or regulatory program of APHIS.

(d) *Cancellation of permits.* (1) APHIS may cancel any outstanding permit whenever:

(i) We receive information subsequent to the issuance of the permit of circumstances that would constitute cause for the denial of an application for permit under paragraph (c) of this section; or

(ii) You, as the permittee, fail to maintain the safeguards or otherwise observe the conditions specified in the permit or in any applicable regulations.

(2) Upon cancellation of a permit, you must either:

(i) Surrender all restricted organisms to an APHIS inspector; or

(ii) Destroy all restricted organisms under the supervision of an APHIS inspector.

(e) *Appealing the denial of permit applications or cancellation of permits.* If your permit application has been denied or your permit has been canceled, APHIS will promptly inform you, in writing, of the reasons for the denial or cancellation. You may appeal the decision by writing to the Administrator and providing all of the facts and reasons upon which you are relying to show that your permit application was wrongfully denied or your permit was wrongfully canceled. The Administrator will grant or deny the appeal as promptly as circumstances allow and will state, in writing, the reasons for the decision. If there is a conflict as to any material fact, you may request a hearing to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator.

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§ 322.16 Packaging of shipments.

(a) Restricted organisms must be packed in a container or combination of containers that will prevent the escape of the organisms and the leakage of any contained materials. The container must be sufficiently strong to prevent it from rupturing or breaking during shipment.

(b) The outer container must be clearly marked with the contents of the shipment, *i.e.*, either "Live Bees," "Bee Germ Plasm," or "Live Bee Brood," and the name of the region of origin.

(c) Only approved packing materials may be used in a shipment of restricted organisms.

(1) The following materials are approved as packing materials: Absorbent cotton or processed cotton padding free of cottonseed; cages made of processed wood; cellulose materials; excelsior; felt; ground peat (peat moss); paper or paper products; phenolic resin foam; sawdust; sponge rubber; thread waste, twine, or cord; and vermiculite.

(2) Other materials, such as host material for the organism, soil, or other types of packing material, may be included in a container only if identified in the permit application and approved by APHIS on the permit.

§ 322.17 Mailed packages.

(a) If you import a restricted organism through the mail or through commercial express delivery, you must attach a special mailing label (APHIS Form 599), which APHIS will provide with your permit, to the package or container. The mailing label indicates that APHIS has authorized the shipment.

(b) You must address the package containing the restricted organism to the containment facility or apiary identified on the permit (post office boxes are not allowed).

(c) If the restricted organism arrives in the mail without the mailing label described in paragraph (a) of this section or addressed to a containment facility or apiary other than the one listed on the permit, an inspector will refuse to allow the organism to enter the United States.

§ 322.18 Restricted organisms in a commercial vehicle arriving at a land border port in the United States.

(a) If you import a restricted organism through a land border port in the United States by commercial vehicle (*i.e.*, automobile or truck), then the person carrying the restricted organism must present the permit required by § 322.14 and an invoice or packing slip accurately indicating the complete contents of the shipment to the inspector at the land border port.

(b) The restricted organisms must be surrendered at the port of entry and can continue on to the destination identified on the permit only by a bonded carrier (commercial express delivery).

(c) If you fail to present a copy of the permit and an invoice or packing list accurately indicating the complete contents of the shipment at the port of entry, an inspector will refuse the organism's entry to the United States or confiscate and destroy the refused material.

(Approved by the Office of Management and Budget under control number 0579-0207)

§ 322.19 Inspection; refusal of entry.

(a) APHIS may inspect any restricted organism at the time of importation to determine if the organism meets all of the requirements of this part.

(b) If, upon inspection, any shipment fails to meet the requirements of the regulations, that shipment will be refused entry into the United States. In accordance with § 322.2(c), the inspector will offer the shipper the opportunity to immediately export any refused shipments. If the shipper declines to immediately export the shipment, we will destroy the shipment at his or her expense.

§ 322.20 Ports of entry.

A restricted organism may be imported only at a port of entry staffed by an APHIS inspector.⁵ After a restricted organism has been cleared for importation at the port of entry, the organism can only be transported by a bonded commercial carrier immediately and directly from the port of entry to the containment facility or apiary identified on the permit. You may open the package containing the restricted organism only within the containment facility or apiary identified on the permit.

(Approved by the Office of Management and Budget under control number 0579-0207)

§ 322.21 Post-entry handling.

(a) Immediately following clearance at the port of entry, a restricted organism must move by a bonded commercial carrier directly to a containment facility or apiary that has been inspected and approved by APHIS.⁶ We must inspect and approve the containment facility or apiary before we will issue a permit to import a restricted organism.

(b) *Inspection of premises.* Prior to issuing a permit to import restricted organisms, we will inspect the apiary or containment facility where you intend to contain the restricted organisms. In order to approve the apiary or containment facility, an inspector must determine that adequate safeguards are in place to prevent the release of diseases or parasites of bees, or of undesirable species or strains of honeybees. We will use the following criteria to determine whether adequate safeguards are in place:

⁵ To find out if a specific port is staffed by an APHIS inspector, or for a list of ports staffed by APHIS inspectors, contact Permit Unit, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1236; toll-free (877) 770-5990; fax (301) 734-8700.

⁶ For a list of approved facilities, or to arrange to have a facility inspected by APHIS, contact Permit Unit, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1236; toll-free (877) 770-5990.

(1) *Enclosed containment facilities.* (i) Will the facility's entryways, windows, and other structures, including water, air, and waste handling systems, contain the restricted organisms, parasites and pathogens, and prevent the entry of other organisms and unauthorized visitors?

(ii) Does the facility have operational and procedural safeguards in place to prevent the escape of the restricted organisms, parasites, and pathogens, and to prevent the entry of other organisms and unauthorized visitors?

(iii) Does the facility have a means of inactivating or sterilizing restricted organisms and any breeding materials, pathogens, parasites, containers, or other material?

(2) *Containment apiaries.* (i) Is the apiary located in an area devoid of indigenous bees and sufficiently isolated to prevent contact between indigenous bees and imported restricted organisms? Is the area extending from the apiary to the nearest indigenous bees constantly unsuitable for foraging individuals of the imported restricted organisms?

(ii) Does the apiary have sufficient physical barriers to prevent the entry of unauthorized visitors?

(iii) Does the apiary have operational and procedural safeguards in place to prevent the escape of the restricted organisms, parasites, and pathogens, and to prevent the entry of other organisms and unauthorized visitors?

(iv) Does the apiary have a means of inactivating or sterilizing restricted organisms, and any hives, wax, pathogens, parasites, containers, or other materials?

(3) Containment apiaries for honeybees resulting from germ plasm imported from nonapproved regions.

(i) Does the apiary have sufficient physical barriers to prevent the entry of unauthorized visitors?

(ii) Are there sufficient physical barriers (e.g., excluders) in hives in the apiary to prevent the escape of all adult queen and drone honeybees resulting from the germ plasm?

(iii) Does the apiary have operational and procedural safeguards in place to prevent the escape of all queen and drone honeybees resulting from the germ plasm?

(iv) Does the apiary have a means of destroying colonies of honeybees with undesirable characteristics that may result from imported germ plasm?

(c) *Holding in containment.* (1) If we issue a permit for importing restricted organisms into an approved containment facility or apiary, you may not remove or release the restricted organisms, or the progeny or germ

plasm resulting from the restricted organisms, from the apiary or facility without our prior approval.

(2) You must allow us to inspect the apiary or facility and all documents associated with the importation or holding of restricted organisms at any time to determine whether safeguards are being maintained to prevent the release of the restricted organisms, their progeny and germ plasm, parasites, and pathogens.

(3) You must inform us immediately, but no later than 24 hours after detection, if restricted organisms escape from the facility

(d) *Release from containment apiary or facility.* (1) After rearing the restricted organisms in an approved containment facility or apiary through at least 4 months of active reproduction with no evidence of nonindigenous parasites or pathogens or of undesirable characteristics, you may submit a request to us for the release of the bees. The request must include:

- (i) Inspection protocols;
- (ii) Inspection frequencies;
- (iii) Names and titles of inspectors;
- (iv) Complete information, including laboratory reports, on detection of diseases and parasites in the population;
- (v) Complete notes and observations on behavior, such as aggressiveness and swarming; and
- (vi) Any other information or data relating to bee diseases, parasites, or adverse species or subspecies.

(2) Mail your request for release to the Permit Unit, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1236, or fax to (301) 734-8700.

(3) When we receive a complete request for release from containment, we will evaluate the request and determine whether the bees may be released. Our evaluation may include an environmental assessment or environmental impact statement prepared in accordance with the National Environmental Policy Act. We may conduct an additional inspection of the bees during our evaluation of the request. You will receive a written statement as soon as circumstances allow that approves or denies your request for release of the bees.

(Approved by the Office of Management and Budget under control number 0579-0207)

Subpart D—Transit of Restricted Organisms Through the United States

§ 322.22 General requirements.

(a) You may transit restricted organisms from any region through the United States to another region only in accordance with this part. For a list of restricted organisms, see § 322.13(a).

(b) You may ship restricted organisms only aboard aircraft to the United States for transit to another country.

(c) You may transload a shipment of restricted organisms only once during the shipment's entire transit through the United States and only at an airport in the continental United States. You may not transload restricted organisms in Hawaii. In Hawaii, the restricted organisms must remain on, and depart for another destination aboard, the same aircraft on which the shipment arrived at the Hawaiian airport.

§ 322.23 Documentation.

Each shipment of restricted organisms transiting the United States must be accompanied by a document issued by the appropriate regulatory authority of the national government of the region of origin stating that the shipment has been inspected and determined to meet the packaging requirements in § 322.24.

§ 322.24 Packaging of transit shipments.

(a) Restricted organisms transiting the United States must be packaged in securely closed and completely enclosed containers that prevent the escape of organisms and the leakage of any contained materials. The container must be sufficiently strong and durable to prevent it from rupturing or breaking during shipment.

(b) In addition to the requirements in paragraph (a) of this section, each pallet of cages containing honeybees transiting the United States must be covered by an escape-proof net that is secured to the pallet so that no honeybees can escape from underneath the net.

(c) The outside of the package must be clearly marked with the contents of the transit shipment, *i.e.*, either "Live Bees," "Bee Germ Plasm," or "Live Bee Brood," and the name of the exporting region.

§ 322.25 Notice of arrival.

At least 2 business days prior to the expected date of arrival of restricted organisms at a port in the continental United States for in-transit movement, you or your shipper must contact the port to give the following information:

(a) The name of each U.S. airport where the shipment will arrive;

(b) The name of the U.S. airport where the shipment will be transloaded (if applicable);

(c) The date of the shipment's arrival at each U.S. airport;

(d) The date of the shipment's departure from each U.S. airport;

(e) The names, phone numbers, and addresses of both the shipper and receiver;

(f) The number of units in the shipment (*i.e.*, number of queens or number of cages of package bees); and

(g) The name of the airline carrying the shipment.

(Approved by the Office of Management and Budget under control number 0579-0207)

§ 322.26 Inspection and handling.

(a) All shipments of restricted organisms transiting the United States are subject to inspection at the port in the United States for compliance with this part. If, upon inspection, a transit shipment of restricted articles is found not to meet the requirements of this part, we will destroy the shipment at your expense.

(b) *Transloading*—(1) *Adult bees*. You may transload adult bees from one aircraft to another aircraft at the port of arrival in the United States only under the supervision of an inspector. If the adult bees cannot be transloaded immediately to the subsequent flight, you must store them within a completely enclosed building. Adult bees may not be transloaded from an aircraft to ground transportation for subsequent movement through the United States.

(2) *Bee germ plasm*. You may transload bee germ plasm from one aircraft to another at the port of arrival in the United States only under the supervision of an inspector.

§ 322.27 Eligible ports for transit shipments.

You may transit restricted organisms only through a port of entry staffed by an APHIS inspector.⁷

Subpart E—Importation and Transit of Restricted Articles

§ 322.28 General requirements; restricted articles.

(a) The following articles from any region are restricted articles:

- (1) Dead bees of any genus;
- (2) Beeswax for beekeeping; and
- (3) Honey for bee feed.

(b) Restricted articles may only be imported into or transit the United States in accordance with this part.

§ 322.29 Dead bees.

(a) Dead bees imported into or transiting the United States must be either:

(1) Immersed in a solution containing at least 70 percent alcohol or a suitable fixative for genetic research;

(2) Immersed in liquid nitrogen; or

(3) Pinned and dried in the manner of scientific specimens.

(b) Dead bees are subject to inspection at the port of entry in the United States to confirm that the requirements of paragraph (a) of this section have been met.

§ 322.30 Export certificate.

Each shipment of restricted articles, except for dead bees, imported into or transiting the United States must be accompanied by an export certificate issued by the appropriate regulatory agency of the national government of the exporting region. The export certificate must state that the articles in the shipment have been treated as follows:

(a) *Beeswax*. Must have been liquefied, and slungum and honey must be removed.

(b) *Honey for bee feed*. Heated to 212 °F (100 °C) for 30 minutes.

(Approved by the Office of Management and Budget under control number 0579-0207)

§ 322.31 Notice of arrival.

(a) At least 10 business days prior to the arrival in the United States of any shipment of restricted articles, you must notify APHIS of the impending arrival. Your notification must include the following information:

- (1) Your name, address, and telephone number;
- (2) The name and address of the recipient of the restricted articles;
- (3) The name, address, and telephone number of the producer;
- (4) The date you expect to receive the shipment;
- (5) A description of the contents of the shipment (*i.e.*, dead bees, honey for bee feed, etc.); and
- (6) The total number of restricted articles you expect to receive.

(b) You must provide the notification to APHIS through one of the following means:

- (1) By mail to the Permit Unit, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1236; or
- (2) By facsimile at (301) 734-8700; or
- (3) By electronic mail to

Notification@usda.gov.

(Approved by the Office of Management and Budget under control number 0579-0207)

§ 322.32 Mailed packages.

(a) If you import a restricted article through the mail or through commercial express delivery, you must mark all sides of the outside of that package with the contents of the shipment and the name of the exporting region. The marking must be clearly visible using black letters at least 1 inch in height on a white background.

(b) If you import a restricted article through commercial express delivery, you must provide an accurate description of the complete contents of the shipment for the shipment's delivery manifest entry.

(c) In addition to the export certificate required in § 322.30 (if applicable), a restricted article that is imported by mail or commercial express delivery must be accompanied by an invoice or packing list accurately indicating the complete contents of the shipment.

(Approved by the Office of Management and Budget under control number 0579-0207)

§ 322.33 Restricted articles in a commercial bonded vehicle arriving at a land border port in the United States.

If you import a restricted article through a land border port in the United States by commercial vehicle (*i.e.*, automobile or truck), then the person carrying the package containing the restricted article or the driver of the vehicle must present the export certificate required by § 322.30 (if applicable) and an invoice or packing slip accurately indicating the complete contents of the shipment to the inspector at the land border port.

§ 322.34 Inspection; refusal of entry.

(a) You must present shipments of restricted articles to the inspector at the port of entry in the United States. Shipments of restricted articles must remain at the port of entry until released by the inspector.

(b) The inspector at the port will confirm that all shipments of restricted articles have proper documentation (see § 322.30) and that you provided notice of arrival for all shipments of restricted articles (see § 322.32).

(c) If, upon inspection, any shipment fails to meet the requirements of this part, that shipment will be refused entry into the United States. In accordance with § 322.2(c), the inspector will offer you, or in your absence the shipper, the opportunity to immediately export any refused shipments, or confiscate and destroy the refused shipments.

(Approved by the Office of Management and Budget under control number 0579-0207)

§ 322.35 Ports of entry.

A restricted article may be imported only at a port of entry staffed by an APHIS inspector. To find out if a specific port is staffed by an APHIS inspector, or for a list of ports staffed by APHIS inspectors, contact Permit Unit, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, Maryland 20737-1236; toll-free (877) 770-5990; fax (301) 734-8700.

⁷ To find out if a specific port is staffed by an APHIS inspector, or for a list of ports staffed by APHIS inspectors, contact Permit Unit, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1236; toll-free (877) 770-5990; fax (301) 734-8700.

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

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 04-23416 Filed 10-20-04; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. FV04-985-2 IFR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 3 (Native) Spearmint Oil for the 2004-2005 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule revises the quantity of Class 3 (Native) spearmint oil produced in the Far West that handlers may purchase from, or handle for, producers during the 2004-2005 marketing year by increasing the salable quantity from 773,474 pounds to 1,095,689 pounds, and the allotment percentage from 36 percent to 51 percent. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, unanimously recommended this rule to avoid extreme fluctuations in supplies and prices and to help maintain stability in the Far West spearmint oil market.

DATES: Effective June 1, 2004, through May 31, 2005; comments received by December 20, 2004 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; E-mail: moab.docketclerk@usda.gov; or Internet: <http://www.regulations.gov>. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or

can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

FOR FURTHER INFORMATION CONTACT:

Susan M. Hiller, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW. Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326-2724, Fax: (503) 326-7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 985, as amended (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has

jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule revises the quantity of Native spearmint oil that handlers may purchase from, or handle for, producers during the 2004-2005 marketing year, which ends on May 31, 2005. Specifically, this rule increases the salable quantity from 773,474 pounds to 1,095,689 pounds, and the allotment percentage from 36 percent to 51 percent for Native spearmint oil for the 2004-2005 marketing year.

The salable quantity is the total quantity of each class of oil that handlers may purchase from, or handle for, producers during a marketing year. The total salable quantity is divided by the total industry allotment base to determine an allotment percentage. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's individual allotment base for the applicable class of spearmint oil.

The initial salable quantity and allotment percentages for Scotch and Native spearmint oils for the 2004-2005 marketing year were recommended by the Committee at its October 8, 2003, meeting. The Committee recommended salable quantities of 766,880 pounds and 773,474 pounds, and allotment percentages of 40 percent and 36 percent, respectively, for Scotch and Native spearmint oils. A proposed rule was published in the **Federal Register** on January 23, 2004 (69 FR 3272). Comments on the proposed rule were solicited from interested persons until February 23, 2004. No comments were received. Subsequently, a final rule establishing the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 2004-2005 marketing year was published in the **Federal Register** on March 22, 2004 (69 FR 13213).

Pursuant to authority contained in §§ 985.50, 985.51, and 985.52 of the order, at its September 13, 2004, meeting, the Committee unanimously recommended that the allotment percentage for Native spearmint oil for the 2004-2005 marketing year be increased by 12 percent from 36 percent to 48 percent. The Committee held another meeting on October 6, 2004, where, based on an unanticipated increase in demand, they unanimously recommended that the allotment percentage for Native spearmint oil for the 2004-2005 marketing year be increased by an additional 3 percent from 48 percent to 51 percent. Taking into consideration the following discussion on adjustments to the Native

spearmint oil salable quantity, the 2004–2005 marketing year salable quantity of 773,474 pounds will therefore be increased to 1,095,689 pounds.

The original total industry allotment base for Native spearmint oil for the 2004–2005 marketing year was established at 2,148,539 pounds and was revised at the beginning of the 2004–2005 marketing year to 2,148,410 pounds to reflect a 2003–2004 marketing year loss of 129 pounds of base due to non-production of some producers' total annual allotments. When the revised total allotment base of 2,148,410 pounds is applied to the originally established allotment percentage of 36 percent, the 2004–2005 marketing year salable quantity of 773,474 pounds is effectively modified to 773,428 pounds.

By increasing the salable quantity and allotment percentage, this rule makes an additional amount of Native spearmint oil available by releasing oil from the reserve pool. When applied to each individual producer, the 15 percent allotment percentage increase allows each producer to take up to an amount equal to 15 percent of their allotment base from their Native spearmint oil reserve. Before November 1, 2004, a producer may also transfer excess oil to another producer to enable that producer to fill a deficiency in that producer's annual allotment. After November 1, 2004, if a producer does not have any reserve pool oil, or has less than 15 percent of their allotment base in the reserve pool, the increase in allotment percentage will actually make less than such amount available to the market.

The following table summarizes the Committee recommendation:

Native Spearmint Oil Recommendation

(A) Estimated 2004–2005 Allotment Base—2,148,539 pounds. This is the estimate that the original 2004–2005 Native spearmint oil salable quantity and allotment percentage was based on.

(B) Revised 2004–2005 Allotment Base—2,148,410 pounds. This is 129 pounds less than the estimated allotment base of 2,148,539 pounds. This is less because some producers failed to produce all of their previous year's allotment.

(C) Initial 2004–2005 Allotment Percentage—36 percent.

(D) Initial 2004–2005 Salable Quantity—773,474. This figure is 36 percent of 2,148,539 pounds.

(E) Initial Adjustment to the 2004–2005 Salable Quantity—773,428 pounds. This figure reflects the salable quantity initially available after the

beginning of the 2004–2005 marketing year due to the 129 pound reduction in the industry allotment base to 2,148,410 pounds.

(F) Increase in Allotment Percentage—15 percent. The Committee recommended a 12 percent increase at its September 13, 2004, meeting and an additional 3 percent increase at its October 6, 2004, meeting, for a total increase of 15 percent.

(G) Revised 2004–2005 Allotment Percentage—51 percent. This figure is derived by adding the 15 percent increase to the initial 2004–2005 allotment percentage of 36 percent.

(H) Calculated Revised 2004–2005 Salable Quantity—1,095,689 pounds. This figure is 51 percent of the revised 2004–2005 allotment base of 2,148,410 pounds.

(I) Computed Increase in the 2004–2005 Salable Quantity—322,262 pounds. This figure is 15 percent of the revised 2004–2005 allotment base of 2,148,410 pounds.

In making this recommendation, the Committee considered all available information on price, supply, and demand. The Committee also considered reports and other information from handlers and producers in attendance at the meetings and reports given by the Committee manager from handlers who were not in attendance. The 2004–2005 marketing year began on June 1, 2004. Handlers have reported purchases of 602,895 pounds of Native spearmint oil for the period of June 1, 2004, through September 30, 2004. This amount exceeds the five-year average of 553,067 pounds for this period by 49,828 pounds. On average, handlers indicated that the estimated total demand for the 2004–2005 marketing year could be 1,105,000 pounds. This amount exceeds the five-year average for an entire marketing year of 973,456 pounds by 131,544 pounds. Therefore, based on past history, the industry may not be able to meet market demand without this increase. When the Committee made its initial recommendation for the establishment of the Native spearmint oil salable quantity and allotment percentage for the 2004–2005 marketing year, it had anticipated that the year would end with an ample available supply.

Based on its analysis of available information, USDA has determined that the salable quantity and allotment percentage for Native spearmint oil for the 2004–2005 marketing year should be increased to 1,095,689 pounds and 51 percent, respectively.

This rule relaxes the regulation of Native spearmint oil and will allow for

market needs and improve producer returns. In conjunction with the issuance of this rule, the Committee's revised marketing policy statement for the 2004–2005 marketing year has been reviewed by USDA. The Committee's marketing policy statement, a requirement whenever the Committee recommends implementing volume regulations or recommends revisions to existing volume regulations, meets the intent of § 985.50 of the order. During its discussion of revising the 2004–2005 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with USDA's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" has also been reviewed and confirmed.

The increase in the Native spearmint oil salable quantity and allotment percentage allows for anticipated market needs for this class of oil. In determining anticipated market needs, consideration by the Committee was given to historical sales, and changes and trends in production and demand.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 8 handlers of spearmint oil who are subject to regulation under the marketing order and approximately 98 producers of Class 3 (Native) spearmint oil in the

regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000.

Based on SBA's definition of small entities, the Committee estimates that 2 of the 8 handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 15 of the 98 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. A typical spearmint oil-producing operation has enough acreage for rotation such that the total acreage required to produce the crop is about one-third spearmint and two-thirds rotational crops. Thus, the typical spearmint oil producer has to have considerably more acreage than is planted to spearmint during any given season. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil-producing farms fall into the SBA category of large businesses.

Small spearmint oil producers generally are not as extensively diversified as larger ones and as such are more at risk to market fluctuations. Such small producers generally need to market their entire annual crop and do not have the luxury of having other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because income from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers. Even though a majority of

handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation.

This rule increases the quantity of Native spearmint oil that handlers may purchase from, or handle for, producers during the 2004–2005 marketing year, which ends on May 31, 2005. Pursuant to authority contained in §§ 985.50, 985.51, and 985.52 of the order, at its September 13, 2004, meeting, the Committee unanimously recommended that the allotment percentage for Native spearmint oil for the 2004–2005 marketing year be increased by 12 percent from 36 percent to 48 percent. The Committee held another meeting on October 6, 2004, where, based on an unanticipated increase in demand, they unanimously recommended that the allotment percentage for Native spearmint oil for the 2004–2005 marketing year be increased by an additional 3 percent from 48 percent to 51 percent. Therefore, the salable quantity for Native spearmint oil increases from 773,474 pounds to 1,095,689 pounds for the 2004–2005 marketing year.

An econometric model was used to assess the impact that volume control has on the prices producers receive for their commodity. Without volume control, spearmint oil markets would likely be over-supplied, resulting in low producer prices and a large volume of oil stored and carried over to the next crop year. The model estimates how much lower producer prices would likely be in the absence of volume controls.

The recommended salable percentages, upon which 2004–2005 producer allotments are based, are 40 percent for Scotch and 51 percent for Native (a 15 percentage point increase from the original salable percentage of 36 percent). Without volume controls, producers would not be limited to these allotment levels, and could produce and sell additional spearmint. The econometric model estimated a \$1.45 decline in the season average producer price per pound (from both classes of spearmint oil) resulting from the higher quantities that would be produced and marketed if volume controls were not used (*i.e.*, if the salable percentages were set at 100 percent).

Loosening the volume control restriction (by increasing the Native salable percentage from 36 percent to 51 percent) resulted in this revised price decline estimate of \$1.45 per pound if volume controls were not used. A previous price decline estimate of \$1.71 per pound was based on the 2004–2005 salable percentages (40 percent for

Scotch and 36 percent for Native) published in the **Federal Register** on March 22, 2004 (69 FR 13213).

The 2003 Far West producer price for both classes of spearmint oil was \$9.50 per pound, which is below the average of \$11.33 for the period of 1980 through 2002, based on National Agricultural Statistics Service data. The surplus situation for the spearmint oil market that would exist without volume controls in 2004–2005 also would likely dampen prospects for improved producer prices in future years because of the buildup in stocks.

The use of volume controls allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. The use of volume controls is believed to have little or no effect on consumer prices of products containing spearmint oil and will not result in fewer retail sales of such products.

Based on projections available at the meetings, the Committee considered alternatives to the 15 percent increase. The Committee not only considered leaving the salable quantity and allotment percentage unchanged, but also looked at various increases ranging from 10 percent to 20 percent. The Committee reached its recommendation to increase the salable quantity and allotment percentage for Native spearmint oil after careful consideration of all available information, and believes that the level recommended will achieve the objectives sought. Without the increase, the Committee believes the industry would not be able to meet market needs.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee meetings were widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meetings and participate in Committee deliberations. Like all Committee meetings, the September 13, 2004, meeting and the October 6, 2004, meeting were public meetings and all entities, both large and small, were able to express their views on this issue.

Finally, interested persons are invited to submit information on the regulatory

and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on a revision to the salable quantity and allotment percentage for Native spearmint oil for the 2004–2005 marketing year. A 60-day comment period is provided. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule increases the quantity of Native spearmint oil that may be marketed during the marketing year which ends on May 31, 2005; (2) the current quantity of Native spearmint oil may be inadequate to meet demand for the remainder of the marketing year, thus making the additional oil available as soon as is practicable is beneficial to both handlers and producers; (3) the Committee unanimously recommended these changes at public meetings and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

■ For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

■ 1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 985.223, paragraph (b) is revised to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 985.223 Salable quantities and allotment percentages—2004–2005 marketing year.

* * * * *

(b) Class 3 (Native) oil—a salable quantity of 1,095,689 pounds and an allotment percentage of 51 percent.

Dated: October 15, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–23628 Filed 10–18–04; 4:40 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–CE–02–AD; Amendment 39–13827; AD 2004–21–06]

RIN 2120–AA64

Airworthiness Directives; deHavilland Inc. Models DHC–2 Mk. I and DHC–2 Mk. II Airplanes and Bombardier Inc. Model (Otter) DHC–3 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for all deHavilland Inc. Models DHC–2 Mk. I and DHC–2 Mk. II airplanes and for all Bombardier Inc. Model (Otter) DHC–3 airplanes powered by radial engines. This AD requires you to visually inspect the firewall connector plugs for proper lockwire security and replace or modify as appropriate. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Canada. We are issuing this AD to prevent loss of ignition systems during flight caused by improper lockwire security, which could result in engine failure. This failure could lead to a forced landing of the airplane.

DATES: This AD becomes effective on December 6, 2004.

As of December 6, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation. **ADDRESSES:** You may get the service information identified in this AD from Bombardier Commercial Service Center, Plant 9, C.P. 6087 Succurale Centre-ville, Montreal QC H3C 3G9, Canada.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2004–CE–02–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mazdak Hobbi, Aerospace Engineer, New York Aircraft Certification Office (ACO), FAA, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone: (516) 228–7330; facsimile: (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? Transport Canada, which is the airworthiness authority for Canada, recently notified FAA that an unsafe condition may exist on all deHavilland DHC–2 Mk. I and DHC–2 Mk. II airplanes and all Bombardier (Otter) DHC–3 airplanes powered by radial engines. Transport Canada reports that a DHC–3 airplane lost both ignition systems during flight.

The lockwire hole in the connector plug on the firewall broke and the plug vibrated loose. Both magnetos then grounded through a spring-loaded center pin in the plug (a maintenance safety feature).

The DHC–2 Mk. I and DHC–2 Mk. II airplanes have a similar ignition system.

What is the potential impact if FAA took no action? If not detected and corrected, failure of the lockwire hole could result in engine failure. This failure could lead to a forced landing of the airplane.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all deHavilland Inc. Models DHC–2 Mk. I and DHC–2 Mk. II airplanes, and all Bombardier Inc. (Otter) DHC–3 airplanes powered by radial engines of the same type. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 12, 2004 (69 FR19132). The NPRM proposed to require you to visually inspect the firewall connector plugs for proper lockwire security and replace or modify as appropriate.

Comments

Comment Issue No. 1: Incorporate Revision "B" of the Applicable Service Bulletins

What is the commenter's concern? The manufacturer has revised the applicable service bulletins to clarify the information presented in the

Description and in the Accomplishment Instructions.

The revisions delete the requirement to remove the upholstery in order to perform the visual inspections and delete the requirement to inspect the receptacle. The receptacle is attached with four self-locking nuts. Lockwire is not used to secure these nuts.

The manufacturer wants the revised service bulletins incorporated into the final rule AD action.

What is FAA's response to the concern? We concur with the commenter and will make these changes in the final rule AD action.

Comment Issue No. 2: Update the Manufacturer's Address

What is the commenter's concern? The manufacturer has provided an updated address and wants it incorporated into the final rule AD action.

What is FAA's response to the concern? We concur with the commenter and will make these changes in the final rule AD action.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Changes to 14 CFR Part 39—Effect on the AD

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

Costs of Compliance

How many airplanes does this AD impact? We estimate that this AD affects 242 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the inspection(s):

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × \$65 per hour = \$130	Not applicable	\$130	\$130 × 242 = \$31,460.

We estimate the following costs to accomplish any necessary replacements that will be required based on the

results of the inspection(s). We have no way of determining the number of

airplanes that may need these replacements:

Labor cost	Parts cost	Total cost per replacement part
2 workhours × \$65 per hour = \$130	Firewall connector plug = \$152 each. Lockwire = minimal cost.	\$130 + \$152 = \$282.

Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in

the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 2004-CE-02-AD" in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004-21-06 deHavilland Inc. and Bombardier Inc.: Amendment 39-13827; Docket No. 2004-CE-02-AD.

When Does This AD Become Effective?

(a) This AD becomes effective on December 6, 2004.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

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

Model	Serial Nos.
deHavilland DHC-2 Mk. I.	All.
deHavilland DHC-2 Mk. II.	All.

Model	Serial Nos.
Bombardier (Otter) DHC-3.	All serial numbers powered by radial engines.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Canada. We are issuing this AD to prevent loss of ignition systems during flight caused

by improper lockwire security, which could result in engine failure. This failure could lead to a forced landing of the airplane.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Inspect the following: (i) connector plugs on the fore side of the firewall for security; (ii) the connector plug lockwire to ensure it is intact and the holes in the plugs are not broken out or cracked. (2) If during any inspection required in paragraph (e)(1)(i) and (e)(1)(ii) of this AD: (i) the lockwire holes are found damaged, replace the connector plug with a new part of the same number; and (ii) the lockwire is damaged, replace the lockwire. (3) When the connector plugs are replaced, do an operational check of the magnetos and correct as appropriate.	Initially inspect within the next 100 hours time-in-service (TIS) after December 6, 2004 (the effective date of this AD). Repetitively inspect thereafter at intervals not to exceed 100 hours TIS. Prior to further flight after any inspection required by paragraphs (e)(1)(i) and (e)(1)(ii) of this AD. Prior to further flight after any replacement required by paragraph (e)(2)(i) this AD.	Follow deHavilland Beaver Alert Service Bulletin Number A2/53, Revision B, dated May 28, 2004; and deHavilland Otter Alert Service Bulletin Number A3/53, Revision B, dated May 28, 2004, as applicable. Follow deHavilland Beaver Alert Service Bulletin Number A2/53, Revision B, dated May 28, 2004; and deHavilland Otter Alert Service Bulletin Number A3/53, Revision B, dated May 28, 2004, as applicable. Follow the applicable maintenance manual procedures.

Note: We recommend you insert de Havilland Inc. Temporary Revision No. 2-24, dated August 24, 2001, and Temporary Revision No. 14, dated August 24, 2001, into the applicable maintenance manual.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, New York Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Mazdak Hobbi, Aerospace Engineer, New York ACO, FAA, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone: (516) 228-7330; facsimile: (516) 794-5531.

Does This AD Incorporate Any Material by Reference?

(g) You must do the actions required by this AD following the instructions in deHavilland Beaver Alert Service Bulletin Number A2/53, Revision B, dated May 28, 2004; and deHavilland Otter Alert Service Bulletin Number A3/53, Revision B, dated May 28, 2004. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from Bombardier Commercial Service Center, Plant 9, C.P. 6087 Succurale Centre-ville, Montreal QC H3C 3G9, Canada. You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: http://www.archives.gov/federal_register/

code_of_federal_regulations/ibr_locations.html.

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

Dorenda D. Baker,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04-23365 Filed 10-20-04; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2004-17738; Airspace Docket No. 04-AWP-5]

Establishment of Class D Airspace; Riverside March Field, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class D surface area at Riverside March Field, CA, within a 5-mile radius of the airport from the surface up to and including 4,000 feet mean sea level (MSL). The continuous hours of operation of March Airport Traffic Control Tower (ATCT), combined with a part-time Class C airspace area for Riverside March Field, has made this action necessary.

EFFECTIVE DATE: 0901 UTC, November 25, 2004.

FOR FURTHER INFORMATION CONTACT: Debra Trindle, Airspace Specialist, Airspace Branch, Air Traffic Division, Federal Aviation Administration, 15000

Aviation Boulevard, Lawndale, California; telephone (310) 725-6613.

SUPPLEMENTARY INFORMATION:

History

On Monday, August 2, 2004, the FAA proposed to amend 14 CFR part 71 to establish Class D airspace at Riverside March Field, CA (69 FR 46116). The proposal was to establish a Class D surface area within a 5-mile radius of the airport from the surface up to and including 4,000 feet mean sea level (MSL). Riverside March Field currently has Class C airspace that is effective only when the March Ground Control Approach (GCA) is open, usually 2300 local to 0700 local; however the March ATCT is open continuously. Class D airspace is necessary when the ATCT is open, and the GCA is closed, to contain and protect Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at the airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9M dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class D airspace at Riverside

March Field, CA, to accommodate aircraft executing instrument flight procedures into and out of Riverside March Field. The airspace description and effective times of use will be published in appropriate aeronautical publications. The area will not be charted due to the existing, already charted, Class C airspace area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact 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

■ In consideration of the foregoing, 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 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

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

Paragraph 5000 Class D airspace.

* * * * *

AWP CA D Riverside March Field, CA [New]

Riverside March Field, CA
(Lat. 33°52'50" N, long. 117°15'34" W)

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the Riverside March Field. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on September 29, 2004.

John Clancy,

Area Director, Terminal Operations, Western Service Area.

[FR Doc. 04–23548 Filed 10–20–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 529

Certain Other Dosage Form New Animal Drugs

CFR Correction

In Title 21 of the Code of Federal Regulations, parts 500 to 599, revised as of April 1, 2004, on page 331, in § 529.1940, paragraph (e)(2)(ii) is corrected beginning in the fourth line, by removing (1) and (2).

[FR Doc. 04–55522 Filed 10–20–04; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9141]

RIN 1545–AX88

Application of Section 904 to Income Subject to Separate Limitations; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations that were published in the **Federal Register** on July 20, 2004 (69 FR 43304). This regulation relates to the section 904(d) foreign tax credit limitation and to the exclusion of certain export financing interest from foreign personal holding company income.

DATES: These corrections are effective July 20, 2004.

FOR FURTHER INFORMATION CONTACT:

Bethany A. Ingwolson at (202) 622–3850 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under section 904(d) of the Internal Revenue Code.

Need for Correction

As published, TD 9141 contains errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR Part 1 is corrected by making the following correcting amendment:

PART 1—INCOME TAXES

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

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

§ 1.904(b)–1 [Corrected]

■ **Par. 2.** Section 1.904(b)–1(g) *Example 3* (v), the introductory text is amended by removing the language “\$424.87/\$2571.42, computed as follows:” and adding the language “\$412/\$2571.42, computed as follows:” in its place.

■ **Par. 3.** Section 1.904(b)–1(g) *Example 4* (iii), the second sentence is amended by removing the language “paragraph (c)(1) of this section. Under Step 1, the U.S. long-term capital loss adjustment amount is \$50 (\$80–\$30). Under Step 2, the” and adding the language “paragraph (c)(1) of this section. Under *Step 1*, the U.S. long-term capital loss adjustment amount is \$50 (\$80–\$30). Under *Step 2*, the” in its place.

■ **Par. 4.** Section 1.904–(b)–1(g) *Example 5* (iii), the second sentence is amended by removing the language “Under Step 1, the U.S. long-term capital loss adjustment amount is \$50 (\$150–\$100). Under Step 2,” and adding the language “to a rate differential adjustment. Under *Step 1*, the U.S. long-term capital loss adjustment amount is \$50 (\$150–\$100). Under *Step 2*,” in its place.

§ 1.904(b)–2 [Corrected]

■ **Par. 5.** Section 1.904(b)–2, paragraph (c), the second sentence is amended by removing the language “apply § 1.904(b)–1(i) and this” and adding the

language “apply § 1.904(b)-1 and this” in its place.

Cynthia Grigsby,

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

[FR Doc. 04-23288 Filed 10-20-04; 8:45 am]

BILLING CODE 4830-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 60

[ND-001-0011; FRL-7823-2]

Clean Air Act Approval and Promulgation of Air Quality Implementation Plan Revision for North Dakota; Revisions to the Air Pollution Control Rules; Delegation of Authority for New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule and delegation of authority.

SUMMARY: EPA is approving certain revisions to the State Implementation Plan submitted by the Governor of North Dakota with a letter dated April 11, 2003. The revisions affect portions of air pollution control rules regarding general provisions and emissions of particulate matter and sulfur compounds. This action is being taken under section 110 of the Clean Air Act.

In addition, EPA is providing notice that on November 6, 2003, North Dakota was delegated authority to implement and enforce certain New Source Performance Standards, as of January 31, 2002.

EFFECTIVE DATE: This final rule is effective November 22, 2004.

ADDRESSES: EPA has established a docket for this action under Docket ID No. ND-001-0011. Some information in the docket is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available in hard copy at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202-2466. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the docket. You may view the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays. Copies of the Incorporation by Reference material are also available at

the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B-108 (Mail Code 6102T), 1301 Constitution Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Amy Platt, Environmental Protection Agency, Region 8, (303) 312-6449, *Platt.Amy@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Summary of State Implementation Plan Revision
- II. Delegation of Authority
- III. Section 110(l)
- IV. Final Action
- V. Statutory and Executive Order Reviews

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The word or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The words *EPA*, *we*, *us*, or *our* mean or refer to the United States Environmental Protection Agency.
- (iii) The initials *NDDH* mean or refer to the North Dakota Department of Health.
- (iv) The initials *SIP* mean or refer to the State Implementation Plan.
- (v) The word or initials *State* or *ND* mean the State of North Dakota, unless the context indicates otherwise.

I. Summary of State Implementation Plan Revision

On July 7, 2004, EPA published a notice of proposed rulemaking for the State of North Dakota (*see* 69 FR 40824). In that proposed rulemaking, we proposed approval of portions of the SIP revision submitted by the Governor of North Dakota on April 11, 2003. The portions of the SIP revision that we proposed approval of affect North Dakota Air Pollution Control Rules regarding general provisions and emissions of particulate matter and sulfur compounds. No comments were received on our July 7, 2004, notice of proposed rulemaking.

As we discussed in our July 7, 2004, notice of proposed rulemaking, we will handle separately the revisions in the April 11, 2003, submittal addressing North Dakota Air Pollution Control Rules Section 33-15-01-13, regarding shutdown and malfunction of an installation, Chapter 33-15-14, regarding construction and minor source permitting, and Chapter 33-15-15, regarding prevention of significant deterioration. In addition, we will handle separately the direct delegation requests for Chapter 33-15-13,

regarding emission standards for hazardous air pollutants, Chapter 33-15-21, regarding the State's Acid Rain Program, and Chapter 33-15-22, regarding emission standards for hazardous air pollutants for source categories. The submittal also included a direct delegation request for standards of performance for new stationary sources (*see* below).

The revisions in the April 11, 2003, submittal to be addressed in this document pertain to portions of the general provisions and the restriction of emissions of particulate matter and sulfur compounds, which involve sections of the following chapters of the North Dakota Administrative Code (N.D.A.C.): 33-15-01 General Provisions; 33-15-05 Emissions of Particulate Matter Restricted; and 33-15-06 Emissions of Sulfur Compounds Restricted. For a discussion of how the State met the necessary procedural requirements in the development of these revisions, please refer to our July 7, 2004 notice of proposed rulemaking (69 FR 40824).

A. Chapter 33-15-01, N.D.A.C., General Provisions

Revisions to Section 33-15-01-04, regarding definitions, included the addition of a definition for “pipeline quality natural gas” and an update to the baseline date for incorporating by reference the definition of volatile organic compounds to August 1, 2001. In addition, Sections 33-15-01-17 and 33-15-01-18, regarding enforcement and compliance certifications, were modified to indicate that information from compliance assurance monitoring protocols, which are in accordance with the requirements of the State's permitting chapter, is credible evidence of whether compliance is achieved. Because these revisions are consistent with Federal requirements, they are approvable.

B. Chapter 33-15-05, N.D.A.C., Emissions of Particulate Matter Restricted

Section 33-15-05-02, regarding emissions from fuel burning equipment used for indirect heating, was revised to exempt fuel burning equipment that burns gaseous fuels from the emissions limitation requirements of the chapter. Burning gaseous fuels results in very low particulate matter emissions. Using AP-42 emission factors for natural gas and propane, the State calculated emission rates of 0.01 lb/10⁶ Btu and 0.006 lb/10⁶ Btu, respectively. This is contrasted with the allowable emission rate of Chapter 33-15-05 of 0.6 lb/10⁶ Btu for a boiler rated at 10 × 10⁶ Btu/

hr. The State believes that, under normal operation, no unit burning gaseous fuels would ever exceed the limits of this chapter. The exempted sources will still be subject to the visible emission standards under Chapter 33-15-03, Restriction of Emission of Visible Air Contaminants, which allow the NDDH to take action should a malfunction occur. Since burning gaseous fuels results in very low particulate matter emissions, well below the emissions limitation requirements of the chapter, this revision to Section 33-15-05-02 is approvable.

In Subsection 33-15-05-03.3, Other Waste Incinerators, requirements for salvage waste incinerators and crematoriums were revised. Requirements were added for construction, operational, and recordkeeping standards for salvage incinerators. Requirements for installation and operation of a temperature recorder for the secondary chamber, as well as requirements for charging and operation, were added for crematoriums. Although there are no Federal requirements for crematoriums, the State believes that these revisions ensure that units are operating properly to protect human health and the environment. In addition, any new units will still be subject to the Ambient Air Quality Standards under Chapter 33-15-02, a visible emissions standard under Chapter 33-15-03, and prevention of significant deterioration increments under Chapter 33-15-15. Therefore, these revisions are approvable.

Finally, 33-15-05-04, Methods of Measurement, was revised to allow various alternative test methods for determining percent oxygen or carbon dioxide, and the reference for fuel factors (F factors) was updated. Since these revisions simply incorporated reference information from Federal rules, they are approvable.

C. Chapter 33-15-06, N.D.A.C., Emissions of Sulfur Compounds Restricted

Section 33-15-06-01, Restriction of Emissions of Sulfur Dioxide (SO₂) from Use of Fuel, was revised to provide an exemption from the requirements of the chapter for installations that burn pipeline quality natural gas or commercial-grade propane. However, sources that burn any fuel must still comply with the Ambient Air Quality Standards of Chapter 33-15-02 and the prevention of significant deterioration increments of Chapter 33-15-15. Since sources that burn pipeline quality natural gas or commercial grade propane are expected to emit far less

SO₂ than the emissions limitation requirements of the chapter, this revision is approvable. In addition, section 33-15-06-03, Methods of Measurement, was updated to incorporate by reference the Federal F factors. These revisions are approvable since they are consistent with Federal requirements.

II. Delegation of Authority

A. New Source Performance Standards

With the April 11, 2003, submittal, North Dakota requested delegation of authority for revisions to the New Source Performance Standards (NSPS), promulgated in Chapter 33-15-12, N.D.A.C. On November 6, 2003, delegation was given with the following letter:

Ref: 8P-AR

Honorable John Hoeven,
Governor of North Dakota, State Capitol,
Bismarck, North Dakota 58505-0001

Re: Delegation of Clean Air Act New Source Performance Standards

Dear Governor Hoeven: In an April 11, 2003, letter from you and an April 17, 2003, letter from David Glatt, North Dakota Department of Health (NDDH), the State of North Dakota submitted revisions to its Air Pollution Control Rules and requested direct delegation to implement and enforce the Federal New Source Performance Standards (NSPS). Specifically, North Dakota Administrative Code Chapter 33-15-12, Standards of Performance for New Stationary Sources, was revised to update the citation for the incorporated Federal NSPS in 40 CFR Part 60 as those in effect on January 31, 2002, with the exception of subpart Eb, which the State has not adopted.

Subsequent to States adopting NSPS regulations, EPA delegates the authority for the implementation and enforcement of those NSPS, so long as the State's regulations are equivalent to the Federal regulations. EPA reviewed the pertinent statutes and regulations of the State of North Dakota and determined that they provide an adequate and effective procedure for the implementation and enforcement of the NSPS by the State. Therefore, pursuant to Section 111(c) of the Clean Air Act (Act), as amended, and 40 CFR Part 60, EPA hereby delegates its authority for the implementation and enforcement of the NSPS to the State of North Dakota as follows:

(A) Responsibility for all sources located, or to be located, in the State of North Dakota subject to the standards of performance for new stationary sources promulgated in 40 CFR Part 60. The categories of new stationary sources covered by this delegation are all NSPS subparts in 40 CFR Part 60, as in effect on January 31, 2002, with the exception of subpart Eb, which the State has not adopted. Note this delegation does not include the emission guidelines in subparts Cb, Cc, Cd, Ce, BBBB, and DDDD. These subparts require state plans which are approved under a separate process pursuant to Section 111(d) of the Act.

(B) Not all authorities of NSPS can be delegated to States under Section 111(c) of the Act, as amended. The EPA Administrator retains authority to implement those sections of the NSPS that require: (1) approving equivalency determinations and alternative test methods, (2) decision making to ensure national consistency, and (3) EPA rulemaking to implement. Therefore, of the NSPS of 40 CFR Part 60 being delegated in this letter, the enclosure lists examples of sections in 40 CFR Part 60 that cannot be delegated to the State of North Dakota.

(C) The North Dakota Department of Health (NDDH) and EPA will continue a system of communication sufficient to guarantee that each office is always fully informed and current regarding compliance status of the subject sources and interpretation of the regulations.

(D) Enforcement of the NSPS in the State will be the primary responsibility of the NDDH. If the NDDH determines that such enforcement is not feasible and so notifies EPA, or where the NDDH acts in a manner inconsistent with the terms of this delegation, EPA may exercise its concurrent enforcement authority pursuant to section 113 of the Act, as amended, with respect to sources within the State of North Dakota subject to NSPS.

(E) The State of North Dakota will at no time grant a variance or waiver from compliance with NSPS regulations. Should the NDDH grant such a variance or waiver, EPA will consider the source receiving such relief to be in violation of the applicable Federal regulation and initiate enforcement action against the source pursuant to section 113 of the Act. The granting of such relief by the NDDH shall also constitute grounds for revocation of delegation by EPA.

(F) If at anytime there is a conflict between a State regulation and a Federal regulation (40 CFR Part 60), the Federal regulation must be applied if it is more stringent than that of the State. If the State does not have the authority to enforce the more stringent Federal regulation, this portion of the delegation may be revoked.

(G) If the Regional Administrator determines that a State procedure for enforcing or implementing the NSPS is inadequate, or is not being effectively carried out, this delegation may be revoked in whole or part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the NDDH.

(H) Acceptance of this delegation of presently promulgated NSPS does not commit the State of North Dakota to accept delegation of future standards and requirements. A new request for delegation will be required for any standards not included in the State's requests of April 11, and 17, 2003.

(I) Upon approval of the Regional Administrator of EPA Region 8, the Director of the NDDH may subdelegate his authority to implement and enforce the NSPS to local air pollution control authorities in the State when such authorities have demonstrated that they have equivalent or more stringent programs in force.

(J) The State of North Dakota must require reporting of all excess emissions from any

NSPS source in accordance with 40 CFR 60.7(c).

(K) Performance tests shall be scheduled and conducted in accordance with the procedures set forth in 40 CFR Part 60 unless alternate methods or procedures are approved by the EPA Administrator. Although the Administrator retains the exclusive right to approve equivalent and alternate test methods as specified in 40 CFR 60.8(b)(2) and (3), the State may approve minor changes in methodology provided these changes are reported to EPA Region 8. The Administrator also retains the right to change the opacity standard as specified in 40 CFR 60.11(e).

(L) Determinations of applicability such as those specified in 40 CFR 60.5 and 60.6 shall be consistent with those which have already been made by the EPA.

(M) Alternatives to continuous monitoring procedures or reporting requirements, as outlined in 40 CFR 60.13(i), may be approved by the State with the prior concurrence of the Regional Administrator.

(N) If a source proposes to modify its operation or facility which may cause the source to be subject to NSPS requirements,

the State shall notify EPA Region 8 and obtain a determination on the applicability of the NSPS regulations.

(O) Information shall be made available to the public in accordance with 40 CFR 60.9. Any records, reports, or information provided to, or otherwise obtained by, the State in accordance with the provisions of these regulations shall be made available to the designated representatives of EPA upon request.

(P) All reports required pursuant to the delegated NSPS should not be submitted to the EPA Region 8 office, but rather to the NDDH.

(Q) As 40 CFR Part 60 is updated, North Dakota should revise its regulations accordingly and in a timely manner and submit to EPA requests for updates to its delegation of authority.

EPA is approving North Dakota's request for NSPS delegation for all areas within the State except for the following: lands within the exterior boundaries of the Fort Berthold, Fort Totten, Standing Rock and Turtle Mountain Indian Reservations; and any other areas which are "Indian Country" within the meaning of 18 U.S.C. 1151.

Since this delegation is effective immediately, there is no need for the State to notify the EPA of its acceptance. Unless we receive written notice of objections from you within ten days of the date on which you receive this letter, the State of North Dakota will be deemed to accept all the terms of this delegation. EPA will publish an information notice in the **Federal Register** in the near future to inform the public of this delegation, in which this letter will appear in its entirety.

If you have any questions on this matter, please contact me or have your staff contact Richard Long, Director of our Air and Radiation Program, at (303) 312-6005.

Sincerely yours,
Robert E. Roberts
Regional Administrator

Enclosures
cc:

David Glatt, NDDH
Terry O'Clair, NDDH

Enclosure to Letter Delegating NSPS in 40 CFR Part 60, Effective Through January 31, 2002, to the State of North Dakota.

EXAMPLES OF AUTHORITIES IN 40 CFR PART 60 WHICH CANNOT BE DELEGATED

40 CFR subparts	Section(s)
A	60.8(b)(2) and (b)(3), and those sections throughout the standards that reference 60.8(b)(2) and (b)(3); 60.11(b) and (e).
Da	60.45a.
Db	60.44b(f), 60.44b(g) and 60.49b(a)(4).
Dc	60.48c(a)(4).
Ec	60.56c(i), 60.8.
J	60.105(a)(13)(iii) and 60.106(i)(12).
Ka	60.114a.
Kb	60.111b(f)(4), 60.114b, 60.116b(e)(3)(iii), 60.116b(e)(3)(iv), and 60.116b(f)(2)(iii).
O	60.153(e).
S	60.195(b).
DD	60.302(d)(3).
GG	60.332(a)(3) and 60.335(a).
VV	60.482-1(c)(2) and 60.484.
WW	60.493(b)(2)(i)(A) and 60.496(a)(1).
XX	60.502(e)(6).
AAA	60.531, 60.533, 60.534, 60.535, 60.536(i)(2), 60.537, 60.538(e) and 60.539.
BBB	60.543(c)(2)(ii)(B).
DDD	60.562-2(c).
GGG	60.592(c).
III	60.613(e).
JJJ	60.623.
KKK	60.634.
NNN	60.663(f).
QQQ	60.694.
RRR	60.703(e).
SSS	60.711(a)(16), 60.713(b)(1)(i) and (ii), 60.713(b)(5)(i), 60.713(d), 60.715(a) and 60.716.
TTT	60.723(b)(1), 60.723(b)(2)(i)(C), 60.723(b)(2)(iv), 60.724(e) and 60.725(b).
VVV	60.743(a)(3)(v)(A) and (B), 60.743(e), 60.745(a) and 60.746.
WWW	60.754(a)(5).

Note that as a result of this latest NSPS delegation of authority to North Dakota, we are now revising the table entitled "Delegation Status of New Source Performance Standards [(NSPS) for Region VIII]" that is located in 40 CFR 60.4 to update the State's delegation status. In addition, since all the Region VIII states are delegated authority to implement and enforce the

Federal NSPS (as opposed to having SIP approved programs), we are also revising the table to delete an old footnote that denoted SIP approved programs.

B. Error in November 6, 2003, NSPS Delegation of Authority

Please note that in the November 6, 2003, delegation of authority to the State

of North Dakota, we made an error. We inadvertently omitted one of the authorities in 40 CFR Part 60 which cannot be delegated to the State. Specifically, in the enclosure to the delegation letter, the table entitled "Examples of Authorities in 40 CFR Part 60 Which Cannot Be Delegated" should have included the following entry: 40 CFR Subpart CCCC Section 60.2030(c).

Regardless, the Federal NSPS regulations, including those authorities which can and cannot be delegated, always take precedence. For a more detailed discussion, please refer to our July 7, 2004, notice of proposed rulemaking at 69 FR 40828.

III. Section 110(l)

Section 110(l) of the Clean Air Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of the National Ambient Air Quality Standards (NAAQS) or any other applicable requirements of the Act. The North Dakota SIP revisions that are the subject of this document do not interfere with the attainment or maintenance of the NAAQS or any other applicable requirements of the Act. The SIP revisions to portions of N.D.A.C. Chapter 33–15–01, regarding the State's general provisions, simply added a definition, updated the baseline date for incorporating by reference the definition of volatile organic compounds, and added and/or clarified several administrative and reporting requirements. These changes are consistent with Federal requirements and rules. The SIP revisions to N.D.A.C. Chapter 33–15–05, regarding the control of particulate matter emissions, address sources that emit far lower emissions than the limitations of the chapter (because they burn gaseous fuels), provide requirements where there are no existing Federal requirements, and simply incorporate reference information from Federal rules. Finally, the SIP revisions to N.D.A.C. Chapter 33–15–06, regarding the control of sulfur compound emissions, address installations that are expected to emit far less SO₂ than the emissions limitations of the chapter (because they burn pipeline quality natural gas or commercial-grade propane) and simply incorporate reference information from Federal rules. These revisions do not interfere with the attainment or maintenance of the NAAQS or any other applicable requirements of the Act.

IV. Final Action

EPA is approving certain rule revisions to the North Dakota SIP, as discussed in this document and submitted by the Governor with a letter dated April 11, 2003. The revisions in the April 11, 2003, submittal which we are approving in this document involve portions of the following chapters of the North Dakota Administrative Code: 33–15–01 General Provisions; 33–15–05 Emissions of Particulate Matter

Restricted; and 33–15–06 Emissions of Sulfur Compounds Restricted. We are not acting at this time on revisions to the shutdown and malfunction provisions, the construction and minor source permitting rules nor the prevention of significant deterioration rules. In addition, the requests for direct delegation of Chapter 33–15–13, Emission Standards for Hazardous Air Pollutants, Chapter 33–15–21, Acid Rain Program and Chapter 33–15–22, Emission Standards for Hazardous Air Pollutants for Source Categories, are being handled separately.

Finally, as requested by the State with its April 11, 2003, submittal, we are providing notice that we granted delegation of authority to North Dakota on November 6, 2003, to implement and enforce the NSPS promulgated in 40 CFR part 60, promulgated as of January 31, 2002 (except subpart Eb, which the State has not adopted). However, the State's NSPS authorities do not include those authorities which cannot be delegated to the states, as defined in 40 CFR part 60.

V. Statutory and Executive Order Reviews

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 20,

2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Beverages, Carbon monoxide, Cement industry, Coal, Copper, Dry cleaners, Electric power plants, Fertilizers, Fluoride, Gasoline, Glass and glass products, Grains, Graphic arts industry, Household appliances, Insulation, Intergovernmental relations, Iron, Lead, Lime, Metallic and nonmetallic mineral processing plants, Metals, Motor vehicles, Natural gas, Nitric acid plants, Nitrogen dioxide, Paper and paper

products industry, Particulate matter, Paving and roofing materials, Petroleum, Phosphate, Plastics materials and synthetics, Reporting and recordkeeping requirements, Sewage disposal, Steel, Sulfur oxides, Tires, Urethane, Vinyl, Waste treatment and disposal, Wool, Zinc.

Dated: September 22, 2004.

Kerrigan G. Clough,

Acting Regional Administrator, Region 8.

■ 40 CFR part 52 is amended to read as follows:

PART 52—[AMENDED]

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

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

Subpart JJ—North Dakota

■ 2. Section 52.1820 is amended by adding paragraph (c)(33) to read as follows:

§ 52.1820 Identification of plan.

* * * * *

(c) * * *

(33) Certain revisions to the North Dakota State Implementation Plan and Air Pollution Control Rules as submitted by the Governor with a letter dated April 11, 2003. The revisions affect portions of North Dakota Administrative Code (N.D.A.C.) regarding general provisions and

emissions of particulate matter and sulfur compounds.

(i) Incorporation by reference.

(A) Revisions to the North Dakota Air Pollution Control Rules as follows:

(1) Chapter 33–15–01, N.D.A.C., General Provisions, sections 33–15–01–04, 33–15–01–17, and 33–15–01–18, effective March 1, 2003.

(2) Chapter 33–15–05, N.D.A.C., Emissions of Particulate Matter Restricted, sections 33–15–05–02 and 33–15–05–04 and subsection 33–15–05–03.3, effective March 1, 2003.

(3) Chapter 33–15–06, N.D.A.C., Emissions of Sulfur Compounds Restricted, sections 33–15–06–01 and 33–15–06–03, effective March 1, 2003.

■ 40 CFR part 60 is amended to read as follows:

PART 60—[AMENDED]

■ 1. The authority citation for part 60 continues to read as follows:

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

Subpart A—General Provisions

■ 2. In § 60.4, amend the table in paragraph (c) by revising the entries for subparts “AAAA” and “CCCC” and by removing footnote 1 to read as follows:

§ 60.4 Address.

* * * * *

(c) * * *

DELEGATION STATUS OF NEW SOURCE PERFORMANCE STANDARDS [(NSPS) FOR REGION VIII]

Subpart	CO	MT	ND	SD	UT	WY
AAAA—Small Municipal Waste Combustors			*			*
CCCC—Commercial and Industrial Solid Waste Incineration Units		(*)	(*)			(*)

(*) Indicates approval of State regulation.

* * * * *

[FR Doc. 04–23585 Filed 10–20–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[MD160–3113; FRL–7821–1]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Redesignation of Kent and Queen Anne’s Counties Ozone Nonattainment Area to Attainment and Approval of the Area’s Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a redesignation request and a State Implementation Plan (SIP) submitted by

the State of Maryland. The SIP revision establishes a maintenance plan for Kent and Queen Anne’s Counties that provides requirements for continued attainment of the one-hour ozone National Ambient Air Quality Standard (NAAQS) for the next 10 years. EPA is approving the revision to the Maryland SIP in accordance with the requirements of the Clean Air Act (CAA).

EFFECTIVE DATE: This final rule is effective on November 22, 2004.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and

Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

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

SUPPLEMENTARY INFORMATION:

I. Background

On August 2, 2004 (69 FR 46124), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed approval of Maryland's redesignation request and a SIP revision that establishes a maintenance plan for the Kent and Queen Anne's Counties that provides requirements for continued attainment for the one-hour ozone NAAQS for the next 10 years. The formal SIP revision was submitted by the Maryland Department of the Environment (MDE) on February 9, 2004. Other specific requirements of Maryland's redesignation request, SIP revision for the maintenance plan, and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR. However, an erratum was found on page 46127 of the NPR, where the motor vehicle emissions budget (MVEB) for NO_x was in error for the period from 2002 until 2014. The correct MVEB for NO_x is 7.7 tons per day (tpd) instead of 2.92 tpd NO_x (refer to Tables 1 and 2 in the NPR).

II. Final Action

EPA is approving the ozone maintenance plan for Kent and Queen Anne's Counties in Maryland submitted on February 9, 2004, because it meets the requirements of section 175A. In addition, EPA is redesignating Kent and Queen Anne's Counties to ozone attainment because EPA has determined that the provisions of section 107(d)(3)(E) of the CAA for redesignation have been met. Kent and Queen Anne's Counties nonattainment area is subject to the CAA's requirements for marginal ozone nonattainment areas until and unless it is redesignated to attainment.

III. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For

this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of

the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 20, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action pertaining to Maryland's redesignation request and maintenance plan for Kent and Queen Anne's counties, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: September 20, 2004.
Thomas C. Voltaggio,
Acting Deputy Regional Administrator,
Region III.

■ 40 CFR parts 52 and 81 are amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:
 Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

■ 2. Section 52.1070 is amended by adding paragraph (c)(187) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *
 (187) The Ozone Redesignation and Maintenance Plan for Kent and Queen Anne's Counties nonattainment area submitted on February 4, 2004 by the Maryland Department of the Environment:

(i) Incorporation by reference.
 (A) A letter dated February 9, 2004 from the Maryland Department of the Environment transmitting Maryland's State Implementation Plan pertaining to the redesignation request for the Kent and Queen Anne's Counties Ozone Nonattainment Area.

(B) SIP Revision 03–15, Redesignation Request for Kent and Queen Anne's

Counties Ozone Nonattainment Area, February 4, 2004.

(ii) Additional Material—Remainder of the State submittals pertaining to the revisions listed in paragraph (c)(187)(i) of this section.

PART 81—[AMENDED]

■ 1. The authority citation for Part 81 continues to read as follows:

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

■ 2. Section 81.321 is amended by revising the ozone table entry for Kent and Queen Anne's Counties to read as follows:

§ 81.321 Maryland.

* * * * *

MARYLAND—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
* * * * *				
Kent County and Queen Anne's County Area				
Kent County	October 21, 2004	Attainment.		
Queen Anne's County	October 21, 2004	Attainment.		
* * * * *				

¹ This date is October 18, 2000, unless otherwise noted.

* * * * *
 [FR Doc. 04–23584 Filed 10–20–04; 8:45 am]
 BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 04076201–4279–02; I.D. 060204F]

RIN 0648–AR97

Fisheries off West Coast States and in the Western Pacific; Coastal Pelagic Species Fisheries; Annual Specifications

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement the annual harvest guideline for Pacific mackerel in the U.S. exclusive economic zone (EEZ) off the Pacific coast. The Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) and its implementing regulations

require NMFS to set an annual harvest guideline for Pacific mackerel based on the formula in the FMP. This action adopts allowable harvest levels for Pacific mackerel off the U.S. Pacific coast.

DATES: This action becomes effective November 22, 2004.

ADDRESSES: The report *Stock Assessment of Pacific Mackerel with Recommendations for the 2004–2005 Management Season* may be obtained from Rodney R. McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802. An regulatory impact review/regulatory analysis may be obtained at this same address.

FOR FURTHER INFORMATION CONTACT: Tonya L. Wick, Southwest Region, NMFS, (562) 980–4036.

SUPPLEMENTARY INFORMATION: The CPS FMP, which was implemented by a final rule published in the **Federal Register** on December 15, 1999 (64 FR 69888), divides management unit species into the categories of actively managed and monitored. Harvest guidelines of actively managed species (Pacific sardine and Pacific mackerel) are based on formulas applied to current biomass estimates. Biomass estimates are not

calculated for species that are only monitored (jack mackerel, northern anchovy, and market squid).

At a public meeting each year, the biomass for each actively managed species is reviewed by the Pacific Fishery Management Council's (Council) CPS Management Team (Team). The biomass, harvest guideline, and status of the fisheries are then reviewed at a public meeting of the Council's CPS Advisory Subpanel (Subpanel). This information is also reviewed by the Council's Scientific and Statistical Committee (SSC). The Council reviews reports from the Team, Subpanel, and SSC, then, after providing time for public comment, makes its recommendation to NMFS. The annual harvest guideline and season structure is published by NMFS in the **Federal Register** as soon as practicable before the beginning of the appropriate fishing season. The Pacific mackerel season begins on July 1 of each year and ends on June 30 the following year.

The Team and Subpanel meetings took place at the Long Beach, CA, office of the NMFS, Southwest Region, on May 18 and 19, 2004 (69 FR 23730, April 20, 2004, and 69 FR 24585, May 4, 2004). The SSC meeting took place in

conjunction with the June 13–18, 2004, Council meeting in Foster City, CA.

A modified virtual population analysis stock assessment model is used by stock assessment scientists to estimate the biomass of Pacific mackerel. The model employs both fishery dependent and fishery independent indices to estimate abundance. The biomass was calculated through the end of 2003, then estimated for the fishing season that began July 1, 2004, based on: (1) the number of Pacific mackerel estimated to comprise each year class at the beginning of 2004, (2) modeled estimates of fishing mortality during 2003, (3) assumptions for natural and fishing mortality through the first half of 2004, and (4) estimates of age-specific growth. Based on this approach the biomass for July 1, 2004, would be 81,383 metric tons (mt). Applying the formula in the FMP to this biomass estimate results in a harvest guideline of 13,268 mt, which is higher than last year but similar to low harvest guidelines of recent years.

The formula in the FMP uses the following factors to determine the harvest guideline:

1. *The biomass of Pacific mackerel.* For 2004, this estimate is 81,383 mt.
2. *The cutoff.* This is the biomass level below which no commercial fishery is allowed. The FMP established the cutoff level at 18,200 mt. The cutoff is subtracted from the biomass, leaving 63,183 mt.
3. *The portion the Pacific mackerel biomass in the U. S. exclusive economic zone (EEZ) off the Pacific coast.* This estimate is 70 percent, based on the historical average of larval distribution obtained from scientific cruises and the distribution of the resource obtained from logbooks of aerial fish-spotters. Therefore, the harvestable biomass in U.S. EEZ waters is 70 percent of 63,183 mt, that is, 44,228 mt.
4. *The harvest fraction.* This is the percentage of the biomass above 18,200 mt that may be harvested. The FMP established the harvest fraction at 30 percent. The harvest fraction is multiplied by the harvestable biomass in U.S. waters (44,228 mt), which results in 13,268 mt.

Information on the fishery and the stock assessment are found in the report *Stock Assessment of Pacific Mackerel with Recommendations for the 2004–2005 Management Season*, which may be obtained by mail from Rodney R. McInnis, Regional Administrator (see ADDRESSES).

Following recommendations of the fishing industry and Subpanel for the 2003–2004 fishing season, a directed fishery for Pacific mackerel of 7,500 mt was set beginning July 1, 2003, followed by an incidental allowance of 40 percent of Pacific mackerel in landings of any CPS, if the 7,500 mt was harvested. A 1 mt landing of Pacific mackerel per trip would have been allowed if no other species were landed during a trip. NMFS implemented a directed and incidental fishery last season in response to concerns about how a low harvest guideline for mackerel might interfere with the sardine fishery. Pacific mackerel is often caught with sardine; therefore, mackerel might have to be discarded, which would increase bycatch. As of June 30, 2004, the end of the season, approximately 5,961 mt of Pacific mackerel had been landed; therefore, an incidental fishery was not necessary.

At its meeting on May 19, 2004, the Subpanel recommended for the 2004–2005 fishing season that a directed fishery of 9,100 mt and an incidental fishery of 4,168 mt be implemented. An incidental allowance of 40 percent of Pacific mackerel in landings of any CPS would become effective when 9,100 mt of Pacific mackerel is estimated to be harvested. The Subpanel also recommended to allow 1 mt of mackerel to be landed per trip during the incidental fishery without landing any other CPS. The Subpanel recommended that an inseason review of the mackerel season be completed for the March 2005 Council meeting, with the possibility of reopening the directed fishery as an automatic action if sufficient amount of the harvest guideline reserved for the incidental fishery remains unharvested. At its June 2004 meeting, the Council made these recommendations to NMFS. A proposed rule containing the Council's recommendations was published July 20, 2004 (69 FR 43383). The public comment period ended on August 4, 2004.

One public comment was received.

Comment: One commenter generally criticized commercial fishing rules and recommended that the quota should be cut by 10 percent per year until the fishery is closed.

Response: The commenter provided no information to support such a change. Further, the comment seemed to be a generic one and not directed to the mackerel fishery, but to all commercial fisheries in general. Information provided by the stock assessment and

recommended by the Council indicates that the harvest guidelines proposed are appropriate, therefore, NMFS has not changed the harvest guidelines from those proposed.

After a review of the information available and the one public comment, NMFS approved the Council's recommendation and hereby implements the following measures for the July 1, 2004, through June 30, 2005, fishing season:

Based on the estimated biomass of 81,383 mt and the formula in the FMP, a harvest guideline of 13,268 mt will be in effect for the fishery beginning on July 1, 2004. This harvest guideline applies to Pacific mackerel harvested in the U.S. EEZ off the Pacific coast beginning at 12:01 a.m. on July 1, 2004, and remains in effect through June 30, 2005, unless the harvest guideline is attained and the fishery is closed before June 30, 2005. All landings made after July 1, 2004, will be counted toward the 2004–2005 harvest guideline of 13,268 mt. There shall be a directed fishery, followed by an incidental fishery of 4,168 mt. An incidental allowance of 40 percent of Pacific mackerel in landings of any CPS will become effective after the date when 9,100 mt of Pacific mackerel is estimated to have been harvested. A landing of 1 mt of Pacific mackerel per trip will be permitted during the incidental fishery for trips in which no other CPS is landed.

Classification

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

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

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

Dated: October 15, 2004.

Rebecca Lent,

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

[FR Doc. 04–23595 Filed 10–20–04; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 69, No. 203

Thursday, October 21, 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

[CGD08-04-033]

RIN 1625-AA09

Drawbridge Operation Regulation; Mississippi River, Iowa and Illinois

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulation governing the Rock Island Railroad & Highway Drawbridge, across the Upper Mississippi River at Mile 482.9, at Rock Island, Illinois. The drawbridge need not open for river traffic and may remain in the closed-to-navigation position from 7 a.m., December 15, 2004, until 8 a.m., March 15, 2005. This proposed rule would allow time for making upgrades to critical mechanical components and perform scheduled annual maintenance/repairs.

DATES: Comments and related material must reach the Coast Guard on or before November 22, 2004.

ADDRESSES: You may mail comments and related material to Commander, Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103-2832. Commander (obr) 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 room 2.107f in the Robert A. Young Federal Building, Eighth Coast Guard District, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Roger K. Wiebusch, Bridge Administrator, (314) 539-3900, extension 2378.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD08-04-033), 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 that 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 Eighth 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

On August 12, 2004, the Department of the Army Rock Island Arsenal requested a temporary change to the operation of the Rock Island Railroad & Highway Drawbridge across the Upper Mississippi River, Mile 482.9 at Rock Island, Illinois to allow the drawbridge to remain in the closed-to-navigation position for 89 consecutive days for critical repairs and annual maintenance. Navigation on the waterway consists primarily of commercial tows and recreational watercraft and will not be significantly impacted due to the reduced navigation in winter months. Presently, the draw opens on signal for passage of river traffic. The Rock Island Arsenal requested the drawbridge be permitted to remain closed-to-navigation from 7 a.m., December 15, 2004, until 8 a.m., March 15, 2005.

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).

The Coast Guard expects that this temporary change to operation of the Rock Island Railroad & Highway Drawbridge will have minimal economic impact on commercial traffic operating on the Upper Mississippi River. This temporary change has been written in such a manner as to allow for minimal interruption of the drawbridge's regular operation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This proposed rule will have a negligible impact on vessel traffic. The primary users of the Upper Mississippi River in Rock Island, Illinois are commercial towboat operators. With the onset of winter conditions most activity on the Upper Mississippi River is curtailed and there are few, if any, significant navigation demands for opening the drawspan.

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

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 could 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 Mr. Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District, Bridge Branch, at (314) 539-3900, extension 2378.

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 will 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 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 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 does not create an

environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction, from further environmental documentation. Paragraph 32(e) excludes the promulgation of operating regulations or procedures for drawbridges from the environmental documentation requirements of the National Environmental Policy Act (NEPA). Since this proposed regulation would alter the normal operating conditions of the drawbridge, it falls within this exclusion. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed 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 7 a.m., December 15, 2004 until 8 a.m. March 15, 2005, temporarily add new § 117.T394 to read as follows:

§ 117.T394 Upper Mississippi River.

The Rock Island Railroad and Highway Drawbridge, mile 482.9, at Rock Island, Illinois, need not open for river traffic and may be maintained in the closed-to-navigation position.

Dated: October 1, 2004.

R.F. Duncan,

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

[FR Doc. 04-23545 Filed 10-20-04; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. RSPA-04-16855; Notice 1]

RIN 2137-AD97

Pipeline Safety: Standards for Direct Assessment of Gas and Hazardous Liquid Pipelines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes regulations that would require pipeline operators to meet certain standards if they use direct assessment to evaluate the threat of corrosion on regulated onshore gas, hazardous liquid, and carbon dioxide pipelines. The standards, which are already in effect for gas transmission lines in high-consequence areas, involve processes of data collection, indirect inspection, direct examination, and evaluation. Congress has directed DOT to prescribe standards for inspection of pipelines by direct assessment. The proposed regulations should advance the use of direct assessment as a method of

managing the impact of corrosion on regulated pipelines.

DATES: Persons interested in submitting written comments on the rules proposed in this document must do so by December 6, 2004. Late filed comments will be considered so far as practicable.

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

- Mail: Dockets Facility, U.S. Department of Transportation, Room PL-401, 400 Seventh Street, SW., 20590-0001. Anyone wanting confirmation of mailed comments must include a self-addressed stamped postcard.

- Hand delivery or courier: Room PL-401, 400 Seventh Street, SW., Washington, DC. The Dockets Facility is open from 10 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

- Web site: Go to <http://dms.dot.gov>, click on "Comments/Submissions" and follow instructions at the site.

All written comments should identify the docket number and notice number stated in the heading of this notice.

Docket access. For copies of this document or other material in the docket, you may contact the Dockets Facility by phone (202-366-9329) or visit the facility at the above street address. For Web access to the dockets to read and download filed material, go to <http://dms.dot.gov/search>. Then type in the last four digits of the docket number shown in the heading of this document, and click on "Search."

Anyone can search the electronic form of all comments filed in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the April 11, 2000 issue of the **Federal Register** (65 FR 19477) or go to <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: L. M. Furrow by phone at 202-366-4559, by fax at 202-366-4566, by mail at U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC, 20590, or by e-mail at buck.furrow@rspa.dot.gov.

SUPPLEMENTARY INFORMATION:

Background

Many operators of gas, hazardous liquid, and carbon dioxide pipelines do more to assure the integrity of their systems than RSPA's pipeline safety regulations in 49 CFR Parts 192 and 195 require. For example, §§ 192.465 and 195.573 require operators to use electrical tests to identify places where buried pipe may not be protected

adequately from external corrosion. But, in addition to electrical tests, many operators have historically used internal inspection devices or hydrostatic testing to find external corrosion. They have also used these methods to look for other pipeline defects.

RSPA has long recognized the safety and environmental advantages of these additional inspection and test methods. In recent years, it became apparent that they are particularly beneficial when used as part of a comprehensive risk-based program to assure system integrity.

In 2000, RSPA issued regulations requiring hazardous liquid and carbon dioxide pipeline operators to conduct integrity management programs using internal inspection, pressure testing, or other equally effective assessment means (§ 195.452).

Congressional Directives

Congress also saw the need for operators to do more to assure the integrity of their pipelines. In 2002, Congress directed DOT to issue regulations on managing gas pipeline integrity in high-density population areas with a program involving internal inspection, pressure testing, and direct assessment.¹ Congress further directed DOT to issue regulations prescribing standards for inspecting pipeline facilities by direct assessment.²

In the pipeline transportation industry, "direct assessment" is a process of data gathering, inspection, examination, and evaluation used to determine if external corrosion, internal corrosion, or stress-corrosion cracking is adversely affecting the physical integrity of ferrous pipelines. The process serves not only to locate and repair corrosion defects but also to prevent future corrosion problems.

Standards for Direct Assessment

In response to Congress' first directive, RSPA published regulations in Subpart O of Part 192 that require operators to follow detailed programs in managing the integrity of onshore gas transmission lines in high-consequence areas (69 FR 69816; Dec. 15, 2003). The definition of "high-consequence area" in § 192.903 describes places where transmission lines pose an increased risk because of their size and operating pressure and the nature or density of the nearby population.

The newly published Subpart O regulations include standards for using direct assessment to evaluate the threats

of external corrosion, internal corrosion, and stress-corrosion cracking. The standards are stated in §§ 192.925, 192.927, and 192.929. The standard on external corrosion direct assessment (§ 192.925) requires operators to integrate data on physical characteristics and operating history, conduct indirect aboveground inspections, directly examine pipe surfaces, and evaluate the effectiveness of the assessment process. Under the standard for direct assessment of internal corrosion (§ 192.927), operators must predict locations where electrolytes may accumulate in normally dry-gas pipelines, examine those locations, and validate the assessment process. The standard for direct assessment of stress-corrosion cracking (§ 192.929) involves collecting data relevant to stress-corrosion cracking, assessing the risk of pipeline segments, and examining and evaluating segments at risk.

Although these standards only affect gas transmission lines included in a Subpart O integrity management program, RSPA believes they are suitable for other gas pipelines that fall under Congress' second directive. Each standard incorporates by reference relevant provisions of the American Society of Mechanical Engineers' consensus standard, ASME B31.8S-2001, "Managing System Integrity of Gas Pipelines," which applies to any onshore gas pipeline made of ferrous material. In addition, § 192.925 incorporates by reference a consensus standard published by NACE International, NACE Standard RP0502-2002, "Pipeline External Corrosion Direct Assessment Methodology." This NACE standard applies broadly to buried onshore ferrous pipelines. Requirements in § 192.925 apart from the ASME and NACE standards merely assure the use of appropriate decision-making criteria.

In addition, RSPA believes §§ 192.925 and 192.929 would provide suitable standards for direct assessment of external corrosion and stress-corrosion cracking on hazardous liquid pipelines that fall under the second congressional directive. Although §§ 192.925 and 192.929 cross-reference provisions of ASME B31.8S-2001, which was intended for use on gas pipelines, we think the referenced provisions are appropriate for pipelines transporting hazardous liquid.

We do not believe, however, that the standard in § 192.927 is suitable for direct assessment of internal corrosion in hazardous liquid pipelines. This standard applies specifically to pipelines that transport dry gas.

¹ Pipeline Safety Improvement Act of 2002 (Pub. L. 107-355; Dec. 17, 2002), Sec. 14(a).

² *Ibid.*, Sec. 23.

Therefore, it does not apply to pipelines that transport liquids. At present, there is no consensus standard available for the direct assessment of internal corrosion in hazardous liquid pipelines.

Proposed Rules

Given that RSPA's existing direct assessment standards are suitable for pipelines besides gas transmission lines in high-consequence areas, RSPA is making the following rulemaking proposals to meet the second congressional directive. For onshore ferrous pipelines subject to Part 192, proposed § 192.490 would require that if operators use direct assessment to evaluate the threat of corrosion or to meet any requirement of Subpart I—Requirements for Corrosion Control, the direct assessment must be carried out according to the applicable standards in §§ 192.925, 192.927, and 192.929. A similar regulation, proposed § 195.588, would be established for hazardous liquid pipelines covered by Part 195, except that § 192.927 would not apply. Because Congress has directed DOT to ensure the safe transportation of carbon dioxide through standards related to hazardous liquid pipelines,³ proposed § 195.588 also applies to carbon dioxide pipelines covered by Part 195.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Policies and Procedures. RSPA does not consider this proposed rulemaking to be a significant regulatory action under Section 3(f) of Executive Order 12866 (58 FR 51735; Oct. 4, 1993). Therefore, the Office of Management and Budget (OMB) has not received a copy of this proposed rulemaking to review. RSPA also does not consider this proposed rulemaking to be significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979).

RSPA prepared a draft Regulatory Evaluation of the proposed rulemaking and a copy is in the docket. The evaluation concludes operators would incur only a minimum amount of cost, if any, to comply with the proposed rulemaking. If you disagree with this conclusion, please provide information to the public docket described above.

Regulatory Flexibility Act. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), RSPA must consider whether rulemaking actions would have a significant economic impact on a substantial number of small entities. Based on the facts available about the anticipated impacts of this proposed rulemaking, I certify that this proposed rulemaking will not have a significant

impact on a substantial number of small entities. If you have any information that this conclusion about the impact on small entities is not correct, please provide that information to the public docket described above.

Executive Order 13175. RSPA has analyzed this proposed rulemaking according to the principles and criteria contained in Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Because the proposed rulemaking would not significantly or uniquely affect the communities of the Indian tribal governments nor impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

Paperwork Reduction Act. Operators have just recently begun to use direct assessment to evaluate the effect of corrosion on buried pipelines. Under Parts 192 and 195, the use of direct assessment is voluntary, except as required by the transmission integrity management rules. The proposed rulemaking would not change this status. Because direct assessment is a new process and its use is largely voluntary, RSPA is unable to develop a reasonable estimate of the number of operators the proposed rulemaking may affect. Therefore, we have not estimated the paperwork burden of the proposed rulemaking.

RSPA invites comments on (1) how many operators plan to use direct assessment, other than to meet the transmission integrity management rules, and (2) the average paperwork burden of complying with the proposed rulemaking (in hours and cost per hour). In estimating the burden, note that each standard requires preparation of plans and procedures, and records are required by section 7 of NACE Standard RP0502–2002.

Unfunded Mandates Reform Act of 1995. This proposed rulemaking does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the proposed rulemaking.

National Environmental Policy Act. RSPA has analyzed the proposed rulemaking for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). Because the proposed rulemaking would affect only those operators that voluntarily use direct assessment and because it largely involves processes of data collection and evaluation, we have preliminarily

determined that the proposed rulemaking is unlikely to significantly affect the quality of the human environment. An environmental assessment document is available for review in the docket. A final determination on environmental impact will be made after the end of the comment period. If you disagree with our preliminary conclusion, please submit your comments to the docket as described above.

Executive Order 13132. RSPA has analyzed the proposed rulemaking according to the principles and criteria contained in Executive Order 13132 ("Federalism"). None of the proposed rules (1) has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) impose substantial direct compliance costs on State and local governments; or (3) preempt state law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Executive Order 13211. This proposed rulemaking is not a "Significant energy action" under Executive Order 13211. It is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, this proposed rulemaking has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

List of Subjects

49 CFR Part 192

Natural gas, Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 195

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

In consideration of the foregoing, RSPA proposes to amend 49 CFR parts 192 and 195 as follows:

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

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

2. Add § 192.490 to read as follows:

§ 192.490 Direct assessment.

Each operator that uses direct assessment on an onshore ferrous pipeline to evaluate the effects of a threat in the first column or to meet any requirement of this subpart regarding that threat must carry out the direct

³ 49 U.S.C. 60102(i) (2000).

assessment according to the standard listed in the second column.

Threat	Standard
External corrosion	§ 192.925
Internal corrosion in pipelines that transport dry gas.	§ 192.927
Stress-corrosion cracking.	§ 192.929

3. The authority citation for Part 195 continues to read as follows:

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

4. Add § 195.588 to read as follows:

§ 195.588 What standards apply to direct assessment?

If you use direct assessment on an onshore pipeline to evaluate the effects of a threat in the first column or to meet any requirement of this subpart regarding that threat, you must carry out the direct assessment according to the standard listed in the second column.

Threat	Standard
External corrosion	§ 192.925 of this chapter.
Stress-corrosion cracking.	§ 192.929 of this chapter.

Issued in Washington, DC, on October 14, 2004.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 04-23551 Filed 10-20-04; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AH44

Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population for Two Fishes (Boulder Darter and Spotfin Chub) in Shoal Creek, Tennessee and Alabama

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), in cooperation with the States of Tennessee and Alabama and with Conservation Fisheries, Inc., a nonprofit organization, propose to reintroduce one federally listed endangered fish, the boulder darter (*Etheostoma wapiti*), and one federally listed threatened fish, the

spotfin chub (*Cyprinella (=Hybopsis) monacha*), into their historical habitat in Shoal Creek, Lauderdale County, Alabama, and Lawrence County, Tennessee. Based on the evaluation of species' experts, these species currently do not exist in this reach or its tributaries. These two fish are being reintroduced under section 10(j) of the Endangered Species Act of 1973, as amended (Act), and would be classified as a nonessential experimental population (NEP).

The geographic boundaries of the proposed NEP would extend from the mouth of Long Branch, Lawrence County, Tennessee (Shoal Creek mile (CM) 41.7 (66.7 kilometers (km)), downstream to the backwaters of the Wilson Reservoir at Goose Shoals, Lauderdale County, Alabama (approximately CM 14 (22 km)), and would include the lower 5 CM (8 km) of all tributaries that enter this reach.

These proposed reintroductions are recovery actions and are part of a series of reintroductions and other recovery actions that the Service, Federal and State agencies, and other partners are conducting throughout the species' historical ranges. This proposed rule provides a plan for establishing the NEP and provides for limited allowable legal taking of the boulder darter and spotfin chub within the defined NEP area.

DATES: We will consider comments on this proposed rule that are received by December 20, 2004. Requests for a public hearing must be made in writing and received by December 6, 2004.

ADDRESSES: You may submit comments and other information, identified by RIN 1018-AH44, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail or Hand Delivery: Field Supervisor, U.S. Fish and Wildlife Service, Tennessee Field Office, 446 Neal Street, Cookeville, Tennessee, 38501.
- Fax: (931) 528-7075.
- E-mail: timothy_merritt@fws.gov.

Include "Attn: Shoal Creek NEP" in the subject line of the message.

Instructions: All submissions received must include the agency name and Regulatory Information Number (RIN) for this rulemaking. Please include your name and return address in the body of your message. Please see the Public Comments Solicited section below for file format and other information about electronic filing. In the event that our internet connection is not functional, please contact the Service by the alternative methods mentioned above.

The comments and materials we receive during the comment period will be available for public inspection, by appointment, during normal business hours at our Tennessee Field Office: U.S. Fish and Wildlife Service, 446 Neal Street, Cookeville, Tennessee, 38501. If you wish to request a public hearing, you may mail or hand deliver your written request to the above address.

FOR FURTHER INFORMATION CONTACT:

Timothy Merritt, U.S. Fish and Wildlife Service, 446 Neal Street, Cookeville, Tennessee 28801, telephone (931) 528-6481, Ext. 211, facsimile (931) 528-7075, or e-mail at timothy_merritt@fws.gov.

SUPPLEMENTARY INFORMATION:

Background

1. Legislative

Congress made significant changes to the Act in 1982 with the addition of section 10(j), which provides for the designation of specific reintroduced populations of listed species as "experimental populations." Previously, we had authority to reintroduce populations into unoccupied portions of a listed species' historical range when doing so would foster the species' conservation and recovery. However, local citizens often opposed these reintroductions because they were concerned about the placement of restrictions and prohibitions on Federal and private activities. Under section 10(j) of the Act, the Secretary of the Department of the Interior can designate reintroduced populations established outside the species' current range, but within its historical range, as "experimental." Based on the best scientific and commercial data available, we must determine whether experimental populations are "essential," or "nonessential," to the continued existence of the species. Regulatory restrictions are considerably reduced under a Nonessential Experimental Population (NEP) designation.

Without the "nonessential experimental population" designation, the Act provides that species listed as endangered or threatened are afforded protection primarily through the prohibitions of section 9 and the requirements of section 7. Section 9 of the Act prohibits the take of an endangered species. "Take" is defined by the Act as harass, harm, pursue, hunt, shoot, wound, trap, capture, or collect, or attempt to engage in any such conduct. Service regulations (50 CFR 17.31) generally extend the prohibitions of take to threatened wildlife. Section 7 of the Act outlines the procedures for

Federal interagency cooperation to conserve federally listed species and protect designated critical habitat. It mandates all Federal agencies to determine how to use their existing authorities to further the purposes of the Act to aid in recovering listed species. It also states that Federal agencies will, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the Act does not affect activities undertaken on private land unless they are authorized, funded, or carried out by a Federal agency.

For purposes of section 9 of the Act, a population designated as experimental is treated as threatened regardless of the species' designation elsewhere in its range. Through section 4(d) of the Act, threatened designation allows us greater discretion in devising management programs and special regulations for such a population. Section 4(d) of the Act allows us to adopt whatever regulations are necessary to provide for the conservation of a threatened species. In these situations, the general regulations that extend most section 9 prohibitions to threatened species do not apply to that species, and the special 4(d) rule contains the prohibitions and exemptions necessary and appropriate to conserve that species. Regulations issued under section 4(d) for NEPs are usually more compatible with routine human activities in the reintroduction area.

For the purposes of section 7 of the Act, we treat NEPs as a threatened species when the NEP is located within a National Wildlife Refuge or National Park, and section 7(a)(1) and the consultation requirements of section 7(a)(2) of the Act apply. Section 7(a)(1) requires all Federal agencies to use their authorities to conserve listed species. Section 7(a)(2) requires that Federal agencies, in consultation with the Service, insure that any action authorized, funded, or carried out is not likely to jeopardize the continued existence of a listed species or adversely modify its critical habitat. When NEPs are located outside a National Wildlife Refuge or National Park, we treat the population as proposed for listing and only two provisions of section 7 would apply—section 7(a)(1) and section 7(a)(4). In these instances, NEPs provide additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(4) requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to

jeopardize the continued existence of a species proposed to be listed. The results of a conference are advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities.

Individuals that are used to establish an experimental population may come from a donor population, provided their removal will not create adverse impacts upon the parent population, and provided appropriate permits are issued in accordance with our regulations (50 CFR 17.22) prior to their removal. In the case of the boulder darter and spotfin chub, the donor population is a captive-bred population, which was propagated with the intention of re-establishing wild populations to achieve recovery goals. In addition, it is possible that wild adult stock could also be released into the NEP area.

2. Biological Information

The endangered boulder darter is an olive to gray colored fish that lacks the red spots common to most darters. It is a small fish, approximately 76 millimeters (mm) (3 inches (in)) in length. Although boulder darters were historically recorded only in the Elk River system and Shoal Creek, scientists believe, based on the historical availability of suitable habitat, that this darter once inhabited fast-water rocky habitat in the Tennessee River and its larger tributaries in Tennessee and Alabama, from the Paint Rock River in Madison County, Alabama, downstream to at least Shoal Creek in Lauderdale County, Alabama (U.S. Fish and Wildlife Service 1989). Currently, it is extirpated from Shoal Creek and exists only in the Elk River, Giles and Lincoln Counties, Tennessee, and Limestone County, Alabama, and the lower reaches of Richland Creek, an Elk River tributary, Giles County, Tennessee (U.S. Fish and Wildlife Service 1989).

The spotfin chub is also olive colored, but with sides that are largely silvery and with white lower parts. Large nuptial males have brilliant turquoise-royal blue coloring on the back, side of the head, and along the mid-lateral part of the body. It is also a small fish, approximately 92 millimeters (mm) (4 inches (in)) in length. The spotfin chub was once a widespread species and was historically known from 24 upper and middle Tennessee River system streams, including Shoal Creek. It is now extant in only four rivers/river systems—the Buffalo River at the mouth of Grinders Creek, Lewis County, Tennessee; the Little Tennessee River, Swain and Macon Counties, North Carolina; Emory River system (Obed River, Clear Creek, and Daddys Creek), Cumberland and

Morgan Counties, Tennessee; the Holston River and its tributary, North Fork Holston River, Hawkins and Sullivan Counties, Tennessee, and Scott and Washington Counties, Virginia (U.S. Fish and Wildlife Service 1983; P. Shute, TVA, pers. comm. 1998).

Since the mid-1980s, Conservation Fisheries, Inc. (CFI), a nonprofit organization, with support from us, the Tennessee Wildlife Resources Agency (TWRA), U.S. Forest Service, National Park Service, Tennessee Valley Authority (TVA), and Tennessee Aquarium, has successfully translocated, propagated, and reintroduced the spotfin chub and three other federally listed fishes (smoky madtoms, yellowfin madtoms, and duskytail darters) into Abrams Creek, Great Smoky Mountains National Park, Blount County, Tennessee. These fish historically occupied Abrams Creek prior to an ichthyocide treatment in the 1950s. An NEP designation for Abrams Creek was not needed since the entire watershed occurs on National Park Service land, section 7 of the Act applies regardless of the NEP designation, and existing human activities and public use of the Creek are consistent with protection and take restrictions needed for the reintroduced populations. Natural reproduction by all four species in Abrams Creek has been documented, but the spotfin chub appears to be the least successful in this capacity (Rakes *et al.* 2001; Rakes and Shute 2002). We have also worked with CFI to translocate, propagate, and reintroduce these same four fish into an NEP established for a section of the Tellico River, Monroe County, Tennessee (67 FR 52420, August 12, 2002). Propagated fish of these four species were released into the Tellico River starting in 2003. It is still too early to determine the success of these releases, but it is believed that the habitat and water quality is sufficient to ensure future success similar to the Abrams Creek reintroductions. CFI has also successfully propagated boulder darters and augmented the only known population of the species in the Elk River system in Tennessee.

Based on CFI's success and intimate knowledge of these two fishes and their habitat needs, we contracted with CFI to survey Shoal Creek in order to determine if suitable habitat exists in this creek for reintroductions, and if we could expand our ongoing fish recovery efforts to these waters (Rakes and Shute 1999). Rakes and Shute (1999) concluded that about 20 miles (32 km) of Shoal Creek above the backwaters of the Wilson Reservoir appeared to contain suitable reintroduction habitat

for both fishes. The boulder darter and spotfin chub were last collected from Shoal Creek in the 1880s, and since then both were apparently extirpated from this reach. We believe the boulder darter was extirpated by the combined effects of water pollution and the impoundment of lower Shoal Creek with the construction of Wilson Dam (U.S. Fish and Wildlife Service 1989). We believe that similar factors led to the extirpation of the spotfin chub for similar reasons. However, as a result of implementation of the Clean Water Act by the U.S. Environmental Protection Agency (EPA) and State water and natural resources agencies, and the pollution control measures undertaken by municipalities, industries, and individuals, the creek's water quality has greatly improved and its resident fish fauna has responded positively (Charles Saylor, TVA, pers. comm. 2002; based on his bioassays).

3. Recovery Goals/Objectives

The boulder darter (*Etheostoma wapiti*) (Etnier and Williams 1989) was listed as an endangered species on September 1, 1988 (53 FR 33996). We completed a recovery plan for this species in July 1989 (U.S. Fish and Wildlife Service 1989). The downlisting (reclassification from endangered to threatened) objectives in the recovery plan are: (1) To protect and enhance the existing population in the Elk River and its tributaries, and to successfully establish a reintroduced population in Shoal Creek or other historical habitat or discover an additional population so that at least two viable populations exist; and (2) to complete studies of the species' biological and ecological requirements and implement management strategies developed from these studies that have been or are likely to be successful. The delisting objectives are: (1) to protect and enhance the existing population in the Elk River and its tributaries, and to successfully establish reintroduced populations or discover additional populations so that at least three viable populations exist (the Elk River population including the tributaries must be secure from river mile (RM) 90 downstream to RM 30); (2) to complete studies of the species' biological and ecological requirements and implement successful management strategies; and (3) to ensure that no foreseeable threats exist that would likely impact the survival of any populations.

The spotfin chub (=turquoise shiner) (*Cyprinella (=Hybopsis) monacha*) (Cope 1868) was listed as a threatened species on September 9, 1977, with critical habitat and a special rule (42 FR

45526). The critical habitat map was corrected on September 22, 1977 (42 FR 47840). We completed a recovery plan for this species in November 1983 (U.S. Fish and Wildlife Service 1983). We also established an NEP for the spotfin chub and three other federally listed fishes for a section of the Tellico River in Monroe County, Tennessee, on August 12, 2002 (67 FR 52420). The delisting objectives in the recovery plan are: (1) To protect and enhance existing populations so that viable populations exist in the Buffalo River system, upper Little Tennessee River, Emory River system, and lower North Fork Holston River; (2) to ensure, through reintroduction and/or the discovery of two new populations, that viable populations exist in two other rivers; and (3) to ensure that no present or foreseeable threats exist that would likely impact the survival of any populations.

The recovery criteria for both fishes generally agree that, to reach recovery, we must: (1) Restore existing populations to viable levels, (2) reestablish multiple, viable populations in historical habitats, and (3) eliminate foreseeable threats that would likely threaten the continued existence of any viable populations. The number of secure, viable populations (existing and restored) needed to achieve recovery varies by species and depends on the extent of the species' probable historical range (*i.e.*, species that were once widespread require a greater number of populations for recovery than species that were historically more restricted in distribution). However, the reestablishment of historical populations is a critical component to the recovery of both the boulder darter and spotfin chub.

4. Reintroduction Site

In May 1999 letters to us, the Commissioner of the Alabama Department of Conservation and Natural Resources (ADCNR) and the Executive Director of the TWRA requested that we consider designating NEPs for the spotfin chub and boulder darter and reintroducing both species into Shoal Creek, where they historically occurred.

We previously established NEPs for the spotfin chub and three other federally listed fishes in the Tellico River, Tennessee, on August 12, 2002 (67 FR 52420). Reintroductions of the spotfin chub were initiated in the Tellico River in 2002 and were continued in 2003 along with the first reintroductions of the remaining three fish species. These reintroduced fish are being monitored. We believe the Tellico River is suitable for the establishment of

viable populations of each of these four fish and anticipate success as this recovery project proceeds.

Establishment of viable populations of the spotfin chub in both the Tellico River under the existing regulation and in Shoal Creek if this proposed regulation is finalized will help achieve an objective in the recovery of this fish. However, it will take several years of monitoring to fully evaluate if populations of this fish (and the other fishes) have become established and remain viable in these historic river reaches.

Based on the presence of suitable habitat, the positive response of native fish species to habitat improvements in Shoal Creek, the presence of similar fish species that have similar habitat requirements to both of these fishes, the recommendations mentioned above, and the evaluation of biologists familiar with Shoal Creek, we believe that Shoal Creek, from the mouth of Long Branch to the backwaters of the Wilson Reservoir, is suitable for the reintroduction of the boulder darter and spotfin chub as NEPs.

According to P. Rakes (CFI, pers. comm. 1999), the best sites to reintroduce these fishes into Shoal Creek are between CM 33 (53 km) and CM 14 (22 km). Therefore, we propose to reintroduce the boulder darter and spotfin chub into historical habitat of the free-flowing reach of Shoal Creek between CM 33 and CM 14. This reach contains the most suitable habitat for the reintroductions. Neither species currently exists in Shoal Creek or its tributaries.

5. Reintroduction Procedures

The dates for these proposed reintroductions, the specific release sites, and the actual number of individuals to be released cannot be determined at this time. Individual fish that would be used for the proposed reintroductions primarily will be artificially propagated juveniles. However, it is possible that wild adult stock could also be released into the NEP area. Spotfin chub and boulder darter propagation and juvenile rearing technology are available. The parental stock of the juvenile fishes for proposed reintroduction will come from existing wild populations. In some cases, the parental stock for juvenile fish will be returned back to the same wild population. Generally, the parents are permanently held in captivity.

The permanent removal of adults from the wild for their use in reintroduction efforts may occur when one or more of the following conditions exist: (1) Sufficient adult fish are

available within a donor population to sustain the loss without jeopardizing the species; (2) the species must be removed from an area because of an imminent threat that is likely to eliminate the population or specific individuals present in an area; or (3) when the population is not reproducing. It is most likely that adults will be permanently removed because of the first condition: sufficient adult fish are available within a donor population to sustain the loss without jeopardizing the species. An enhancement of propagation or survival permit under section 10(a)(1)(A) of the Act is required. The permit will be issued before any take occurs, and we will coordinate these actions with the appropriate State natural resources agencies.

6. Status of Reintroduced Population

Previous translocations, propagations, and reintroductions of spotfin chubs and boulder darters have not affected the wild populations of either species. The use of artificially propagated juveniles will reduce the potential effects on wild populations. The status of the extant populations of the boulder darter and spotfin chub is such that individuals can be removed to provide a donor source for reintroduction without creating adverse impacts upon the parent population. If any of the reintroduced populations become established and are subsequently lost, the likelihood of the species' survival in the wild would not be appreciably reduced. Therefore, we have determined that these reintroduced fish populations in Shoal Creek are not essential to the continued existence of the species. We will ensure, through our section 10 permitting authority and the section 7 consultation process, that the use of animals from any donor population for these reintroductions is not likely to jeopardize the continued existence of the species.

Reintroductions are necessary to further the recovery of these species. The NEP designation for the reintroduction alleviates landowner concerns about possible land and water use restrictions by providing a flexible management framework for protecting and recovering the boulder darter and spotfin chub, while ensuring that the daily activities of landowners are unaffected. In addition, the anticipated success of these reintroductions will enhance the conservation and recovery potential of these species by extending their present ranges into currently unoccupied historical habitat. These species are not known to exist in Shoal Creek or its tributaries at the present time.

7. Location of Reintroduced Population

The NEP area, which encompasses all the sites for the proposed reintroductions, will be located in the free-flowing reach of Shoal Creek, Lauderdale County, Alabama, and Lawrence County, Tennessee, from the mouth of Long Branch downstream to the backwaters of the Wilson Reservoir. Section 10(j) of the Act requires that an experimental population be geographically separate from other wild populations of the same species. This proposed NEP area is totally isolated from existing populations of these species by large reservoirs, and neither fish species is known to occur in or move through large reservoirs. Therefore, the reservoirs will act as barriers to the species' downstream movement into the Tennessee River and its tributaries and ensure that this NEP remains geographically isolated and easily distinguishable from existing wild populations. Based on the fishes' habitat requirements, we do not expect them to become established outside the NEP. However, if any of the reintroduced boulder darters and spotfin chubs move outside the designated NEP area, then the fish would be considered to have come from the NEP area. In that case, we may propose to amend the rule and enlarge the boundaries of the NEP area to include the entire range of the expanded populations.

The designated NEP area for the spotfin chub in the Tellico River (67 FR 52420) does not overlap or interfere with this proposed NEP area for Shoal Creek in Tennessee and Alabama because they are geographically separated river reaches.

Critical habitat has been designed for the spotfin chub (42 FR 47840, September 22, 1977); however, the designation does not include the proposed NEP area. Critical habitat has not been designated for the boulder darter. Section 10(j)(2)(C)(ii) of the Act states that critical habitat shall not be designated for any experimental population that is determined to be nonessential. Accordingly, we cannot designate critical habitat in areas where we have already established, by regulation, a nonessential experimental population.

8. Management

The aquatic resources in the proposed reintroduction area are managed by the ADCNR and TWRA. Multiple-use management of these waters will not change as a result of the experimental designation. Private landowners within the NEP area will still be allowed to

continue all legal agricultural and recreational activities. Because of the substantial regulatory relief provided by NEP designations, we do not believe the reintroduction of boulder darter and spotfin chub will conflict with existing human activities or hinder public use of the area. The ADCNR and the TWRA have previously endorsed the boulder darter and spotfin chub reintroductions under NEP designations and are supportive of this effort. The NEP designation will not require the ADCNR and the TWRA to specifically manage for reintroduced boulder darter and spotfin chub.

The Service, State employees, and CFI, Inc., staff will manage the reintroduction. They will closely coordinate on reintroductions, monitoring, coordination with landowners and land managers, and public awareness, among other tasks necessary to ensure successful reintroductions of species.

(a) *Mortality*: The Act defines "incidental take" as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity such as recreation (e.g., fishing, boating, wading, trapping or swimming), forestry, agriculture, and other activities that are in accordance with Federal, Tribal, State, and local laws and regulations. A person may take a boulder darter or spotfin chub within the experimental population area provided that the take is unintentional and was not due to negligent conduct. Such conduct will not constitute "knowing take," and we will not pursue legal action. However, when we have evidence of knowing (i.e., intentional) take of a boulder darter or spotfin chub, we will refer matters to the appropriate authorities for prosecution. We expect levels of incidental take to be low since the reintroduction is compatible with existing human use activities and practices for the area.

(b) *Special Handling*: Service employees and authorized agents acting on their behalf may handle boulder darter and spotfin chub for scientific purposes; to relocate boulder darter and spotfin chub to avoid conflict with human activities; for recovery purposes; to relocate boulder darter and spotfin chub to other reintroduction sites; to aid sick or injured boulder darter and spotfin chub; and to salvage dead boulder darter and spotfin chub.

(c) *Coordination with landowners and land managers*: The Service and cooperators identified issues and concerns associated with the proposed boulder darter and spotfin chub reintroduction before preparing this proposed rule. The proposed

reintroduction also has been discussed with potentially affected State agencies, businesses, and landowners within the proposed release area. The land along the proposed NEP site is privately owned. International Paper owns a large tract within the proposed NEP area and has expressed a strong interest in working with us to establish these fish in their stretch of the creek. Most, if not all, of the identified businesses are small businesses engaged in activities along the affected reaches of this creek. Affected State agencies, businesses, landowners, and land managers have indicated support for the reintroduction, if boulder darter and spotfin chub released in the proposed experimental population area are established as an NEP and if aquatic resource activities in the proposed experimental population area are not constrained.

(d) *Potential for conflict with human activities:* We do not believe these proposed reintroductions will conflict with existing or proposed human activities or hinder public use of the NEP area within Shoal Creek. Experimental population special rules contain all the prohibitions and exceptions regarding the taking of individual animals. These special rules are compatible with routine human activities in the reintroduction area.

(e) *Monitoring:* After the first initial stocking of these two fish, we will monitor annually their presence or absence and document any spawning behavior or young-of-the-year fish that might be present. This monitoring will be conducted primarily by snorkeling or seining and will be accomplished by contracting with the appropriate species experts. Annual reports will be produced detailing the stocking rates and monitoring activities that took place during the previous year. We will also fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

(f) *Public awareness and cooperation:* On August 26, 1999, we mailed letters to 80 potentially affected congressional offices, Federal and State agencies, local governments, and interested parties to notify them that we were considering proposing NEP status in Shoal Creek for two fish species. We received a total of four responses, all of which supported our proposed designation and reintroductions.

The EPA supported the proposal, commended the ADCNR, TWRA, and us for the proposal and its projected beneficial results, and stated that the reintroductions would assist them in meeting one of the goals of the Clean

Water Act—restoring the biological integrity of the Nation's water.

The TVA strongly supported the concept of reintroducing extirpated species, but also cautioned that past industrial discharges into Shoal Creek could potentially limit or prevent the survival of sensitive fishes in the creek.

The Tennessee Department of Environment and Conservation applauded our (TWRA, CFI, and us) efforts to restore Shoal Creek fishes. They also supported the proposed reintroductions under NEP status, because the designation will ensure that current human uses of Shoal Creek are given due consideration in recovery efforts for the species.

Dr. David Etnier, Department of Ecology and Evolutionary Biology, University of Tennessee, Knoxville, Tennessee, supported the reintroductions and concluded that he saw no compelling reason to delay them.

We will inform the general public of the importance of this reintroduction project in the overall recovery of the boulder darter and spotfin chub. The designation of the NEP for Shoal Creek and adjacent areas would provide greater flexibility in the management of the reintroduced boulder darter and spotfin chub. The NEP designation is necessary to secure needed cooperation of the States, Tribes, landowners, agencies, and other interests in the affected area.

Finding

Based on the above information, and using the best scientific and commercial data available (in accordance with 50 CFR 17.81), the Service finds that releasing the boulder darter and spotfin chub into the Shoal Creek Experimental Population Area under a Nonessential Experimental Population designation will further the conservation of the species.

Other Changes to the Regulations

The spotfin chub was listed with critical habitat and a special rule on September 9, 1977, under the scientific name of *Hybopsis monacha*. The current list of endangered and threatened species at 50 CFR 17.11(h), the existing experimental population on the Tellico River in Tennessee at 50 CFR 17.84(m), and the critical habitat designation at 50 CFR 17.95(e) all use the scientific name *Cyprinella* (= *Hybopsis*) *monacha* for the spotfin chub. However, the special rule at 50 CFR 17.44(c) uses the scientific name *Hybopsis monacha* for the spotfin chub. We are proposing to correct the text for the special rule at 50 CFR 17.44(c) by changing the scientific name

for the spotfin chub from *Hybopsis monacha* to *Cyprinella* (= *Hybopsis*) *monacha* to make this section consistent with the text of the existing regulations for the spotfin chub.

Also, unlike many of the existing experimental population regulations at 50 CFR 17.84, the entry for the experimental population for the Tellico River in Tennessee at 50 CFR 17.84(m) does not include a map. We are proposing to add a map for this entry to make this section consistent with the text of the existing regulations for experimental populations (see Proposed Regulation Promulgation section below).

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning this proposed rule. If you wish to comment on this proposed rule, you may submit your comments and materials concerning this proposal by any one of several methods (see ADDRESSES).

Comments submitted electronically should be in the body of the e-mail message itself or attached as a text file (ASCII), and should not use special characters or encryption. Please also include "Attn: Shoal Creek NEP," your full name, and your return address in your e-mail message. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. 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 for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, 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 will be available for public inspection, by appointment, during normal business hours at the Ecological Services Office in Cookeville, Tennessee (see ADDRESSES). Copies of the proposed rule are available on the Internet at <http://cookeville.fws.gov>.

Peer Review

In conformance with our policy on peer review, published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our NEP designation is based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed NEP.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

You may request a public hearing on this proposal. Requests must be made in writing at least 15 days prior to the close of the public comment period and sent to the Field Supervisor for the U.S. Fish and Wildlife Service in Tennessee (see **ADDRESSES** and **DATES** sections).

Required Determinations

Regulatory Planning and Review (E.O. 12866)

In accordance with the criteria in Executive Order 12866, this proposed rule to designate NEP status for the boulder darter and spotfin chub in Shoal Creek, Lauderdale County, Alabama and Lawrence County, Tennessee, is not a significant regulatory action subject to Office of Management and Budget review. This rule will not have an annual economic effect of \$100 million or more on the economy and will not have an adverse effect on any economic sector, productivity, competition, jobs, the environment, or other units of government. The area affected by this rule consists of a very limited and discrete geographic segment of lower Shoal Creek (about 28 CM (44 km)) in southwestern Tennessee and northern Alabama. Therefore, a cost-benefit and economic analysis will not be required.

We do not expect this rule to have significant impacts to existing human activities (e.g., agricultural activities, forestry, fishing, boating, wading, swimming, trapping) in the watershed. The reintroduction of these federally listed species, which will be accomplished under NEP status with its

associated regulatory relief, is not expected to impact Federal agency actions. Because of the substantial regulatory relief, we do not believe the proposed reintroduction of these species will conflict with existing or proposed human activities or hinder public use of Shoal Creek or its tributaries.

This rule will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. Federal agencies most interested in this rulemaking are primarily the EPA and TVA. Both Federal agencies support the proposal. Because of the substantial regulatory relief provided by the NEP designation, we believe the reintroduction of the boulder darter and spotfin chub in the areas described will not conflict with existing human activities or hinder public utilization of the area.

This rule will not materially affect entitlements, grants, user fees, or loan programs, or the rights and obligations of their recipients. Because there are no expected impacts or restrictions to existing human uses of Shoal Creek as a result of this rule, no entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients are expected to occur.

This rule does not raise novel legal or policy issues. Since 1984, we have promulgated section 10(j) rules for many other species in various localities. Such rules are designed to reduce the regulatory burden that would otherwise exist when reintroducing listed species to the wild.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Although most of the identified entities are small businesses engaged in activities along the affected reaches of this creek, this rulemaking is not expected to have any significant impact on private activities in the affected area. The designation of an NEP in this rule will significantly reduce the regulatory requirements regarding the reintroduction of these species, will not create inconsistencies with other agencies' actions, and will not conflict with existing or proposed human activity, or Federal, State, or public use of the land or aquatic resources.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act.

This rule will not have an annual effect on the economy of \$100 million or more. It will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. The intent of this special rule is to facilitate and continue the existing commercial activity while providing for the conservation of the species through reintroduction into suitable habitat.

Unfunded Mandates Reform Act

The proposed NEP designation will not place any additional requirements on any city, county, or other local municipality. The ADCNR and TWRA, which manages Shoal Creek's aquatic resources, requested that we consider these proposed reintroductions under an NEP designation. However, they will not be required to manage for any reintroduced species. Accordingly, this proposed rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required since this rulemaking does not require any action to be taken by local or State governments or private entities. We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.*, that this rulemaking will not impose a cost of \$100 million or more in any given year on local or State governments or private entities (*i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.).

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. When reintroduced populations of federally listed species are designated as NEPs, the Act's regulatory requirements regarding the reintroduced listed species within the NEP are significantly reduced. Section 10(j) of the Act can provide regulatory relief with regard to the taking of reintroduced species within an NEP area. For example, this rule allows for the taking of these reintroduced fishes when such take is incidental to an otherwise legal activity, such as recreation (e.g., fishing, boating, wading, trapping, swimming), forestry, agriculture, and other activities that are in accordance with Federal, State, and local laws and regulations. Because of the substantial regulatory relief provided by NEP designations, we do not believe the reintroduction of these

fishes will conflict with existing or proposed human activities or hinder public use of the Shoal Creek system.

A takings implication assessment is not required because this rule (1) will not effectively compel a property owner to suffer a physical invasion of property and (2) will not deny all economically beneficial or productive use of the land or aquatic resources. This rule will substantially advance a legitimate government interest (conservation and recovery of two listed fish species) and will not present a barrier to all reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, the rule does not have significant Federalism effects to warrant the preparation of a Federalism Assessment. This rule will not have substantial direct effects on the States, in the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. The State wildlife agencies in Alabama (ADCNR) and Tennessee (TWRA) requested that we undertake this rulemaking in order to assist the States in restoring and recovering their native aquatic fauna. Achieving the recovery goals for these species will contribute to their eventual delisting and their return to State management. No intrusion on State policy or administration is expected; roles or responsibilities of Federal or State governments will not change; and fiscal capacity will not be substantially directly affected. The special rule operates to maintain the existing relationship between the States and the Federal Government and is being undertaken at the request of State agencies (ADCNR and TWRA). We have cooperated with the ADCNR and TWRA in the preparation of this proposed rule. Therefore, this rule does not have significant Federalism effects or implications to warrant the preparation of a Federalism Assessment pursuant to the provisions of Executive Order 13132.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this proposed rule does not unduly burden the judicial system and that it meets the requirements of sections (3)(a) and (3)(b)(2) of the Order.

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork

Reduction Act (44 U.S.C. 3501 *et seq.*) require that Federal agencies obtain approval from OMB before collecting information from the public. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid control number. This proposed rule does not include any new collections of information that require approval by OMB under the Paperwork Reduction Act.

National Environmental Policy Act

We have determined that the issuance of this proposed rule is categorically excluded under our National Environmental Policy Act procedures (516 DM 6, Appendix 1.4 B (6)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of the Interior Manual Chapter 512 DM 2, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects.

Energy Supply, Distribution or Use (E.O. 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Clarity of This Regulation (E.O. 12866)

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of

the preamble helpful in understanding the rule? (6) What else could we do to make the rule easier to understand?

Send your comments concerning how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail your comments to: Exsec@ios.doi.gov.

Literature Cited

- Rakes, P. L., P. W. Shute, and J. R. Shute. 1998. Captive propagation and population monitoring of rare Southeastern fishes. Final Report for 1997. Field Season and Quarterly Report for Fiscal Year 1998, prepared for Tennessee Wildlife Resources Agency, Contract No. FA-4-10792-5-00. 32 pp.
- Rakes, P. L., and J. R. Shute. 1999. Results of assays of portions of the French Broad River, Sevier and Knox Counties, Tennessee, and Shoal Creek, Lawrence and Wayne Counties, Tennessee and Lauderdale Counties, Alabama, for suitable habitat to support reintroduction of rare fishes. Unpublished report prepared by Conservation Fisheries, Inc., Knoxville, Tennessee, for the U.S. Fish and Wildlife Service, Asheville, North Carolina. 26 pp.
- Rakes, P.L., P.W. Shute, and J.R. Shute. 2001. Captive propagation and population monitoring of rare southeastern fishes: 2000. Unpublished Report to Tennessee Wildlife Resources Agency, Contract No. FA-99-13085-00.
- Rakes, P.L. and J.R. Shute. 2002. Captive propagation and population monitoring of rare southeastern fishes: 2001. Unpublished Report to Tennessee Wildlife Resources Agency, Contract No. FA-99-13085-00.
- U.S. Fish and Wildlife Service. 1983. Spottfin Chub Recovery Plan. Atlanta, GA. 46 pp.
- _____. 1989. Boulder Darter Recovery Plan. Atlanta, GA. 15 pp.

Author

The principal author of this proposed rule is Timothy Merritt (*see ADDRESSES* section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title

50 of the Code of Federal Regulations, as set forth below:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

under FISHERIES for “Chub, spotfin,” and “Darter, boulder,” to read as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

2. Amend § 17.11(h) by revising the existing entries in the List of Endangered and Threatened Wildlife

§ 17.11 Endangered and threatened wildlife.

* * * * *
(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* * * * *							
FISHES							
* * * * *							
Chub, spotfin (=turquoise shiner).	<i>Cyprinella (=Hybopsis) monacha.</i>	U.S.A. (AL, GA, NC, TN, VA).	Entire, except where listed as an experimental population..	T	28, 732	17.95(e)	17.44(c)
Do .....	.....do .....	.....do	Tellico River, from the backwaters of the Tellico Reservoir (about Tellico River mile 19 (30 km)) upstream to Tellico River mile 33 (53 km), in Monroe County, TN.	XN	732	NA	17.84(m)
Do .....	.....do .....	.....do	Shoal Creek (from Shoal Creek mile 41.7 (66.7 km)) at the mouth of Long Branch, Lawrence County, TN, downstream to the backwaters of Wilson Reservoir (Shoal Creek mile 14 (22 km)) at Goose Shoals, Lauderdale County, AL, including the lower 5 miles (8 km) of all tributaries that enter this reach.	.....	.....	NA	17.84(n)
* * * * *							
Darter, boulder	<i>Etheostoma wapiti</i>	U.S.A. (AL, TN)	Entire, except where listed as an experimental population.	E	322	NA	NA
Do .....	.....do .....	.....do	Shoal Creek (from Shoal Creek mile 41.7 (66.7 km)) at the mouth of Long Branch, Lawrence County, TN, downstream to the backwaters of Wilson Reservoir (Shoal Creek mile 14 (22 km)) at Goose Shoals, Lauderdale County, AL, including the lower 5 miles (8 km) of all tributaries that enter this reach.	XN .....	.....	NA	17.84(n)
* * * * *							

§ 17.44 [Amended]

3. Amend § 17.44(c) by removing the words “spotfin chub (*Hybopsis monacha*)” and adding, in their place, the words “spotfin chub (*Cyprinella (=Hybopsis) monacha*)”.

4. Amend § 17.84 by adding new paragraphs (m)(5) and (n), including maps, to read as follows:

§ 17.84 Special rules—vertebrates.

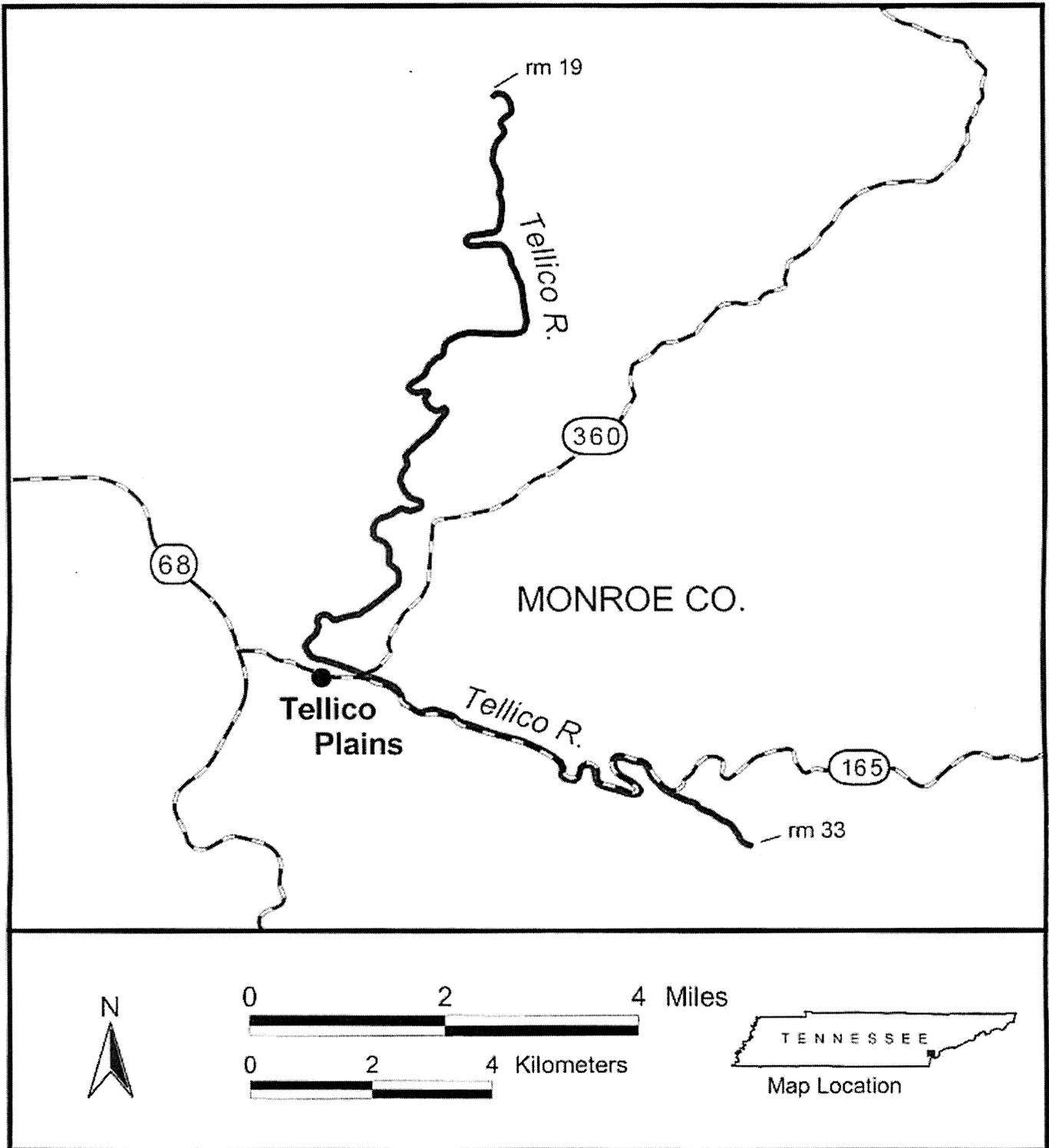
* * * * *

(m) * * *

(5) Note: Map of the NEP area for spotfin chub, duskytail darter, and smoky madtom in Tennessee follows:

BILLING CODE 4310–55–P

Portion of the Tellico River Covered by the Spottfin Chub, Duskytail Darter, Smoky Madtom and Yellowfin Madtom Nonessential Experimental Population Designation



(n) Spotfin chub (= turquoise shiner) (*Cyprinella (=Hybopsis) monacha*), boulder darter (*Etheostoma wapiti*).

(i) *Where are populations of these fishes designated as nonessential experimental populations (NEP)?*

(i) The NEP area for the boulder darter and the spotfin chub is within the species' historic ranges and is defined as follows: Shoal Creek (from Shoal Creek mile 41.7 (66.7 km)) at the mouth of Long Branch, Lawrence County, TN, downstream to the backwaters of Wilson Reservoir (Shoal Creek mile 14 (22 km)) at Goose Shoals, Lauderdale County, AL, including the lower 5 miles (8 km) of all tributaries that enter this reach.

(ii) None of the fishes named in paragraph (n) of this section are currently known to exist in Shoal Creek or its tributaries. Based on the habitat requirements of these fishes, we do not expect them to become established outside the NEP area. However, if any individuals of either of the species move upstream or downstream or into tributaries outside the designated NEP area, we would presume that they came from the reintroduced populations. We would then amend paragraph (n)(1)(i) of this section and enlarge the boundaries

of the NEP to include the entire range of the expanded population.

(iii) We do not intend to change the NEP designations to "essential experimental," "threatened," or "endangered" within the NEP area. Additionally, we will not designate critical habitat for these NEPs, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) *What take is allowed in the NEP area? Take of these species that is accidental and incidental to an otherwise legal activity, such as recreation (e.g., fishing, boating, wading, trapping or swimming), forestry, agriculture, and other activities that are in accordance with Federal, State, and local laws and regulations, is allowed.*

(3) *What take of these species is not allowed in the NEP area?*

(i) Except as expressly allowed in paragraph (n)(2) of this section, all the provisions of § 17.31(a) and (b) apply to the fishes identified in paragraph (n)(1) of this section.

(ii) Any manner of take not described under paragraph (n)(2) of this section is prohibited in the NEP area. We may refer unauthorized take of these species to the appropriate authorities for prosecution.

(iii) You may not possess, sell, deliver, carry, transport, ship, import, or

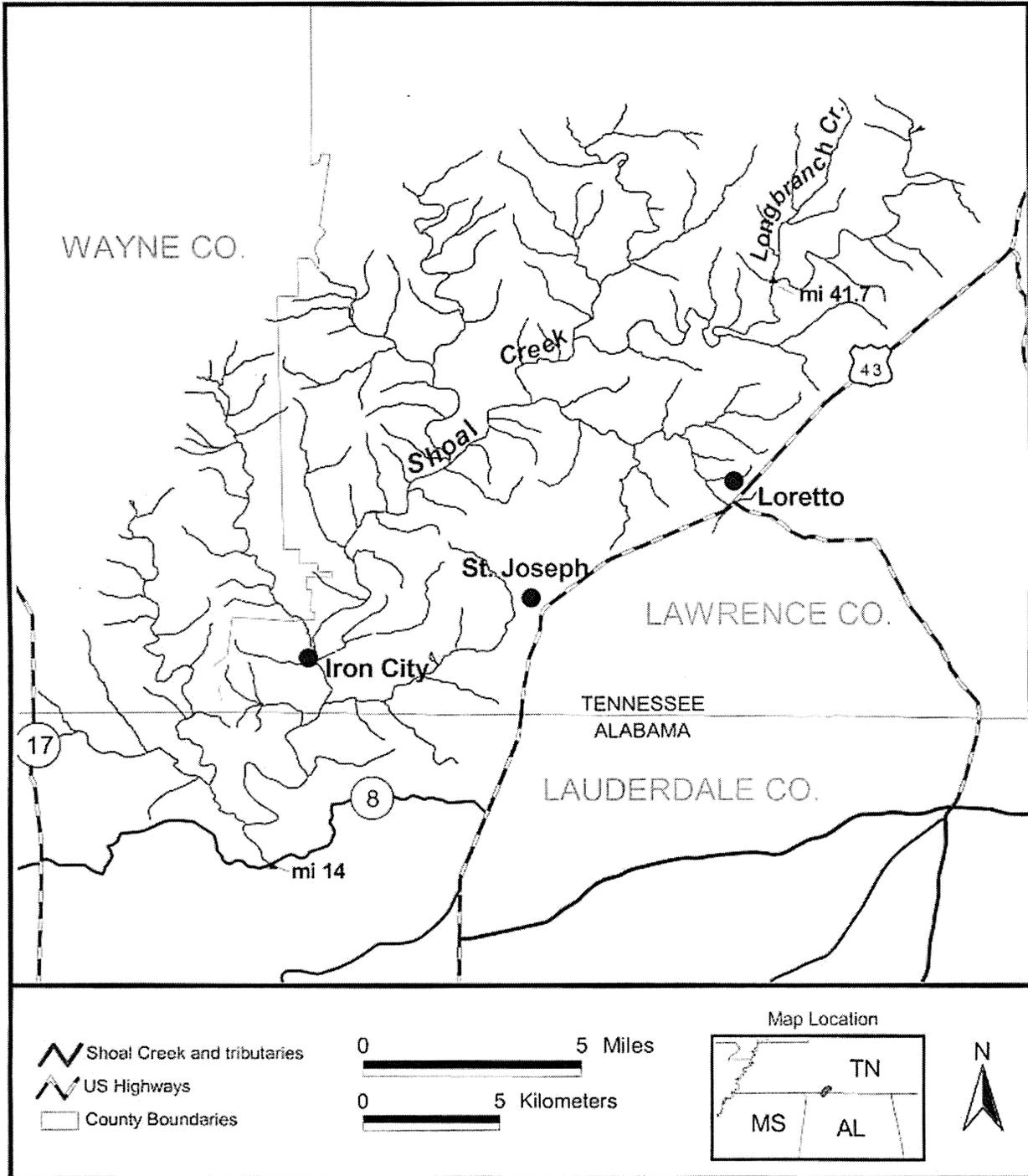
export by any means whatsoever any of the identified fishes, or parts thereof, that are taken or possessed in violation of paragraph (n)(3) of this section or in violation of the applicable State fish and wildlife laws or regulations or the Act.

(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraph (n)(3) of this section.

(4) *How will the effectiveness of these reintroductions be monitored? After the initial stocking of these two fish, we will monitor annually their presence or absence and document any spawning behavior or young-of-the-year fish that might be present. This monitoring will be conducted primarily by snorkeling or seining and will be accomplished by contracting with the appropriate species experts. We will produce annual reports detailing the stocking rates and monitoring activities that took place during the previous year. We will also fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.*

(5) **Note:** Map of the NEP area for spotfin chub and boulder darter in Tennessee and Alabama follows:

Portion of Shoal Creek Watershed Covered by the Spotfin Chub and Boulder Darter Nonessential Experimental Population Designation



Dated: September 20, 2004.

Craig Manson,
Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04-23587 Filed 10-20-04; 8:45 am]

BILLING CODE 4310-55-C

Notices

Federal Register

Vol. 69, No. 203

Thursday, October 21, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Bureau for Democracy, Conflict and Humanitarian Assistance, Office of Private Voluntary Cooperation/ American Schools and Hospitals Abroad; Announcement of Draft Changes to Criterion #8 American Schools and Hospitals Abroad Program

The U.S. Agency for International Development is announcing draft changes to Criterion #8 in the American Schools and Hospitals Abroad program, pursuant to section 214 of the Foreign Assistance Act of 1961, as amended. The program criteria serve as administrative guidance for considering the acceptability and relative merits of applicants.

FOR FURTHER INFORMATION CONTACT: Mr. George Like (703) 712-1766, ASHA Agency for International Development, Washington, DC 20523.

SUPPLEMENTARY INFORMATION: On November 26, 1979, the U.S. Agency for International Development published 11 Program Criteria for the American Schools and Hospitals Abroad program. Criterion #8 states "The institution must be open to all persons regardless of race, religion, sex, color or national origin. (The above shall not be construed to require enrollment of students of both sexes at an educational institution enrolling males or females only.) Assistance may not be used to train persons for religious pursuits or to construct buildings or other facilities intended for worship or religious instruction."

On December 12, 2002, Executive Order 13279 "Equal Protection of the Laws for Faith-Based and Community Organizations" was signed. Accordingly, the U.S. Agency for International Development proposes to change Criterion #8 of the American Schools and Hospitals Abroad program

to "The institution must be open to all persons regardless of race, religion, sex, color or national origin. (The above shall not be construed to require enrollment of students of both sexes at an educational institution enrolling males or females only.) Assistance may not be used to support any inherently religious activities, such as worship, religious instruction or proselytization."

The sixty-day comment period will begin on the date that this announcement is published in the **Federal Register**.

G. Garrett Grigsby,

Deputy Assistant Administrator, Bureau for Democracy, Conflict and Humanitarian Assistance.

[FR Doc. 04-23552 Filed 10-20-04; 8:45 am]

BILLING CODE 6116-01-P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

Notice of Request for Extension of a Currently Approved Information Collection

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service (RHS), the Rural Business-Cooperative Service (RBS), Rural Utilities Service (RUS), and the Farm Service Agency's (FSA) intention to request an extension for a currently approved information collection in support of compliance with Civil Rights laws.

DATES: Comments on this notice must be received by December 20, 2004, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Jacqueline Micheli, Equal Opportunity Specialist, Rural Development, Civil Rights Staff, U.S. Department of Agriculture, STOP 0703, 1400

Independence Ave., SW., Washington, DC 20250-0703, telephone (202) 692-0099 (voice) or 692-0107 (TDD).

SUPPLEMENTARY INFORMATION: *Title:* 7 CFR 1901-E, Civil Rights Compliance Requirements.

OMB Number: 0575-0018.

Expiration Date: April 30, 2005.

Type of Request: Extension of a Currently Approved Information Collection.

Abstract: The information collection under OMB Number 0575-0018 enables the RHS, RBS, RUS, and FSA to effectively monitor a recipient's compliance with the civil rights laws, and to determine whether or not service and benefits are being provided to beneficiaries on an equal opportunity basis.

The RBS, RHS, RUS, and FSA, formerly the Farmers Home Administration, are required to provide Federal financial assistance through its farmer, housing, and community and business programs on an equal opportunity basis. The laws implemented in 7 CFR part 1901, subpart E ("1901-E"), require the recipients of RBS, RHS, RUS, and FSA's Federal financial assistance to collect various types of information, including information on participants in certain of these agencies' programs, by race, color, and national origin. While these agencies realize that the provisions of 1901-E are outdated as the result of statutory amendment and other processes of law, the information needed to be collected under this implementing regulation is not affected by the obsolete nature of the regulation. The RBS, RHS, RUS, and FSA use the information to monitor a recipient's compliance with the civil rights laws, and to determine whether or not service and benefits are being provided to beneficiaries on an equal opportunity basis. The agencies are in the process of revising 1901-E, and expect to publish for comment a **Federal Register** document proposing these revisions in 2005. The following laws are implemented in 7 CFR 1901-E:

a. Title VI of the Civil Rights Act of 1964 ("Title VI"). The implementing regulations for this Act, issued by the U.S. Department of Justice and the U.S. Department of Agriculture (USDA), requires recipients of RBS', RHS' RUS' and FSA's program assistance to collect information on the race/national origin

of the beneficiaries of their specific programs. This information is used by the RBS, RHS, RUS, and FSA for compliance review and monitoring purposes for Title VI.

b. Title VIII of the Civil Rights Act of 1968 (as amended) ("Title VIII"). Section 808a of Title VIII (42 U.S.C. 3608a (1988)), in pertinent part, requires the Secretary of Agriculture to collect racial and ethnic data on beneficiaries and recipients of USDA's housing programs. Furthermore, the implementing regulations issued by the U.S. Department of Housing and Urban Development (HUD) and adopted by the RBS, RHS, RUS, and FSA, requires recipients and other participants in RHS's housing programs affirmatively to further fair housing by providing housing, and the opportunity to acquire housing in a non-discriminatory fashion. One way to demonstrate compliance with Title VIII is to prepare Affirmative Fair Housing Marketing Plans, and to collect and maintain data to reflect compliance with the requirements of that plan. Furthermore, under the Memorandum of Understanding between HUD and USDA, many complaints of fair housing violations by USDA recipients will be processed by HUD. The collection and maintenance of this data will assist in the enforcement effort.

c. Executive Order 11246. The implementing regulations issued by the U.S. Department of Labor (DOL), and adopted by the RBS, RHS, RUS, and FSA, require recipients of federally assisted construction contracts of \$10,000 or more to maintain goals for hiring minorities and females, and to submit employment utilization reports to the DOL's Office of Federal Contract Compliance Programs.

The information collected and maintained by the recipients of certain programs from RBS, RHS, RUS, and FSA is used internally by these agencies for monitoring compliance with the civil rights laws and regulations. This information is made available to USDA officials, officials of other Federal agencies, and to Congress for reporting purposes. Without the required information, RBS, RHS, RUS, FSA and its recipients will lack the necessary documentation to demonstrate that their programs are being administered in a nondiscriminatory manner, and in full compliance with the civil rights laws. In addition, the RBS, RHS, RUS, FSA, and their recipients would be vulnerable in lawsuits alleging discrimination in the affected programs of these agencies, and would be without appropriate data and documentation to defend themselves by demonstrating that services and benefits

are being provided to beneficiaries on an equal opportunity basis.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 5.41 hours per response.

Respondents: Recipients of RBS, RHS, RUS, and FSA's Federal financial assistance, loan, and loan guarantee programs.

Estimated Number of Respondents: 54,653.

Estimated Number of Responses per Respondent: 1.99.

Estimated Number of Responses: 108,534.

Estimated Total Annual Burden on Respondents: 587,568.

Copies of this information collection can be obtained from Tracy Givelekian, Regulations and Paperwork Management Branch, Support Services Division, at (202) 692-0039.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Rural Development, including whether the information will have practical utility; (b) the accuracy of the Agencies' estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden 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. Comments may be sent to Tracy Givelekian, Regulations and Paperwork Management Branch, Support Services Division, Rural Development U.S. Department of Agriculture, Ag Box 0742, Washington, DC 20250-0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: October 13, 2004.

Gilbert G. Gonzalez,

Acting Under Secretary, Rural Development.

Dated: October 13, 2004.

J.B. Penn,

Under Secretary, Farm and Foreign Agricultural Services.

[FR Doc. 04-23578 Filed 10-20-04; 8:45 am]

BILLING CODE 3410-XV-P

DEPARTMENT OF AGRICULTURE

Forest Service

Bridger-Teton National Forest—Pinedale Ranger District; Wyoming; Moose-Gypsum Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service proposes a number of project actions within the Moose-Gypsum Project Area. These actions are designed to move these areas closer to the desired Future Conditions as described in the Bridger-Teton National Forest's Land and Resource Management Plan. The Pinedale Ranger District is proposing a 1,500-acre timber harvest in conifer stands; 1,100 acres of mechanical aspen stand improvement treatments; 600 acres of Wildland/Urban Interface fuels treatments; 29,000 acres of sage/grass/aspen treatments to be accomplished primarily with prescribed burning and possibly with the use of an herbicide sage-reduction treatment on approximately 8,000 acres. Watershed restoration projects, such as the replacement of storm damaged culverts and rehabilitation of damaged stream banks on the Green River are also projects included in this proposal. Recreation project improvements included as a part of this analysis are a rerouting of the district's snowmobile trail around the elk winter feed ground, the development of a dispersed campsite management plan, and new trailhead design and reconstruction. Road management improvements, including the refinement of the existing travel plan to consider All Terrain Vehicle routes and wilderness trespass issues, the obliteration and rehabilitation of a roadbed within the Wilderness, and an upgrade of the Green River Lakes Road to a higher standard are also proposed for analysis in this environmental impact statement.

DATES: Comments concerning the scope of the analysis must be received by November 12, 2004. The draft environmental impact statement is expected May 2005, and the final environmental impact statement is expected October 2005.

ADDRESSES: Send written comments to Craig Trulock, District Ranger, Pinedale Ranger District, P.O. Box 220, Pinedale, Wyoming 82941. Electronic comments may be sent to; *comments-intermtn-bridger-teton-pinedale@fs.fed.us* with the subject line "Moose-Gypsum EIS."

FOR FURTHER INFORMATION CONTACT: Craig Trulock, District Ranger, Pinedale

Ranger District, Bridger-Teton National Forest, U.S. Forest Service 307-367-4326.

SUPPLEMENTARY INFORMATION: The Upper Green River Watershed is approximately 25 miles north of Pinedale, Wyoming, in the Green River drainage, on the west slope of the Wind River mountain range. The smaller project area within the boundaries of the Upper Green River Watershed is approximately 110,397 acres of National Forest System lands administered by the Pinedale Ranger District of the Bridger-Teton National Forest. The Upper Green River Watershed is comprised of the tributary creeks of the Green River and these include Moose Creek, Gypsum Creek, Roaring Fork, Boulder Creek and Wagon Creek. The subwatershed of two of these creeks, Moose Creek and Gypsum Creek and portion of the Green River watershed itself, are defined as the project area to be analyzed in this environmental impact statement. The legal description of the project area under consideration includes portions of T37N, R109W; T38N, R109/110W; T39N, R108/109/110W; T40N, R108/109/110W.

Purpose and Need for Action

The Moose-Gypsum EIS is being analyzed for the purpose of responding to the goals and objectives of the Bridger-Teton Forest Plan, in order to move the project area toward the Desired Future Conditions described in that plan. The 1999 Upper Green Landscape Assessment (LSA) analyzed integrated resource conditions in the project area. The LSA more specifically identified and described Desired Future Conditions for a variety of resources. In 2004, the Gypsum Watershed Analysis was completed, further clarifying the Desired Future Conditions for some resources. The Purpose and Need for this project is to consider actions that attain, or take the initial steps toward attaining, these resources' Desired Future Conditions. There are a number of components related to current resource conditions that are in need of improvement, and these include:

- Reintroduction of fire into the area as a natural disturbance tool. Fire will be used to achieve a number of objectives ranging from habitat improvement, rangeland improvement, fuels reduction, and treatment of Aspen stands that are predominantly old age classes, are being encroached on by conifers, and are declining in growth and health.
- Attention to the overall health of the watersheds of Moose and Gypsum Creeks through road surface

improvement, culvert replacement and other watershed restoration activities.

- Modification of the compositions of some of the vegetative species within the project area in order to move them toward historic vegetation compositions, which is the Desired Future Conditions for these vegetation species. A majority of the conifer stands in the project area are in older age classes that are declining in growth and health, accumulating heavy fuels loads and higher tree densities than are healthy for their site conditions. The Desired Future Condition would be to maintain a healthy variety: a percentage of stands in seedling/sapling stages, for example, with preservation of the forest structure in snags, down logs, tree clumps, lower tree densities and promotion of natural regeneration.

- Reduction of the risk of catastrophic wildfire by reduction of the hazardous fuels loads around private land through vegetation management.
- Management of the timber resource for production of saw timber and other wood products from suitable timberlands available for timber harvest on an even-flow, long term, sustained yield basis, and in an economically-efficient manner.
- Provision of a diversity of opportunities for resource uses that contribute to the local and regional economies of northwestern Wyoming.
- Improvement of recreation opportunities and the quality of recreational experiences through the development of a dispersed camping plan for the project area to protect sensitive areas such as streams and river banks, updating the 1996 Pinedale Ranger District's Travel Management Plan in order to address Off-Highway Vehicle issues such as wilderness trespass, closure violations, and to ensure that choices for open and closed roads are appropriate.

Proposed Action

A Proposed Action is defined early in the project-level planning process. It serves as a starting point for the Interdisciplinary Team and gives the public and agencies information on which to focus comments. The Proposed action presented here will be updated using the comments received, preliminary analysis and additional field information obtained prior to the Draft EIS. The Proposed Action of this project is to complete a variety of projects within the area under analysis to meet Desired Future Conditions, goals and objectives identified for the various resources under consideration in this EIS. Vegetation treatments within the project are designed to move the

vegetation to more historic species and age class compositions. These vegetation treatments will take place over an extended time period of up to ten years.

Following are general descriptions of the type of projects being proposed and analyzed:

1. *Conifer Vegetation Treatments.* Conifer treatments are proposed to thin overstocked conifer forests while maintaining a forested appearance. The objective is to leave the healthiest trees of diverse species while reducing losses caused by insects and disease and salvaging wood products. These treatments will take place in older stands where tree growth is greatly reduced or where mortality of trees exceeds growth. The remaining trees will better utilize the nutritional resources available on their sites and continuously provide habitat for forest-dependent species. Additional treatments will provide for regeneration of the declining Lodgepole pine, Whitebark pine and mixed conifer forests and enhanced age class diversity across the landscape. These treatments entail removing most merchantable trees through a commercial timber sale. Regeneration of healthy new stands will be ensured by planting with Lodgepole pine or Englemann spruce and/or providing for natural regeneration. Individual and groups of healthy seed trees and snags, and groups of healthy non-merchantable trees, will be left for seed, habitat, and diversity, where they are available. Age class diversity is important to reduce losses caused by insects and disease and will reflect historically occurring conditions. Treatments to be analyzed include: shelterwood harvest, overstory-removal harvest, clearcut harvest, group-selection harvest and salvage harvest.

2. *Aspen Treatments.* A combination of mechanical treatments (which may include harvesting, pushing over, or other regeneration methods) and burning (broadcast and pile) of aspen and encroaching conifer to rejuvenate aspen stands.

3. *Sage and Grass Treatments.* Primarily burning with some use of sagebrush herbicides. The objectives are wildlife habitat improvement, rangeland improvement, sage encroached aspen, and reestablishment of diverse age structures.

4. *Fuels Reduction Treatments.* A combination of mechanical treatments and burning (broadcast and pile) will be utilized to reduce fuel loadings around private lands. Down wood will be removed, understory ladder fuels will be pruned and a thinning from below of dense understory will open the

understory to reduce risk from crown fires.

5. *Watershed Improvements.* Forest roads will be improved to minimize existing sedimentation into adjacent streams, improve drainage, and reduce continual maintenance needs. This will entail culvert replacement and maintenance as part of the harvest operations. Existing roads provide access to many of the treatment areas. Some additional skid roads may be needed to reach into the stands. After treatments are completed, these skid roads would be closed and obliterated and allowed to regenerate naturally, or seeded, depending upon the site.

6. *Travel Plan Update.* The Pinedale Ranger District's Travel Plan needs to be updated in some areas within the Gypsum Creek drainage and the Upper Green River drainage. Several problems exist including wilderness trespass, erosion problems that are adding sediment to streams and travel in areas that have been closed. These could lead to road closures of some routes, and maintenance and relocation of other routes that are causing problems. Several opportunities exist to provide additional travel routes open to OHVs. These include constructing short segments connecting two existing travel routes providing loop OHV trails, and provide additional OHV routes in certain other areas.

7. *Recreation Planning.* A dispersed camping plan has been developed to establish new dispersed campsites while closing some dispersed sites that are in sensitive areas such as next to stream banks. Several problems exist along the Green River and Gypsum Creek, where dispersed camp sites are too close to the streams. This has caused trampling of the vegetation along the stream banks leading to increased erosion and sedimentation into the streams. The objective will be to provide dispersed camping opportunities while correcting erosion and sedimentation problems. Where opportunities allow, the dispersed campsites will be moved 200 feet away from the streams. Where the use cannot be moved, those campsites will be closed and other campsites in adjacent areas will be opened to accommodate this use.

Possible Alternatives

The Environmental Impact Statement will analyze at least three alternatives: The "No Action" alternative, which will detail the consequences of doing nothing in all the project categories included in the variety of projects of the Proposed Action; the effects of the "Proposed Action" will be analyzed; and an "Alternative Action" may be

formulated from acceptable portions of the Proposed Action. The scoping process and environmental analysis will evaluate the feasibility of alternatives to the proposed action.

Responsible Official

Craig Trulock, District Ranger, Pinedale Ranger District, P.O. Box 220, Pinedale, Wyoming 82941.

Nature of Decision To Be Made

The decision, which will be based upon the analyses described above, will be whether or not the Proposed Project, or portions of the Proposed Project, will further the Pinedale District's attainment of the Desired Future Conditions described in the Bridger-Teton National Forest's Land and Resource Management Plan. The decision will also identify needed mitigation measures during the analysis process, in addition to the any prescribed in the Land and Resource Management Plan.

Scoping Process

The Forest Service is seeking information, comments, and assistance from individuals, organizations and Federal, State, and local agencies that may be interested in or affected by the proposed action (36 CFR 219.6).

Public comments will be used and disclosed in the environmental analysis documented in the Moose-Gypsum EIS. Public participation will be solicited by notifying in person, and/or by mail, known interested and affected parties. A legal notice and news releases will be used to give the public general notice. Open houses will be held from 4 p.m. to 7 p.m. on Wednesday, November 3, 2004. Forest Service and Bionomics, Inc., (environmental consultants) will be available to explain the project, answer questions and record public input.

A reasonable range of alternatives will be evaluated and reasons will be given for eliminating alternatives from detailed study. A "no-action alternative" is required by law, which means that the consequences of not doing the Proposed Action will be evaluated. Alternatives will be formulated in response to public issues, management concerns, existing condition reports and resource opportunities identified during the scoping process.

Comments Requested

This Notice of Intent initiates the scoping process which guides the development of the Moose-Gypsum Environmental Impact Statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 30 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 2.1.)

Dated: October 14, 2004.

Craig Trulock,

*District Ranger, Pinedale Ranger District,
Bridger-Teton National Forest.*

[FR Doc. 04-23614 Filed 10-20-04; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Membership of the USCCR Performance Review Board

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of membership of the USCCR Performance Review Board.

SUMMARY: This notice announces the appointment of the Performance Review Board (PRB) of the United States Commission on Civil Rights. Publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The PRB provides fair and impartial review of the U.S. Commission on Civil Rights' Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance awards to the Staff Director, U.S. Commission on Civil Rights for the FY2003 rating year.

FOR FURTHER INFORMATION CONTACT: Janice Minor, Human Resources Assistant, U.S. Commission on Civil Rights, 624 9th Street, NW., Washington, DC 20425, (202) 376-8364.

Members: Gloria Gutierrez, Deputy Administrator for Management, Food and Nutrition Service, USDA; Jill M. Crumpacker, Director, Policy & Performance Management, Chief, Human Capitol Officer, Federal Labor Relations Authority; Joseph Mancias, Senior Management Counsel, Department Homeland Security.

TinaLouise Martin,

*Director of Human Resources, U.S.
Commission on Civil Rights.*

[FR Doc. 04-23573 Filed 10-20-04; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-427-098]

Anhydrous Sodium Metasilicate From France: Revocation of Antidumping Duty Order

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

ACTION: Notice of revocation of the antidumping duty order on anhydrous sodium metasilicate from France.

SUMMARY: On September 1, 2004, the Department of Commerce ("the Department") initiated a second sunset review of the antidumping duty order on anhydrous sodium metasilicate from France. *See Initiation of Five-Year ("Sunset") Reviews*, 69 FR 53408 (September 1, 2004). Because no domestic party responded to the sunset review notice of initiation by the applicable deadline, the Department is revoking the antidumping duty order on anhydrous sodium metasilicate from France.

EFFECTIVE DATE: October 21, 2004.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-5050.

SUPPLEMENTARY INFORMATION:

Scope

Imports covered by this order covers anhydrous sodium metasilicate from France, a crystallized silicate which is alkaline and readily soluble in water. Applications include waste paper de-inking, ore-flotation, bleach stabilization, clay processing, medium or heavy duty cleaning, and compounding into other detergent formulations. This merchandise is classified under Harmonized Tariff Schedules of the United States ("HTSUS") item numbers 2839.11.00 and 2839.19.00. The HTSUS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Background

On January 7, 1981, the Department issued an antidumping duty order on anhydrous sodium metasilicate from France. *See Anhydrous Sodium Metasilicate From France, Antidumping Duty Order*, 46 FR 1667 (January 7, 1981). On October 21, 1999, pursuant to 19 CFR 351.218(f)(4), the Department published in the **Federal Register** its notice of continuation of the antidumping duty order following the first sunset review. *See Continuation of Antidumping Duty Order: Anhydrous Sodium Metasilicate From France*, 64 FR 56737 (October 21, 1999). On September 1, 2004, the Department initiated a second sunset review of this order pursuant to section 751(c) of the Tariff Act of 1930, as amended, (the "Act"), and 19 CFR part 351, in general.

See Initiation of Five-Year ("Sunset") Review, 69 FR 53408 (September 1, 2004). As a courtesy to interested parties, the Department sent letters, via certified and registered mail, to each party listed on the Department's most current service list for this proceeding to inform them of the automatic initiation of a sunset review of this order. We received no response from the domestic industry by the deadline date. *See* 19 CFR 351.218(d)(1)(i). As a result, the Department determined that no domestic party intends to participate in the sunset review. On September 21, 2004, the Department notified the International Trade Commission ("ITC") in writing that we intended to issue a final determination revoking this antidumping duty order. *See* 19 CFR 351.218(d)(1)(iii)(B).

Determination To Revoke

Pursuant to section 751(c)(3)(A) of the Act and 19 CFR 351.218(d)(1)(iii)(B)(3), if no domestic interested party responds to the notice of initiation, the Department shall issue a final determination, within 90 days after the initiation of the review, revoking the order. Because no domestic interested party filed a notice of intent to participate or a substantive response, the Department finds that no domestic interested party is participating in this review. Therefore, we are revoking this antidumping duty order effective October 21, 2004, the fifth anniversary of the date of the determination to continue the order, consistent with 19 CFR 351.222(i)(2)(i) and section 751(c)(6)(A)(iii) of the Act.

Effective Date of Revocation

Pursuant to sections 751(c)(3)(A) and 751(c)(6)(A)(iii) of the Act, and 19 CFR 351.222(i)(2)(i), the Department will instruct U.S. Customs and Border Protection to terminate the suspension of liquidation of the merchandise subject to this order entered, or withdrawn from warehouse, on or after October 21, 2004. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping duty deposit requirements. The Department will complete any pending administrative reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

This five-year ("sunset") review and notice are in accordance with sections 751(c) and 777(i)(1) of the Act.

Dated: October 15, 2004.

Jeffrey A. May,

Acting Assistant Secretary for Import Administration.

[FR Doc. E4-2792 Filed 10-20-04; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-867]

Automotive Replacement Glass Windshields From the People's Republic of China: Final Results of Administrative Review

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

ACTION: Notice of final results of the first administrative review of automotive replacement glass windshields from the People's Republic of China.

SUMMARY: The Department of Commerce ("the Department") published its preliminary results of administrative review of the antidumping duty order on automotive replacement glass windshields ("ARG") from the People's Republic of China ("PRC") on May 7, 2004. See *Automotive Replacement Glass Windshields from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review* 69 FR 25545 (May 7, 2004) ("Preliminary Results"). The period of review ("POR") is September 19, 2001, through March 31, 2003.

Based on our analysis of the comments we received, we have made changes from the preliminary results of review. Therefore, the final results differ from the *Preliminary Results* with respect to the weighted-average dumping margins. The final weighted-average dumping margin for the reviewed firms is listed below in the section entitled "Final Results of the Review."

DATES: Effective October 21, 2004.

FOR FURTHER INFORMATION CONTACT: Will Dickerson or Jon Freed, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-1778 and (202) 482-3818, respectively.

Background

On May 21, 2003, the Department published in the **Federal Register** a notice of the initiation of the antidumping duty administrative review of ARG from the PRC for the period

September 19, 2001, through March 31, 2003. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 68 FR 27781 (May 21, 2003). The respondents included Changchun Pilkington Safety Glass Company, Ltd., Shanghai Yaohua Pilkington Autoglass Company, Ltd., Wuhan Yaohua Pilkington Safety Glass Company, Ltd., Guilin Pilkington Safety Glass Company, Ltd. (collectively "Pilkington JVs"), Dongguan Kongwan Automobile Glass Ltd. and Peaceful City, Ltd., (collectively "Peaceful City"), Fuyao Glass Industry Group company, Ltd. ("Fuyao"), Shenzhen CSG Automotive Glass Co., Ltd. (formerly Shenzhen Benxun AutoGlass Co., Ltd.) ("Shenzhen CSG"), TCG International, Inc. ("TCGI"), and Xinyi Automotive Glass (Shenzhen) Co., Ltd. ("Xinyi").

On September 8, 2003, the Department published a notice in the **Federal Register** rescinding the administrative reviews of TCGI, Xinyi, and Shenzhen CSG. See *Certain Automotive Replacement Glass Windshields from the People's Republic of China: Notice of Partial Rescission of the Antidumping Duty Administrative Review*, 68 FR 52893 (September 8, 2003) ("Notice of Rescission").

In the Department's original investigation, Shenzhen Benxun AutoGlass Co., Ltd. ("Benxun") received a rate separate from the PRC-wide entity. When Shenzhen CSG requested an administrative review, it indicated it was the company known formerly as Benxun, but that it had undergone a name change since the Department's original investigation. On July 8, 2003, Shenzhen CSG withdrew its request for an administrative review. Because Shenzhen CSG withdrew its request for administrative review, the Department did not have the information necessary to make a successor-in-interest determination. Therefore, the Department did not determine that Shenzhen CSG was entitled to receive the same antidumping rate accorded Benxun within the context of this administrative review. In a changed-circumstance review subsequent to the September 8, 2003, Notice of Rescission, the Department determined that entries of merchandise from Shenzhen CSG are eligible for Benxun's cash-deposit rate. See *Notice of Final Results of Antidumping Duty Changed Circumstances Review: Automotive Replacement Glass Windshields from the People's Republic of China*, 69 FR 43388 (July 20, 2004).

We invited parties to comment on our preliminary results of review. See *Preliminary Results*. On June 7, 2004,

the Department received case briefs from PNA, Fuyao, and Shenzhen CSG. On June 9, 2004, the Department received an untimely filed case brief from Peaceful City, which it rejected in accordance with 19 CFR 351.302(d). See *Letter to Peaceful City Rejecting Case Brief*, dated July 9, 2004. We did not receive any rebuttal comments. We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act").

Scope of Order

The products covered by this order are ARG windshields, and parts thereof, whether clear or tinted, whether coated or not, and whether or not they include antennas, ceramics, mirror buttons or VIN notches, and whether or not they are encapsulated. ARG windshields are laminated safety glass (*i.e.*, two layers of (typically float) glass with a sheet of clear or tinted plastic in between (usually polyvinyl butyral)), which are produced and sold for use by automotive glass installation shops to replace windshields in automotive vehicles (*e.g.*, passenger cars, light trucks, vans, sport utility vehicles, etc.) that are cracked, broken or otherwise damaged.

ARG windshields subject to this order are currently classifiable under subheading 7007.21.10.10 of the Harmonized Tariff Schedules of the United States (HTSUS). Specifically excluded from the scope of the order are laminated automotive windshields sold for use in original assembly of vehicles. While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Facts Available

In the instant review, for the preliminary results, the Department applied the petition rate as adverse facts available, in accordance with section 776(a) of the Act, to Peaceful City because Peaceful City withheld certain information that had been requested by the Department, it failed to provide certain information by the Department's statutory deadlines, it significantly impeded the Department's investigation, and it failed to provide certain information that could be verified pursuant to sections 776(a)(2)(A), (B), (C) and (D) of the Act. See *Preliminary Results*, 69 FR at 25550-25555. There is no argument on the record to cause us to reconsider our decision in the *Preliminary Results*. Therefore, we have determined that the application of facts available continues to be appropriate with respect to Peaceful City.

Corroboration of Adverse Facts Available

We corroborated the adverse facts-available rate we have applied to Peaceful City in the investigation and in the preliminary results of this administrative review. See *Preliminary Results*, 69 FR at 25555–25556, citing *Memorandum from Jon Freed to Robert Bolling: Preliminary Results in the Antidumping Administrative Review of Automotive Replacement Glass Windshields from the People's Republic of China: First Administrative Review Corroboration Memorandum*, dated April 29, 2004 (“*First Review Corroboration Memo*”), with attached *Memorandum from Edward Yang to Joseph Spetrini: Preliminary Determination in the Antidumping Investigation of Automotive Replacement Glass Windshields from the People's Republic of China: Total Facts Available Corroboration Memorandum for All Others Rate*, dated September 10, 2001 (“*Corroboration Memo*”). In the *Preliminary Results*, the Department found the facts-available rate of 124.5 percent to be both reliable and relevant. *Id.* The Department explained in its *Preliminary Results* that it would reexamine the relevancy of the petition rate to this administrative review by considering all margins on the record at the time of the final results. See 69 FR at 25556.

To assess the relevancy of the total adverse facts-available rate it has chosen, the Department compared the final margin calculations of other respondents in this administrative review with the rate of 124.5 percent from the original petition. We find the rate is within the range of the highest margins we have determined in this administrative review. See *Memorandum from Jon Freed to Robert Bolling: Final Results in the Antidumping Administrative Review of Automotive Replacement Glass Windshields from the People's Republic of China: First Administrative Review Final Corroboration Memorandum*, dated October 14, 2004 (“*First Review Final Corroboration Memo*”). Since the record of this administrative review contains margins within the range of the petition margin, we determine that the rate from the petition continues to be relevant for use in this administrative review. Further, the rate used is currently applicable to all exporters subject to the PRC-wide rate.

As the petition rate is both reliable and relevant, we determine that it has probative value. As a result, the Department determines that the petition rate is corroborated for the purposes of

this administrative review and may reasonably be applied to Peaceful City as a total adverse facts-available rate. Accordingly, we determine that the highest rate from any segment of this administrative proceeding (*i.e.*, the calculated rate of 124.50 percent) is in accord with the requirement under section 776(c) of the Act that secondary information be corroborated (*i.e.*, have probative value).

Consequently, we are applying a single antidumping rate, the highest rate from any segment of this administrative proceeding, to Peaceful City's exports based on Peaceful City's failure to be reasonably prepared during the verification and its resulting failure to substantiate the majority of its factors of production, which were reported in its questionnaire responses. See, *e.g.*, *Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China*, 65 FR 25706, 25707 (May 3, 2000).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the “Issues and Decision Memorandum” (“*Decision Memorandum*”) from Jeffrey A. May, Deputy Assistant Secretary, for Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated October 14, 2004, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memorandum*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in the *Decision Memorandum*, which is on file in the Central Records Unit, Room B–099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at <http://ia.ita.doc.gov/frn/index.html>. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made changes in the margin calculations for PNA. The specific calculation changes can be found in our *Final Analysis Memo*, dated October 14, 2004. The changes to the margin calculations are listed below:

- For the calculation of imputed credit, inventory-carrying cost, and marine insurance, the Department used the net price (*i.e.*, gross price—price-list discount) rather than gross price in

order to base these adjustments on the amounts actually paid. See *Decision Memorandum* at Comment 7.

- In the preliminary results, the Department inadvertently overstated the marine insurance value. For the final results, the Department reduced the marine insurance value by two decimal places. See *Decision Memorandum* at Comment 8.

- In the preliminary results, the Department inadvertently valued metal clips with the surrogate value for labels. For the final results, the Department valued metal clips with the value listed on page 5 of the *Factors Valuation Memorandum*. See *Decision Memorandum* at Comment 9.

- The Department double-counted two elements of the packing labor calculation of normal value in the preliminary results of review. For the final results, the Department corrected this inadvertent error. See *Decision Memorandum* at Comment 10.

Final Results of Review

We determine that the following percentage margins exist on exports of ARG windshields from the PRC for the period September 19, 2001, through March 31, 2003:

AUTOMOTIVE REPLACEMENT GLASS WINDSHIELDS FROM THE PRC

Producer/manufacturer/exporter	Weighted-average margin (percent)
Fuyao	*0.13
Peaceful City/Dongguan Kongwan	124.50
Pilkington	2.88

**De minimis*.

Assessment Rates

In accordance with 19 CFR 351.212(b)(1), we have calculated exporter/importer (or customer)-specific assessment rates for merchandise subject to this review. The Department will issue appraisal instructions directly to U.S. Customs and Border Protection (“CBP”) within 15 days of publication of these final results of administrative review. We will direct CBP to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period.

To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all

U.S. sales to that importer (or customer) and dividing this amount by the total value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate was greater than *de minimis* (i.e., 0.5%), we calculated a per unit assessment rate by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate was *de minimis*, we will order CBP to liquidate appropriate entries without regard to antidumping duties.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of ARG windshields from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above except that the Department shall require no deposit of estimated antidumping duties for firms whose weighted-average margins are less than 0.5% and therefore *de minimis*; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any previous reviews, the cash deposit rate will be the "all others" rate, which is 124.5 percent.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping

duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(I)(1) of the Act.

Dated: October 14, 2004.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix 1—Issues in the Decision Memorandum

Fuyao's Comments

Comment 1: Water as a Separate Component of Normal Value

Comment 2: Certain Inputs as a Separate Component of Normal Value

Shenzhen CSG's Comments

Comment 3: Liquidation Instructions for Shenzhen CSG's Entries

PNA's Comments

Comment 4: Proper Set of Sales as Basis for the Margin for PNA

Comment 5: Rejection of Market Purchases from Indonesia, Thailand, and South Korea

Comment 6: Surrogate Profit Ratio

Comment 7: Allocation of Credit Expense, Inventory Carrying Cost, and Marine Insurance

Comment 8: Market-Price Value for Marine Insurance 1

Comment 9: Surrogate Value for Metal Clips

Comment 10: Double-Counting of Labor

[FR Doc. 04-23605 Filed 10-20-04; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-846]

Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan; Final Results of the Expedited Sunset Review of Antidumping Duty Order

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

ACTION: Notice of expedited sunset review of antidumping duty order on certain hot-rolled flat-rolled carbon-quality steel products from Japan; Final results.

SUMMARY: On May 3, 2004, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order of certain hot-rolled flat-rolled carbon-quality steel products ("hot-rolled steel") from Japan.¹ On the basis of the notice of intent to participate, adequate substantive comments filed on behalf of the domestic interested parties, and inadequate response from respondent interested parties, (in this case, no response) the Department conducted an expedited sunset review of the antidumping duty order pursuant to section 751(c)(3)(B) of the Tariff Act of 1930, as amended, and section 351.218(c)(1)(ii)(B) of the Department's regulations. As a result of this sunset review, the Department determined that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the levels listed below in the section entitled "Final Results of Review".

EFFECTIVE DATE: October 21, 2004.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-5050.

SUPPLEMENTARY INFORMATION:

Background

On May 3, 2004, the Department initiated a sunset review of the antidumping duty order on hot-rolled steel products from Japan in accordance with section 751(c) of the Tariff Act of 1930, as amended ("the Act"). See *Notice of Initiation*, 69 FR 24118 (May 3, 2004).

The Department received Notices of Intent to Participate within the applicable deadline specified in section 351.218(d)(1)(i) of the Department's regulations on behalf of Nucor Corporation ("Nucor"), United States Steel Corporation ("U.S. Steel"), International Steel Group, Inc. ("ISG"), Gallatin Steel Company ("Gallatin"), IPSCO Steel Inc. ("IPSCO"), Steel Dynamics, Inc. ("SDI"), and Ispat Inland Inc. ("Ispat"), a division of Ispat Inland Flat Products, (collectively "domestic interested parties").² The domestic

¹ See *Initiation of Five-Year ("Sunset") Reviews*, 69 FR 24118 (May 3, 2004) ("*Notice of Initiation*").

² Gallatin, IPSCO, SDI, U.S. Steel and Ispat were petitioners in the original investigation.

interested parties claimed interested-party status as manufacturers of subject merchandise as defined by section 771(9)(C) of the Act.

The Department received complete substantive responses from the domestic interested parties within the 30-day deadline specified in the Department's regulations under section 351.218(d)(3)(i). However, the Department did not receive any responses from respondent interested parties to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(c)(2), the Department conducted an expedited sunset review of this antidumping duty order.

Scope of the Antidumping Duty Order

See Appendix 1.

Analysis of Comments Received

All issues raised in this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to Jeffrey A. May, Acting Assistant Secretary, or Import Administration, dated October 15, 2004, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the antidumping duty order were revoked. Parties can find a complete discussion of all issues raised in this sunset review and the corresponding recommendations in this public memo, which is on file in the Central Records Unit, room B-099 of the main Department Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at <http://ia.ita.doc.gov/frn>, under the heading "October 2004." The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

The Department determines that revocation of the antidumping duty investigation on hot-rolled steel from Japan would be likely to lead to continuation or recurrence of dumping

at the following weighted-average margins:

Manufacturers/producers/exporters	Weighted-average margin (percent)
Kawasaki Steel Corporation	40.26
Nippon Steel Corporation	18.37
NKK Corporation	17.70
All Others	22.92

This notice also serves as the only reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751 (c), 752, and 777(i)(1) of the Act.

Dated: October 15, 2004.

Jeffrey A. May,
Acting Assistant Secretary for Import Administration.

Appendix 1

Scope of the Antidumping Duty Order on Hot-Rolled Flat-Rolled Carbon Quality Steel From Japan (A-588-846)

For purposes of this order, the products covered are certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than

[In percent]

C	Mn (max)	P (max)	S (max)	Si	Cr	Cu	Ni (max)
0.10-0.14	0.90	0.025	0.005	0.30-0.50	0.50-0.70	0.20-0.40	0.20

Width = 44.80 inches maximum;
Thickness = 0.063-0.198 inches;
Yield Strength = 50,000 ksi minimum;

Tensile Strength = 70,000-88,000 psi.

4.0 mm is not included within the scope of these investigations.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free ("IF") steels, high strength low alloy ("HSLA") steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this order, regardless of Harmonized Tariff Schedule of the United States ("HTSUS") definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.012 percent of boron, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent of zirconium. All products that meet the physical and chemical description provided above are within the scope of this order unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including *e.g.*, ASTM specifications A543, A387, A514, A517, and A506).

SAE/AISI grades of series 2300 and higher. Ball bearing steels, as defined in the HTSUS.

Tool steels, as defined in the HTSUS.

Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.

ASTM specifications A710 and A736.

USS abrasion-resistant steels (USS AR 400, USS AR 500).

Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

[In percent]

C	Mn	P (max)	S (max)	Si	Cr	Cu (max)	Ni (max)	Mo (max)
0.10–0.16	0.70–0.90	0.025	0.006	0.30–0.50	0.50–0.70	0.25	0.20	0.21

Width = 44.80 inches maximum;
 Thickness = 0.350 inches maximum;
 Yield Strength = 80,000 ksi minimum;

Tensile Strength = 105,000 psi.

Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

[In percent]

C	Mn	P (max)	S (max)	Si	Cr	Cu	Ni (max)	V (wt) (max)	Cb (max)
0.10–0.14	1.30–1.80	0.025	0.005	0.30–0.50	0.50–0.70	0.20–0.40	0.20	0.10	0.08

Width = 44.80 inches maximum;
 Thickness = 0.350 inches maximum;
 Yield Strength = 80,000 ksi minimum;

Tensile Strength = 105,000 psi Aim.

Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

[In percent]

C (max)	Mn (max)	P (max)	S (max)	Si (max)	Cr (max)	Cu (max)	Ni (max)	Nb (max)	Ca	A1
0.15	1.40	0.025	0.01	0.50	1.00	0.50	0.20	0.005	Treated	0.01–0.07

Width = 39.37 inches;
 Thickness = 0.181 inches maximum;
 Yield Strength = 70,000 psi minimum for thicknesses less than or equal to 0.148 inches and 65,000 psi minimum for thicknesses > 0.148 inches;

Tensile Strength = 80,000 psi minimum.
 Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either (i) tensile strength between 540 N/mm² and 640 N/mm² and an elongation percentage greater than or equal to 26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm² and 690 N/mm² and an elongation percentage greater than or equal to 25 percent for thicknesses of 2mm and above.

Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.

Grade ASTM A570–50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 inch nominal), mill edge and skin passed, with a minimum copper content of 0.20 percent.

The merchandise subject to this order is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00,

7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered by this order, including: vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under order is dispositive.

[FR Doc. 04–23604 Filed 10–20–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–056]

Melamine in Crystal Form From Japan: Revocation of Antidumping Duty Finding

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

ACTION: Notice of revocation of the antidumping duty finding on melamine in crystal form from Japan.

SUMMARY: On August 2, 2004, the Department of Commerce (“the Department”) initiated a sunset review of the antidumping duty finding on melamine in crystal form from Japan. See *Initiation of Five-Year (“Sunset”)*

Reviews, 69 FR 46134 (August 2, 2004). Because no domestic party responded to the sunset review notice of initiation by the applicable deadline, the Department is revoking the antidumping duty finding on melamine in crystal form from Japan.

EFFECTIVE DATE: September 1, 2004.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5050.

SUPPLEMENTARY INFORMATION:

Background

On February 2, 1977, the Treasury Department published in the **Federal Register** its antidumping duty finding on melamine in crystal form from Japan. See 42 FR 6866 (February 2, 1977). On September 1, 1999, pursuant to 19 CFR 351.218(f)(4), the Department published in the **Federal Register** notice of continuation of the antidumping duty finding following the first sunset review. See *Continuation of Antidumping Duty Finding: Melamine from Japan*, 64 FR 47764 (September 1, 1999). On August 2, 2004, the Department initiated a second sunset review of this finding pursuant to section 751(c) of the Tariff Act of 1930, as amended, (the “Act”) and 19 CFR part 351, in general. See *Initiation of Five-Year (“Sunset”) Reviews*, 69 FR 46134 (August 2, 2004). As a courtesy to interested parties, the Department sent letters, via certified and registered mail,

to each party listed on the Department's most current service list for this proceeding to inform them of the automatic initiation of a sunset review of this finding. We received no response from the domestic industry by the deadline date. See 19 CFR 351.218(d)(1)(i). As a result, the Department determined that no domestic party intends to participate in the sunset review. On August 23, 2004, the Department notified the International Trade Commission ("ITC") in writing that we intended to issue a final determination revoking this antidumping duty finding. See 19 CFR 351.218(d)(1)(iii)(B).

Scope

This Treasury Finding covers melamine in crystal form, which is a fine white crystalline powder used to manufacture melamine formaldehyde resins, and is currently classifiable under item 2933.61.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, the written description remains dispositive.

Determination To Revoke

Pursuant to section 751(c)(3)(A) of the Act and 19 CFR 351.218(d)(1)(iii)(B)(3), if no domestic interested party responds to the notice of initiation, the Department shall issue a final determination, within 90 days after the initiation of the review, revoking the finding. Because no domestic interested party filed a notice of intent to participate or a substantive response, the Department finds that no domestic interested party is participating in this review. Therefore, we are revoking this antidumping duty finding effective September 1, 2004, the fifth anniversary of the date of the determination to continue the finding, consistent with 19 CFR 351.222(i)(2)(i) and section 751(c)(6)(A)(iii) of the Act.

Effective Date of Revocation

Pursuant to sections 751(c)(3)(A) and 751(c)(6)(A)(iii) of the Act, and 19 CFR 351.222(i)(2)(i), the Department will instruct U.S. Customs and Border Protection to terminate the suspension of liquidation of the merchandise subject to this finding entered, or withdrawn from warehouse, on or after September 1, 2004. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping duty deposit requirements. The Department will complete any pending administrative reviews of this finding and will conduct administrative

reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

This five-year ("sunset") review and notice are in accordance with sections 751(c) and 777(i)(1) of the Act.

Dated: October 15, 2004.

Jeffrey A. May,

Acting Assistant Secretary for Import Administration.

[FR Doc. E4-2791 Filed 10-20-04; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-501]

Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China; Final Results of the Expedited Sunset Review of the Antidumping Duty Order

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

ACTION: Notice of final results of expedited sunset review of the antidumping duty order on natural bristle paint brushes and brush heads from the People's Republic of China.

SUMMARY: On May 3, 2004, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on natural bristle paint brushes and brush heads ("natural paint brushes") from the People's Republic of China ("PRC") pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of domestic interested parties and inadequate response from respondent interested parties, the Department conducted an expedited (120-day) sunset review. As a result of this sunset review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. The dumping margins are identified in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: October 21, 2004.

FOR FURTHER INFORMATION CONTACT: Hilary E. Sadler, Esq., Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4340.

SUPPLEMENTARY INFORMATION:

Background

On May 3, 2004, the Department published the notice of initiation of the second sunset review of the antidumping duty order on natural paint brushes from the PRC pursuant to section 751(c) of the Act. See *Initiation of Five-Year ("Sunset") Reviews*, 69 FR 24118 (May 3, 2004). The Department received the Notice of Intent to Participate from the domestic interested parties, the Paint Applicator Division of the American Brush Manufacturers Association and its participating member companies: Shur-Line, Bestt Liebco, Wooster Brush Company, Purdy Corporation, True Value Manufacturing, and Elder & Jenks, Inc. (collectively "the domestic interested parties"), within the deadline specified in section 351.218(d)(1)(i) of the Department's Regulations ("Sunset Regulations"). The domestic interested parties claimed interested party status under sections 771(9)(C) and (E) of the Act, as domestic manufacturers of paint brushes and a trade association whose majority of members manufacture, produce, or wholesale a domestic-like product in the United States. We received complete substantive responses only from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no responses from the respondent interested parties. As a result, pursuant to section 751(c)(5)(A) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120-day) sunset review of this order.

Scope of the Order

The products covered by the order are natural bristle paintbrushes and brush heads from the PRC. Excluded from the order are paintbrushes and brush heads with a blend of 40 percent natural bristles and 60 percent synthetic filaments. The merchandise under review is currently classifiable under item 9603.40.40.40 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, the Department's written description of the merchandise is dispositive.

Analysis of Comments Received

All issues raised in these reviews are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to Jeffrey A. May, Acting Assistant Secretary for Import Administration, dated October 15, 2004, which is hereby adopted by this notice.

The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order were to be revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in room B-099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at <http://ia.ita.doc.gov/frn>, under the heading "October 2004." The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty order on natural paint brushes from the PRC would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average percentage margins:

Manufacturers/Exporters/Producers	Weighted average margin (percent)
Hebei Animal By-Products Import/Export Corp.	351.92
Hunan Provincial Native Produce and Animal By-Products Import/Export Corp.	351.92
Peace Target, Inc.	351.92
PRC-wide	351.92

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 15, 2004.

Jeffrey A. May,
Acting Assistant Secretary for Import Administration.

[FR Doc. E4-2788 Filed 10-20-04; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-046]

Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review: Polychloroprene Rubber From Japan

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

ACTION: Notice of preliminary results of antidumping duty changed circumstances review.

SUMMARY: On March 1, 2004, the Department of Commerce (the Department) published a notice of initiation of changed circumstances review of the antidumping duty finding on polychloroprene rubber (PR) from Japan to determine whether Showa Denko K.K. (SDK) is the successor-in-interest company to the joint venture of Showa DDE Manufacturing K.K. (SDEM) and DDE Japan Kabushiki Kaisha (DDE Japan) (collectively, SDEM/DDE Japan joint venture). See *Notice of Initiation of Antidumping Duty Changed Circumstances Review: Polychloroprene Rubber from Japan*, 69 FR 9586 (March 1, 2004) (*Notice of Initiation*). We have preliminarily determined that SDK is not the successor-in-interest to the SDEM/DDE Japan joint venture, for purposes of determining antidumping liability in this proceeding. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 21, 2004.

FOR FURTHER INFORMATION CONTACT: Zev Primor, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-4114.

SUPPLEMENTARY INFORMATION:

Background

On December 6, 1973, the Department of Treasury published in the **Federal Register** (38 FR 33593) the antidumping finding on PR from Japan. On January 14, 2004, SDK submitted a letter stating that it is the successor-in-interest to the SDEM/DDE Japan joint venture and, as such, entitled to receive the same antidumping duty treatment previously accorded to the joint venture (*i.e.*, zero cash deposit). See *Notice of Final Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber from Japan*, 67 FR 58 (January 2, 2002), (*Changed Circumstances*). In that same letter, SDK explained that on November 1, 2002, the SDEM/DDE Japan joint venture was dissolved. Prior to the joint venture's dissolution, SDK and DuPont Dow Elastomers L.L.C. (DuPont) each owned 50 percent of the joint venture. SDK, therefore, requested that the Department conduct an expedited changed circumstances review of the antidumping duty finding on PR from Japan pursuant to section 751(b)(1) of the Tariff Act (the Act), as amended, and 19 CFR 351.221(c)(3)(ii). However, because the submitted record supporting SDK's claims was deficient, the Department found that an expedited review was impracticable and, on March

1, 2004, issued a *Notice of Initiation* without the preliminary results.

In response to the Department's supplemental questionnaire, on March 10 and 19, 2004, SDK provided the Department with supplemental questionnaire responses. Additionally, on February 4 and May 3, 2004, DuPont, a U.S. producer of PR and the petitioner in this proceeding, notified the Department that it opposes SDK's request to be considered the successor-in-interest to the SDEM/DDE Japan joint venture. In particular, DuPont argued that differences between the corporate structures, distribution channels, price structure, and customer base preclude SDK from being considered the successor-in-interest to the SDEM/DDE Japan joint venture.

From August 25 through August 27, 2004, the Department conducted a verification of information in connection with this changed circumstances review at SDK's offices in Kawasaki, Japan. On September 20, 2004, the Department issued its Verification Report. See Memorandum from Zev Primor to the File "Antidumping Duty Changed Circumstances Review of Polychloroprene Rubber (PR) from Japan: Verification Report for Showa Denko K.K. (SDK) Regarding Successorship," September 20, 2004, (Verification Report).

Scope of Review

Imports covered by this review are shipments of PR, an oil resistant synthetic rubber also known as polymerized chlorobutadiene or neoprene, currently classifiable under items 4002.42.00, 4002.49.00, 4003.00.00, 4462.15.21, and 4462.00.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). HTSUS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Preliminary Results of Changed Circumstances Review

In submissions to the Department dated January 14, 2004, and March 10 and March 19, 2004, SDK advised the Department that on November 1, 2002, the SDEM/DDE Japan joint venture was dissolved. SDEM was the manufacturing arm of the joint venture, while DDE Japan was its marketing and selling arm. When the joint venture was dissolved, DuPont sold its interest in SDEM to SDK. SDK, in turn, sold its interest in DDE Japan to DuPont. As a result of those interest transfers, SDK became the sole owner of SDEM and DuPont became the sole owner of DDE Japan. On the same date, November 1, 2002,

SDEM was renamed Showa Denko Elastomers (SDEL), while maintaining the original production facility. SDK assumed the marketing and selling end of SDEL's business. On January 1, 2004, SDK merged with its wholly-owned subsidiary SDEL, thus creating a single corporate entity by the name of SDK.

Analysis

In making a successor-in-interest determination, the Department examines a number of factors, including, but not limited to, changes in: (1) Management; (2) customer base; (3) production facilities; and (4) supplier relationships. *See Brass Sheet and Strip from Canada: Notice of Final Results of Antidumping Administrative Review*, 57 FR 20460, 20462 (May 13, 1992) (*Canadian Brass*); *Notice of Final Results of Changed Circumstances Antidumping Countervailing Duty Administrative Reviews: Certain Pasta from Turkey*, 69 FR 1280 (January 8, 2004). While none of these factors alone will necessarily be dispositive, the Department will generally consider the new company to be the successor to the previous company if—considering all of the factors together—the new company's resulting operation is not materially dissimilar to that of its predecessor. *See, e.g., Industrial Phosphoric Acid from Israel: Final Results of Changed Circumstances Review*, 59 FR 6944, 6945 (February 14, 1994), and *Canadian Brass*, 57 FR 20460. In other words, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company essentially operates as the same business entity as the former company, the Department will assign the new company the cash deposit rate of its predecessor.

Based on our review of the evidence provided by SDK and DuPont, we preliminarily determine that SDK is not the successor-in-interest to the SDEM/DDE Japan joint venture. While record evidence indicates that SDK retained the same production facility and suppliers as the joint venture entity (*see* Verification Report, at 10, and Exhibits 10, 14), the record evidence also indicates that SDK's management composition and customer base changed significantly from that of the SDEM/DDE Japan joint venture.

1. Customer Base

A. Selling and Marketing Operations

Under the joint venture arrangement, DDE Japan was solely responsible for developing and maintaining the customer base, planning future sales and marketing PR to customers in Japan

and the United States. In contrast, SDEM's role in the joint venture was to manufacture PR and supply it to DDE Japan once DDE Japan secured an order. For example, SDK's officials stated at verification that SDEM "did not maintain contact with the U.S. customers." *See* Verification Report, at 8. Moreover, the record in this case suggests that to compensate for the lack of a distribution channel in the United States after the dissolution of the joint venture, SDK established its own subsidiary, Showa Denko America (SDA), in order to develop new business in the United States. According to the record, SDA purchases PR from SDK and resells it to the end-user customers in the United States. In consultation with SDK, SDA sets the prices and arranges for delivery of PR to such customers. *See* SDK's submission dated March 10, 2004, at 16. Previously under the joint venture arrangement, DDE Japan handled all of these functions. Consequently, SDK is operating a different business now than that which existed before the dissolution of the joint venture, as SDK must now assume all the selling, marketing and credit risks previously borne by its joint venture partner, DDE Japan. *See* Submission by DuPont, at 3 (May 3, 2004).

B. Price Structure

With regard to the price structure, DDE Japan negotiated all prices with the unaffiliated customers. Under the terms of the joint venture arrangement, SDEM was guaranteed a fixed transfer price regardless of the price obtained by DDE Japan in the relevant market. In the post-dissolution period, SDK has to negotiate its own prices in the relevant markets and is no longer guaranteed a profit on each transaction. The Department considers this to be a significant change in the competitive environment for SDK.

C. Customer Base

As mentioned above, upon the loss of its joint venture marketing arm, DDE Japan, SDK had to develop its own customer base in both the United States and in Japan. At verification, we determined that a significant number of the joint venture's former customers were no longer customers of SDK. *See* Verification Report, at 8 and Exhibit 11. Consequently, we preliminarily determine that the customer base changed significantly since the dissolution of the SDEM/DDE Japan joint venture.

2. Management

A. Corporate Structure

The parent companies, SDK and DuPont, initially formed the SDEM/DDE Japan joint venture through a stock exchange, whereby each parent company purchased shares in the other company's subsidiary. As noted above, SDK and DuPont shared ownership of the joint venture equally (*i.e.*, a 50/50 split). The record shows that on November 1, 2002, the corporate structure of the SDEM/DDE Japan joint venture changed significantly. Upon dissolution, each parent company sold to the other parent company its share in that company's subsidiary. The former joint venture companies were then absorbed by their respective parent companies. As explained above, as a result of those interest transfers, SDK became the sole owner of SDEM, which it in turn absorbed. Because SDEM comprised the production arm of the former joint venture, SDK had to create its own PR marketing and selling division following the dissolution. Consequently, the Department preliminarily views SDK's current corporate structure as significantly different from the SDEM/DDE Japan joint venture.

B. Management Composition

The record evidence also shows that the management structure of the SDEM/DDE Japan joint venture resulted was significantly different from SDK's management structure. None of the senior managers employed by the DDE Japan office accepted positions with SDK after the dissolution of the joint venture. Only a very small number of former supervisors employed by DDE Japan are now employed by SDK. Further, the composition of the board of directors governing the SDEM/DDE Japan joint venture differed significantly from that of SDK. Prior to the creation of the joint venture, each of the underlying companies, SDEM and DDE Japan, had its own board of directors governing its operations. This management arrangement continued throughout the course of the joint venture arrangement. Upon dissolution of the joint venture, with one exception, the board of directors remained with their respective joint venture partner. Therefore, the Department considers the SDK board of directors to be significantly different from the joint venture board structure. *See* Verification Report, at Exhibit 9. Thus, the record evidence discloses that SDK's management composition varies significantly from that of the SDEM/DDE Japan joint venture entity.

Conclusion

In sum, we preliminarily find that SDK has not presented evidence to establish a *prima facie* case of its successorship status. The dissolution of the SDEM/DDE Japan joint venture precipitated significant changes to the company ultimately absorbed by SDK. While SDK absorbed the joint venture's production facility and retained the venture's supplier base, SDK's management and corporate structure, selling and marketing operations, customer base, and price structure are significantly different from those of the SDEM/DDE Japan joint venture. Therefore, given the totality of the considered factors, the record evidence demonstrates that SDK is a new entity that operates in significantly different manner from its predecessor, the SDEM/DDE Japan joint venture. Consequently, we preliminarily determine that SDK should not be given the same antidumping duty treatment as the joint venture, *i.e.*, zero percent antidumping duty cash deposit rate. Instead, SDK, as a new entity, should continue to be assigned as its cash deposit rate the "all others" rate, which in this proceeding is 55 percent.

The cash deposit determination from this changed circumstances review will apply to all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this changed circumstances review. See *Granular Polytetrafluoroethylene Resin from Italy; Final Results of Antidumping Duty Changed Circumstances Review*, 68 FR 25327 (May 12, 2003). This deposit rate shall remain in effect until publication of the final results of the next administrative review in which SDK participates.

Public Comment

Any interested party may request a hearing within 14 days of publication of this notice. See 19 CFR 351.310(c). Any hearing, if requested, will be held 15 days after the date of publication of this notice, or the first working day thereafter. Interested parties may submit case briefs and/or written comments not later than 7 days after the date of publication of this notice. See 19 CFR 351.309(c)(ii). Rebuttal briefs, which must be limited to issues raised in such briefs or comments, may be filed not later than 12 days after the date of publication of this notice. See 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument (1) a statement of the issue; (2) a brief summary of the

argument; and (3) a table of authorities. Further, we would appreciate it if the parties submitting written comments would provide the Department with an additional electronic copy of the public comments. Consistent with 19 CFR 351.216(e) of the Department's regulations, we will issue the final results of this changed circumstances review not later than 270 days after the date on which this review was initiated.

This notice is in accordance with sections 751(b) and 777(I)(1) of the Act, and 19 CFR 351.221(c)(3)(I) of the Department's regulations.

Dated: October 15, 2004.

Jeffrey A. May,

Acting Assistant Secretary for Import Administration.

[FR Doc. E4-2786 Filed 10-20-04; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-423-808, A-475-822, A-580-831]

Stainless Steel Plate in Coils From Belgium, Italy, and the Republic of Korea; Notice of Final Results of Expedited Sunset Review of Antidumping Duty Orders

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

ACTION: Notice of expedited sunset reviews of the antidumping duty orders of stainless steel plate in coils from Belgium, Italy, and Korea; final results.

SUMMARY: On April 1, 2004, the Department of Commerce ("the Department") initiated sunset reviews of the antidumping duty orders on stainless steel plate in coils ("SSPC") from Belgium, Italy, and the Republic of Korea ("Korea") pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a Notice of Intent to Participate and an adequate substantive response filed on behalf of domestic interested parties and inadequate response from respondent interested parties, the Department conducted an expedited (120-day) sunset review. As a result of these sunset reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping. The dumping margins are identified in the *Final Results of Review* section of to this notice.

EFFECTIVE DATE: October 21, 2004.

FOR FURTHER INFORMATION CONTACT: Hilary E. Sadler, Esq., Office of Policy

for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4340.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 2004, the Department published the notice of initiation of the sunset reviews of the antidumping duty orders on SSPC from Belgium, Italy, and Korea.¹ On April 16, 2004, the Department received a Notice of Intent to Participate from Allegheny Ludlum Corp., North American Stainless, and the United Steelworkers of America, AFL-CIO/CLC (collectively "domestic interested parties") within the deadline specified in section 315.218(d)(1)(i) of the Department's regulations. The domestic interested parties claimed interested party status under sections 771(9)(C) and (D) of the Act, as U.S. producers of SSPC and a certified union whose workers are engaged in the production of SSPC. On May 3, 2004, the Department received complete substantive responses from the domestic interested parties within the deadline specified in section 351.218(d)(3)(i) of the Department's regulations. We did not receive responses from any respondent interested parties to this proceeding, except a participation waiver from Uguine & ALZ Belgium. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations, the Department determined to conduct expedited reviews of these orders.

Scope of the Orders

The merchandise subject to these orders is stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (*e.g.*, cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of these orders are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars. The merchandise

¹ See *Initiation of Five-Year ("Sunset") Reviews*, 69 FR 17129 (April 1, 2004) ("*Initiation Notice*").

subject to these orders is currently classifiable in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.05, 7219.12.00.20, 7219.12.00.25, 7219.12.00.50, 7219.12.00.55, 7219.12.00.65, 7219.12.00.70, 7219.12.00.80, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the orders is dispositive.

Analysis of Comments Received

All issues raised in these reviews are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated October 8, 2004, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the orders were revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in room B-099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at <http://ia.ita.doc.gov/frn>, under the heading "October 2004." The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on SSPC from Belgium, Italy, and Korea would likely lead to continuation or recurrence of dumping at the following percentage weighted-average percentage margins:

Manufacturers/Exporters/Producers	Weighted Average Margin (percent)
<i>Belgium</i>	
Ugine & ALZ Belgium	9.86
All Others	9.86

Manufacturers/Exporters/Producers	Weighted Average Margin (percent)
<i>Italy</i>	
Thyssen Krupp Acciai Speciali Terni, S.A.	45.09
All Others	39.69
<i>Korea</i>	
POSCO	6.08
All Others	6.08

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 13, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4-2789 Filed 10-20-04; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-122-848]

Preliminary Results of Countervailing Duty Expedited Review: Hard Red Spring Wheat From Canada

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

ACTION: Notice of preliminary results of countervailing duty expedited review.

SUMMARY: The Department of Commerce is conducting an expedited review of the countervailing duty order on hard red spring wheat from Canada for the period August 1, 2001, through July 31, 2002. The Department preliminarily determines that countervailable subsidies were not provided to Richelain Farms. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 21, 2004.

FOR FURTHER INFORMATION CONTACT: Daniel J. Alexy or Stephen Cho, AD/

CVD Operations Office I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-1540 or (202) 482-3798.

SUPPLEMENTARY INFORMATION:

Petitioner

The petitioner is the North Dakota Wheat Commission, one of the participating petitioners in the investigation.

Period of Review

The period of review for this expedited review is the same period as the investigation: August 1, 2001, to July 31, 2002, which coincides with the fiscal year of the Canadian Wheat Board ("CWB"). See 19 CFR 351.204(b)(2); 19 CFR 351.214(k)(3)(i).

Background

On September 5, 2003, the Department of Commerce ("the Department") published the *Final Affirmative Countervailing Duty Determinations: Certain Durum Wheat and Hard Red Spring Wheat from Canada* (68 FR 52747), and on October 23, 2003, the Department published the countervailing duty order on Hard Red Spring Wheat ("HRSW") (68 FR 60642). On November 18, 2003, the Department received a request from Richelain Farms ("Richelain") to conduct an expedited review of the HRSW countervailing duty order. Richelain, a company that was not selected for individual examination during the investigation, made this request pursuant to 19 CFR 351.214(k).

On December 31, 2003, the Department initiated the expedited review. *Hard Red Spring Wheat From Canada: Initiation of Expedited Review of the Countervailing Duty Order* ("Initiation Notice") (68 FR 75490). We sent questionnaires to Richelain Farms and the Government of Canada on February 13, 2004. We received questionnaire responses from Richelain and the Government of Canada on March 25, 2004. On June 3 and 4, and August 26, 2004, we verified Richelain's questionnaire responses. On June 24, 2004, the Department postponed the deadline for the preliminary determination. See *Hard Red Spring Wheat from Canada: Notice of Extension of Time Limit for Countervailing Duty Expedited Review*, 69 FR 35329.

Scope of Review

For purposes of this expedited review, the products covered are all varieties of hard red spring ("HRSW") wheat from

Canada. This includes, but is not limited to, varieties commonly referred to as Canada Western Red Spring, Canada Western Extra Strong, and Canada Prairie Spring Red. The merchandise subject to this investigation is currently classifiable under the following *Harmonized Tariff Schedule of the United States* ("HTSUS") subheadings: 1001.90.10.00, 1001.90.20.05, 1001.90.20.11, 1001.90.20.12, 1001.90.20.13, 1001.90.20.14, 1001.90.20.16, 1001.90.20.19, 1001.90.20.21, 1001.90.20.22, 1001.90.20.23, 1001.90.20.24, 1001.90.20.26, 1001.90.20.29, 1001.90.20.35, and 1001.90.20.96. This investigation does not cover imports of wheat that enter under the subheadings 1001.90.10.00 and 1001.90.20.96 that are not classifiable as hard red spring wheat. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Verification

In accordance with 19 CFR 351.214(k)(3)(iv), we verified information submitted by respondent Richelain. See *Verification of Richelain Farms in the Countervailing Duty Expedited Review of Hard Red Spring Wheat from Canada* dated October 8, 2004 ("Verification Report"). This verification was concluded on August 26, 2004, in Quebec, Canada.

Preliminary Results of Expedited Review

The Canadian Wheat Board ("CWB") represents Western Canadian wheat producers who want to sell their wheat in the global wheat market. The CWB enjoys certain powers and rights similar to those of government agencies; under the Canadian Wheat Board Act, the CWB is a single-desk seller of all "Western Division" grain. According to the Canada Transportation Act, "Western Division" means the part of Canada lying west of the meridian passing through the eastern boundary of the City of Thunder Bay, including the whole of the Province of Manitoba.

In the investigation, we determined that the CWB benefitted from two countervailable subsidies programs: "Provision of Government-Owned and Leased Railcars" and "Comprehensive Financial Risk Coverage: The Borrowing, Lending, and Initial Payment Guarantees." In its questionnaire response, Richelain, which is located in Quebec, reported that it never benefitted from the subsidies programs found countervailable in the investigation.

Furthermore, Richelain reported that it has never purchased or exported CWB wheat, and that it has no business relationship with the CWB.

At verification, the Department did not find any evidence that Richelain received subsidies from the programs found countervailable in the investigation. The Department also found no indication of any relationship between Richelain and the CWB, or that Richelain exported CWB-sourced wheat to the United States. See *Verification Report*. Accordingly, the Department preliminarily determines that Richelain has not benefitted from any of the investigated subsidies.

In accordance with 19 CFR 351.221(b)(4)(i), the calculated individual subsidy rate for Richelain, the only respondent subject to this expedited review, is zero. Accordingly, pursuant to 19 CFR 351.214(k)(3)(iv), we preliminarily determine that Richelain should be excluded from the countervailing duty order.

Public Comment

Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Case briefs must be received by the Department within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, must be received no later than five days after the time limit for filing case briefs. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. See 19 CFR 351.310(c). Requests should contain (1) the party's name, address, and telephone number, (2) the number of participants, and (3) a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief. See 19 CFR 351.310(c).

Interested parties that seek access to business proprietary information must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. The Department will include the results of its analysis of issues raised in any case or rebuttal briefs in the final results of this expedited review.

This expedited review and notice is issued and published in accordance with section 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677(f)(i)).

Dated: October 15, 2004.

Jeffrey A. May,

Acting Assistant Secretary for Import Administration.

[FR Doc. E4-2787 Filed 10-20-04; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-475-823]

Stainless Steel Plate in Coils From Italy; Preliminary Results of the Full Sunset Review of the Countervailing Duty Order

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

ACTION: Notice of preliminary results of full sunset review: stainless steel plate in coils from Italy.

SUMMARY: On April 1, 2004, the Department initiated a sunset review of the countervailing duty ("CVD") order on stainless steel plate in coils ("SSPC") from Italy pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). See *Initiation of Five-Year (Sunset) Reviews*, 69 FR 17129 (April 1, 2004). On the basis of substantive responses filed by domestic and respondent interested parties, the Department is conducting a full sunset review. As a result of this review, the Department preliminarily finds that revocation of the countervailing duty order would likely lead to continuation or recurrence of subsidies at the levels indicated in the *Preliminary Results of Review* section of this notice.

EFFECTIVE DATE: October 21, 2004.

FOR FURTHER INFORMATION CONTACT: Hilary Sadler, Esq., Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4340.

SUPPLEMENTARY INFORMATION:

Department's Regulations

The Department's procedures for the conduct of sunset reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*; *Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Policy Bulletin*").

Background

On April 1, 2004, the Department initiated a sunset review of the countervailing duty ("CVD") order on SSPC from Italy pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). See *Initiation of Five-Year (Sunset) Reviews*, 69 FR 17129 (April 1, 2004). The Department received a notice of intent to participate from Allegheny Ludlum Corp. ("Allegheny Ludlum"), North America Stainless ("NAS"), and the United Steelworkers of America, AFL-CIO/CLC ("USWA"), the domestic interested parties (collectively "domestic interested parties"), within the applicable deadline (April 16, 2004) specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. See Response of the Domestic Interested Parties at 2, May 3, 2004 ("Domestic Response"). All domestic interested parties claimed interested-party status under section 771(9)(C) and (D) of the Act, as a U.S. producer of the domestic like product or a certified union whose workers are engaged in the production of the subject merchandise in the United States. Domestic Response. The USWA was a petitioner in the investigation and has been involved in this proceeding since its inception. *Id.* at 6. Armo, Inc., J&L Specialty Steels, Inc., Lukens Inc., were also petitioners in the original investigation but are either no longer producers of subject merchandise or are scheduled to cease production of SSPC within in this month. *Id.* According to the domestic parties of this review, two unions, Butler Armco Independent Union and Zanesville Armco Independent Organization, that were original petitioners are not participating in this sunset review because very few workers at these unions are engaged in the production of SSPC in the United States. *Id.* at 7. The domestic interested parties have participated as a group at various segments of this order. *Id.*

The Department received a complete substantive response to the notice of initiation on behalf of three respondent interested parties: the Government of

Italy ("GOI"), the Delegation of the European Commission ("EC"), and TKAST. On May 3, 2004, we received substantive responses from all three respondent interested parties expressing their willingness to participate in this review as the authority responsible for defending the interest of the Member States of the European Union. See Responses of the GOI (unpaginated), May 3, 2004, ("GOI Response"); EC (unpaginated), April 30, 2004, ("EC Response"); and TKAST, May 3, 2004 ("TKAST Response") at 2. All respondent interested parties note that they have in the past participated in this proceeding. On May 3, 2004, we received a substantive response from TKAST, a foreign producer and exporter of the subject merchandise as well as the respondent interested party under section 771(9)(A) of the Act, expressing its willingness to participate in this review as well as the Section 129 review. See TKAST Response at 2.

On May 3, 2004, we received a complete substantive response from the domestic interested parties within the 30-day deadline specified in the Department's Regulations under section 351.218(d)(3)(i). See Domestic Response.

We received rebuttal comments from the domestic interested parties on May 10, 2004. On June 10, 2004, pursuant to section 351.309(e)(ii), TKAST filed comments on the Department's adequacy determination stating that the Department's determination of respondents' inadequacy was incorrect and should be reconsidered. See Letter of TKAST, Stainless Steel Plate from Italy (Sunset): Adequacy of Responses (June 10, 2004). On June 10, 2004, Allegheny Ludlum Corporation, North American Stainless and the United Steelworkers of America, petitioners in this case, filed comments arguing that the Department's adequacy determination was correct and that the expedited review is warranted. See Letter of Domestic Interested Parties, Stainless Steel Plate in Coils from Belgium, Canada, Italy, South Africa, South Korea and Taiwan: Five Year ("Sunset") Reviews of Antidumping Duty and Countervailing Duty Orders (June 10, 2004).

In a sunset review, the Department normally will conclude that there is adequate response to conduct a full sunset review where respondent interested parties account for more than 50 percent, by volume, of total exports of subject merchandise to the United States. See 19 CFR 351.218(e)(1)(ii)(A). TKAST accounted for more than the 50 percent threshold that the Department normally considers to be an adequate

response under 19 CFR section 351.218(e)(1)(ii)(A). On July 13, 2004, the Department determined that the responses by TKAST, the only respondent company in this review, the GOI, and the EC provided an adequate basis for a full review. See Memorandum for James J. Jochum, Assistant Secretary, Import Administration, from Ronald K. Lorentzen, Acting Director, Office of Policy, Re: Sunset Review of Stainless Steel Plate in Coils from Italy; Adequacy of Respondent Interested Party Response to the Notice of Initiation, July 13, 2004. Therefore, the Department is conducting a full sunset review in accordance with 19 CFR 351.218(e)(2)(I).

Scope of Review

The product covered by this order is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (*e.g.*, cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of these orders are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars. In addition, certain cold-rolled stainless steel plate in coils is also excluded from the scope of this order. The excluded cold-rolled stainless steel plate in coils is defined as that merchandise which meets the physical characteristics described above that has undergone a cold-reduction process that reduced the thickness of the steel by 25 percent or more, and has been annealed and pickled after this cold reduction process. The merchandise subject to these orders is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.05, 7219.12.00.20, 7219.12.00.25, 7219.12.00.50, 7219.12.00.55, 7219.12.00.65, 7219.12.00.70, 7219.12.00.80, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10,

7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the orders is dispositive.

Analysis of Comments Received

All issues raised in the substantive responses and rebuttals by parties to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to Jeffrey A. May, Acting Assistant Secretary for Import Administration, dated October 15, 2004, which is hereby adopted by this notice. The issues discussed in the accompanying Decision Memo include the likelihood of continuation or recurrence of countervailable subsidies and the net subsidy likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B-099, of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at <http://www.ia.ita.doc.gov/frn>, under the heading "Italy." The paper copy and electronic version of the Decision Memo are identical in content.

Preliminary Results of Review

The Department notes that on November 7, 2003, the U.S. Trade Representative requested the Department, pursuant to section 129(b)(4) of the Uruguay Round Agreements Act, to implement the determination in the Section 129 Memo. *See Notice of Implementation Under Section 129 of the Uruguay Round Agreements Act: Countervailing Measures Concerning Certain Steel Products From the European Communities*, 68 FR 64858, (November 17, 2003). Accordingly, the Department revised the cash deposit rates for TKASt and "all others" to reflect the impact that privatization had on non-recurring, allocable subsidies for the countervailing duty order on SSPC from Italy. *Id.* We, therefore, revised the net subsidy rates for TKASt to 1.62 percent and all others to 1.61 percent.

We preliminarily determine that revocation of the countervailing duty order on SSPC from Italy would be likely to lead to continuation or recurrence of countervailable subsidies at the rate listed below:

Producers/Exporters	Net countervailable subsidy (percent)
TKASt	0.80
All Others	1.61

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(d)(i). Any hearing, if requested, will be held on December 22, 2004. Interested parties may submit case briefs no later than December 13, 2004, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than December 20, 2004, in accordance with 19 CFR 351.309(d)(1). The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such briefs, not later than February 25, 2005.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 15, 2004.

Jeffrey A. May,

Acting Assistant Secretary for Import Administration.

[FR Doc. E4-2790 Filed 10-20-04; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended Export Trade Certificate of Review, Application No. 84-15A12.

SUMMARY: On October 14, 2004, the U.S. Department of Commerce issued an amended Export Trade Certificate of Review to Northwest Fruit Exporters ("NFE").

FOR FURTHER INFORMATION CONTACT:

Jeffrey C. Anspacher, Director, Export Trading Company Affairs, International Trade Administration, (202) 482-5131 (this is not a toll-free number) or e-mail at oetca@ita.doc.gov.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2003).

Export Trading Company Affairs ("ETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the U.S. Department of Commerce to

publish a summary of the certification in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 84-00012, was issued to NFE on June 11, 1984 (49 FR 24581, June 14, 1984) and previously amended on May 2, 1988 (53 FR 16306, May 6, 1988); September 21, 1988 (53 FR 37628, September 27, 1988); September 20, 1989 (54 FR 39454, September 26, 1989); November 19, 1992 (57 FR 55510, November 25, 1992); August 16, 1994 (59 FR 43093, August 22, 1994); November 4, 1996 (61 FR 57850, November 8, 1996); October 22, 1997 (62 FR 55783, October 28, 1997); November 2, 1998 (63 FR 60304, November 9, 1998); October 20, 1999 (64 FR 57438, October 25, 1999); October 16, 2000 (65 FR 63567, October 24, 2000); October 5, 2001 (66 FR 52111, October 12, 2001); October 3, 2002 (67 FR 62957, October 9, 2002); and September 16, 2003 (68 FR 54893, September 19, 2003).

NFE's Export Trade Certificate of Review has been amended to:

1. Add each of the following companies as a new "Member" of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): John's Farm LLC, Brewster, Washington; Pride Packing Company, Wapato, Washington; and Sage Processing LLC, Wapato & Zillah, Washington;

2. Delete the following companies as "Members" of the Certificate: Apple Country, Inc., Wapato, Washington; Carlson Orchards, Inc., Yakima, Washington; Jenks Bros. Cold Storage & Packing, Royal City, Washington; J.C. Watson Co., Parma, Idaho; and Roy Farms, Moxee, Washington; and

3. Change the listing of the following Members: "Brewster Heights Packing, Brewster, Washington" to the new listing "Brewster Heights Packing & Orchards, LP, Brewster, Washington"; and "Chelan Fruit Company, Chelan, Washington" to the new listing "Chelan Fruit Cooperative, Chelan, Washington".

The effective date of the amended certificate is July 14, 2004. A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4100, U.S.

Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: October 15, 2004.

Jeffrey C. Anspacher,

Director, Export Trading Company Affairs.

[FR Doc. 04-23579 Filed 10-20-04; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101504D]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Oversight Committee in November 2004. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will held on Thursday, November 4, 2004, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Comfort Inn, 1940 Post Road, Warwick, RI 02886; telephone: (401) 732-0470.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

SUPPLEMENTARY INFORMATION: The Scallop Oversight Committee will consider options and recommend alternatives for Framework Adjustment (FW) 17 that would require some or all vessels with general category scallop permits to operate vessel monitoring system (VMS) equipment. The recommendations would be approved by the Council at its November 16-18, 2004 meeting, followed by a final framework meeting on February 1-3, 2005.

In addition, the Plan Development Team and Advisory Panel will brief the committee about preliminary work on the 2005 Stock Assessment and Fishery Evaluation Report. The final report is scheduled for presentation to the Council in September 2005. Planning

issues related to FW 17 (general category VMS) or FW 18 (biennial specifications and adjustments) may also be discussed. The committee meeting will conclude with a closed-door session to review Advisory Panel applications and discuss appointment recommendations. These recommendations will be presented to the Council's Executive Committee at its next meeting.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: October 18, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4-2782 Filed 10-20-04; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101804B]

Atlantic Coastal Fisheries Cooperative Management Act Provisions; Application for Exempted Fishing Permits (EFPs)

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

ACTION: Notification of a request for EFPs to conduct experimental fishing; request for comments.

SUMMARY: The Director, State, Federal and Constituent Programs Office, Northeast Region, NMFS (Office Director) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Office Director has also made a preliminary determination that the activities authorized under the

EFPs would be consistent with the goals and objectives of Federal management of the American lobster resource. However, further review and consultation may be necessary before a final determination is made to issue EFPs. Therefore, NMFS announces that the Office Director proposes to issue EFPs that would allow a maximum of six Federally permitted commercial fishing vessels to participate in a project designed to monitor the movement of berried female American lobsters (berried lobsters) in two inshore locations in the vicinity of Portsmouth, New Hampshire, and Friendship, Maine, and in two offshore locations along the northern edge of Georges Bank and in Corsair and Lydonia Canyons to the southeast of Georges Bank.

This EFP is a collaborative project involving the University of New Hampshire (UNH), Durham, New Hampshire (NH); the Lobster Conservancy, Friendship, Maine; the New England Aquarium, Boston, Massachusetts; and the Atlantic Offshore Lobstermen's Association, Candia, NH. The EFP proposes to monitor a total of 120 legal sized berried lobsters carrying early-stage eggs until the eggs mature and are released. Each berried lobster will be tagged and fitted with a small ambient temperature recording device (Tidbit temperature-loggers) and then the movement and egg-development stages of these tagged berried lobsters will be documented. The objective of the project will be to test the hypothesis that berried lobsters speed up or slow down egg growth and development by moving to warmer or colder water in order to expose their eggs to water temperatures that result in hatching at an optimal time for larval growth and survival. To test this hypothesis, when a tagged berried lobster is recaptured in commercial lobster gear, participating lobstermen will download thermal data from the attached Tidbit temperature-logger, and also preserve a maximum of 6 eggs from each tagged berried lobster to allow researchers to estimate the egg developmental stage and time to maturity. The tagged berried lobsters will then be released unharmed. The EFP would waive the prohibition on removal of eggs specified at 50 CFR 697.7(c)(iv) for the six participating vessels and is limited to the 120 pre-tagged berried lobsters in this project.

This project would not involve the authorization of any additional trap gear, and all trap gear would conform to existing Federal lobster regulations. There would be no anticipated adverse effects on protected resources or habitat as a result of this research. Therefore,

this document invites comments on the issuance of EFPs to allow a maximum of six commercial fishing vessels in possession of Federal lobster permits to remove a maximum of six eggs each time any one of the 120 tagged berried lobsters are captured during the course of normal fishing operations in the designated study areas.

DATES: Comments on this lobster EFP notification for berried lobster monitoring and data collection must be received on or before November 5, 2004.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930-2298. Mark the outside of the envelope "Comments - Lobster EFP Proposal". Comments also may be sent via facsimile (fax) to 978-281-9117. Comments on the Lobster EFP Proposal may be submitted by e-mail. The mailbox address for providing e-mail comments is Lob0204@noaa.gov. Include in the subject line of the e-mail comment the following document identifier: "Comments - Lobster EFP Proposal".

FOR FURTHER INFORMATION CONTACT: Bob Ross, Fishery Management Specialist, (978) 281-9234, fax (978)-281-9117.

SUPPLEMENTARY INFORMATION:

Background

The regulations that govern exempted fishing, at 50 CFR 600.745(b) and 697.22 allow the Regional Administrator to authorize for limited testing, public display, data collection, exploration, health and safety, environmental clean-up, and/or hazardous removal purposes, and the targeting or incidental harvest of managed species that would otherwise be prohibited. An EFP to authorize such activity may be issued, provided there is adequate opportunity for the public to comment on the EFP application, the conservation goals and objectives of Federal management of the American lobster resource are not compromised, and issuance of the EFP is beneficial to the management of the species.

The American lobster fishery is the most valuable fishery in the northeastern United States. In 2002, approximately 82 million pounds (37,324 metric tons (mt)) of American lobster were landed with an ex-vessel value of approximately 293 million dollars. Operating under the Atlantic States Marine Fisheries Commission's interstate management process, American lobster are managed in state waters under Amendment 3 to the American Lobster Interstate Fishery Management Plan (Amendment 3). In Federal waters of the Exclusive

Economic Zone (EEZ), lobster is managed under Federal regulations at 50 CFR part 697. Amendment 3, and compatible Federal regulations established a framework for area management, which includes industry participation in the development of a management program which suits the needs of each lobster management area while meeting targets established in the Interstate Fisheries Management Program. The industry, through area management teams, with the support of state agencies, have played a vital role in advancing the area management program.

American lobster experience very high fishing mortality rates and are overfished throughout their range, from Canada to Cape Hatteras. Although harvest and population abundance are near record levels due to high recent recruitment and favorable environmental conditions, there is significant risk of a sharp drop in abundance, and such a decline would have serious implications. To facilitate the development of effective management tools, extensive monitoring and detailed abundance and size frequency data on the composition of lobsters throughout the range of the resource are necessary. This proposed EFP would monitor tagged berried lobsters in four study areas using traditional lobster trap gear.

Proposed EFP

The EFP proposes to collect statistical and scientific information as part of a project designed to monitor the movement of tagged berried lobsters to collect data that will assist in the assessment of the lobster resource and in the development of management practices appropriate to the fishery. Participants in this project are funded by, and under the direction of the Northeast Consortium, a group of four research institutions (University of New Hampshire, University of Maine, Massachusetts Institute of Technology, and Woods Hole Oceanographic Institution) which are working together to foster this initiative.

Each of the six commercial fishing vessels in possession of Federal lobster permits involved in this monitoring and data collection program would collect temperature data and a maximum of six eggs from each tagged berried lobster harvested using traditional lobster trap gear. Participating vessels would collect data from each of the four general study areas in the vicinity of Portsmouth, New Hampshire, and Friendship, Maine, the northern edge of Georges Bank and in the vicinity of Corsair and Lydonia Canyons. This EFP would not involve

the authorization of any additional lobster trap gear in the study areas. The participating vessels may retain on deck tagged egg bearing female lobsters, in addition to legal lobsters, for the purpose of collecting temperature data from the attached Tidbit temperature-loggers, and for the purpose of collecting a maximum of six eggs from each tagged berried lobster to allow researchers to estimate the egg developmental stage and time to maturity. All sub-legal lobsters, berried females, and v-notched females would be returned to the sea as quickly as possible after data collection. Pursuant to 50 CFR 600.745(3)(v), the Regional Administrator may attach terms and conditions to the EFP consistent with the purpose of the exempted fishing.

This project would not involve the authorization of any additional lobster trap gear. All traps fished by the participating vessels would comply with all applicable lobster regulations specified at 50 CFR 697. To allow for the collection of temperature data and the removal of a maximum of six of eggs from each tagged berried lobster, the EFP would waive the American lobster prohibition on removal of eggs specified at 50 CFR 697.7(c)(iv). All sample collections would be conducted by six federally permitted commercial fishing vessels, during the course of regular commercial fishing operations. There would not be observers or researchers onboard every participating vessel.

This project, including the lobster handling protocols, was initially developed in consultation with University of New Hampshire scientists. To the greatest extent practicable, these handling protocols are designed to avoid unnecessary adverse environmental impact on lobsters involved in this project, while achieving the data collection objectives of this project.

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

Dated: October 18, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4-2783 Filed 10-20-04; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

Technology Administration

Request for Comments on Electronics Recycling

AGENCY: Technology Administration, Department of Commerce.

ACTION: Notice, request for comments.

SUMMARY: The Technology Administration (TA) publishes this notice to solicit comments on the following specific issues regarding electronics recycling: (1) Definition of covered products; (2) collection and the role of government in collection; (3) financing collection, transportation and recycling, financing for orphan products, financing historical products versus future products, and the role of government, the electronics industry, and intermediaries in financing; and (4) the role of the federal government in creating a national recycling plan. This solicitation is intended to give those who were unable to comment at the September 21, 2004, roundtable on electronics recycling, entitled Technology Recycling: Achieving Consensus for Stakeholders, an opportunity to submit a statement regarding these issues.

DATES: Comments and statements should be received by the Technology Administration no later than October 27, 2004, in order to receive consideration.

ADDRESSES: Electronic statements are preferred, but written comments will be accepted. Please submit your comments electronically to technologyrecycling@doc.gov either in Microsoft Word (specify version) or WordPerfect (version 5 or 6, specify version).

Paper submissions should include an electronic copy of the comments on a diskette in one of the formats specified above. Mail to Lauren Daly, Office of Technology Policy, Technology Administration HCHB 4817, 1401 Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Direct questions to technologyrecycling@doc.gov or call Lauren Daly at (202) 482-0336.

SUPPLEMENTARY INFORMATION:

Background

The Technology Administration, Office of Technology Policy held a roundtable on September 21, 2004, entitled Technology Recycling: Achieving Consensus for Stakeholders, that included representatives of electronics manufacturers, retailers, recyclers, and environmental organizations. At the roundtable, participants discussed that: (1) A list of products for recycling should be limited to a small number of items to start with, such as cathode ray tubes and flat panel

monitors over a certain size, and have a timetable for expansion of the list; (2) a collection process may include but should not mandate participation from retailers, local governments, manufacturers and third parties; (3) there exists several different financing models including extended producer responsibility and an advanced recovery fee, as well as financing the recycling of orphan products and transportation from collection to recyclers; and (4) there exists a need for a national approach as opposed to a state-by-state approach. The purpose of the roundtable was to obtain information for a report on electronics recycling that will be released in 2005.

Request for Comments

The Office of Technology Policy of TA is soliciting comments on the following specific issues regarding electronics recycling: (1) Definition of covered products; (2) collection and the role of government in collection; (3) financing collection, transportation and recycling, financing for orphan products, financing historical products versus future products, and the role of government, the electronics industry, and intermediaries in financing; and (4) the role of the federal government in creating a national recycling plan. This solicitation is intended to give those who were unable to comment at the roundtable an opportunity to submit a statement regarding these issues. Statements may propose a specific scenario or model for electronics recycling; give examples of existing programs in similar or unrelated areas that could serve as a model for an electronics recycling program; or comment on the pros and cons of existing or proposed models. TA is interested in specific scenarios that would enhance the competitiveness of U.S. industry and encourage conservation of resources.

We request, but do not require, that commentors provide their name, affiliation, and contact information and whether the comments represent the views of an individual or an organization. The Department reserves the right to use comments received, either partially or wholly, in subsequent reports or publications. Any comments become the property of the U.S. Department of Commerce.

For further information on the roundtable and the report, check the <http://www.technology.gov> website under Events and Activities, September

21, 2004, Technology Recycling Roundtable.

Dated: October 13, 2004.

Phillip J. Bond,

Under Secretary of Commerce for Technology.
[FR Doc. 04-23499 Filed 10-20-04; 8:45 am]

BILLING CODE 3510-18-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishment of a New Standard Form

AGENCY: Under Secretary of Defense for Personnel and Readiness, Federal Voting Assistance Program.

ACTION: Notice.

SUMMARY: The Department of Defense, Under Secretary of Defense for Personnel and Readiness, Federal Voting Assistance Program is establishing a new form, Standard Form 186A, Federal Write-In Absentee Ballot (Electronic). This form is an alternative to the current Standard Form 186, Federal Write-In Absentee Ballot.

Since this form is only electronic, users can get it from the following Federal Voting Assistance Program Web site: <http://www.fvap.gov>.

DATES: Effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Glynda Hughes, Department of Defense (703) 604-4578.

SUPPLEMENTARY INFORMATION: The following is a list of differences between the hard copy SF 186 and the electronic SF 186A.

Paragraphs 2b. and 2c. of the Instructions are not on the hard copy SF 186. These paragraphs are added to provide the citizen instructions on how to package the ballot since no envelopes are provided with the electronic version.

Paragraph 3. of the electronic version does not include the instruction, "Remove tape from the Security Envelope and seal."

Paragraph 4. of the electronic version contains additional instructions for the citizens to prepare the voter supplied envelopes for mailing.

Dated: October 18, 2004.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001-06-M

FEDERAL WRITE-IN ABSENTEE BALLOT FOR GENERAL ELECTIONS

PRIVACY ACT STATEMENT

AUTHORITY: 42 USC 1973ff, "Title 1 - Registration and Voting By Absent Uniformed Services Voters and Overseas Voters in Elections for Federal Office."

PRINCIPAL PURPOSE: Your Social Security number and other identifying information is solicited for the sole purpose of verifying your identity so as to ensure that you are eligible to vote using the Federal Write-in Absentee Ballot for general elections or other elections as provided by law or special provisions for all persons covered by the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA).

DISCLOSURE: Voluntary; however failure to furnish your Social Security number or other requested information may result in the Federal Write-In Absentee Ballot not being recognized and therefore not counted.

INSTRUCTIONS TO THE VOTER

Please read Privacy Act Statement and Instructions before completion. If you have any questions, consult your Unit Voting Assistance Officer or Embassy/Consulate Voting Assistance Officer or the *Voting Assistance Guide*.

1. Complete, sign and date the Voter's Declaration/Affirmation as follows:

VOTER INFORMATION.

Enter information for 1.a. through 1.e. For Block 1.d., provide identification form and number of that form. For example: passport 0000, State Department 0000, driver's license 0000 (give State and date of issue), or birth certificate 0000 (give county or state of issue).

VOTING RESIDENCE.

Block 2. Enter complete legal voting residence address, in as much detail as possible, where you **ACTUALLY LIVED**. Your right to vote in your state and determination of your voting precinct depend on the physical location of your residence while you were in the state. **DO NOT USE A POST OFFICE BOX NUMBER.** A Post Office Box number is not a residence address. In an area with street names and numbers, this information is required. In an area with no street names, indicate route name and number and box number. Also provide any additional information necessary to physically describe your residence location. This voting residence address must be the same as the voting residence on the application you previously submitted for your regular absentee ballot.

CURRENT COMPLETE MILITARY OR OVERSEAS ADDRESS.

Block 3. Enter information which indicates your physical location outside the United States. APO/FPO addresses are considered to be outside the United States. Some states allow you to mail this ballot from inside the United States. Consult your state pages in the *Voting Assistance Guide*. **This address must be different from the address in Block 2.**

WITNESS(ES).

Some states require a notary or witness(es) for absentee ballots. Consult your Voting Assistance Officer or the Voting Assistance Guide to determine the requirements of your state.

2. Complete the Ballot as follows:

a. **Voting Procedure:** For each office for which you vote, write in either a candidate's name or political party designation. President and Vice President run as a team and your vote must be for members of the same party. For other offices, you may vote for members of different parties for each office indicated. "Senator" means U.S. Senator; "Representative" means U.S. Congressman or Congresswoman. See *Voting Assistance Guide* for Special Provisions implemented by your state, and possible use of "ADDENDUM" section.

b. Once ballot is complete, fold and place in a plain envelope and seal. Label the envelope as follows: "Official Federal Write-in Absentee Ballot/Security Envelope". **PLACE ONLY THE VOTED BALLOT IN THE SECURITY ENVELOPE.**

c. Sign and date the Voter's Declaration/Affirmation. Obtain witness(es) signature and address if required by state law.

3. Insert the sealed Security Envelope and the Voter's Declaration/Affirmation into a mailing envelope and seal.

4. If mailed in a foreign postal system, international airmail postage must be affixed. If mailed within APO/FPO or U.S. postal system, a postage paid indicia may be printed onto your mailing envelope from the FVAP web site at <http://www.fvap.gov>. Otherwise, proper postage must be affixed. Enter your name and current complete military or overseas mailing address in the upper left hand corner as your return address on the mailing envelope. Enter the name and mailing address of the proper city, township, village, county or state election official in the center section on the mailing envelope. Consult the *Voting Assistance Guide* for correct address. This must be the same election official where you sent your application for an absentee ballot. **NOTE:** Mark outside envelope "Official Absentee Ballot".

VOTER'S DECLARATION/AFFIRMATION			
General Information. Enter state, county, city/township/village where you are eligible to vote.			
Ballot for the State of _____		County of _____	
City/Township/Village of _____			
1. VOTER INFORMATION			
a. TYPED OR PRINTED NAME <i>(Last, First, Middle Initial)</i>		b. SEX	c. SOCIAL SECURITY NUMBER _____
d. OTHER IDENTIFICATION NUMBER <i>(Passport or other ID Card)</i>			e. DATE OF BIRTH <i>(MMDDYYYY)</i>
2. VOTING RESIDENCE <i>(For military, legal residence. For overseas civilians, last residence in county/jurisdiction in U.S.)</i>			
a. NUMBER AND STREET <i>(If rural route, include specific location of residence. Do not use Post Office box.)</i>		b. CITY, TOWNSHIP OR VILLAGE	
c. COUNTY OR PARISH	d. STATE	e. ZIP CODE <i>(9-digit, if known)</i>	f. LAST DATE OF RESIDENCY <i>(MMDDYYYY)</i>
3. CURRENT COMPLETE MILITARY OR OVERSEAS ADDRESS			
4. I SWEAR OR AFFIRM, UNDER THE PENALTY OF PERJURY, THAT:			
a. I am a United States citizen, and eligible to vote in the above jurisdiction (Item 2).		e. I have not received the requested ballot.	
b. I have not been convicted of a felony or other disqualifying offense or been adjudicated mentally incompetent, or if so, my voting rights have been reinstated, if required by state law.		f. I understand that if my regular absentee ballot is received by the local election official in time to be counted, that ballot will be counted and this write-in ballot will be voided.	
c. I am not registering, requesting a ballot or voting in any other jurisdiction in the U.S.		g. I have voted and sealed this ballot in private and have not allowed any person to observe the marking of this ballot, except for those authorized to assist voters under state or Federal law. I have not been influenced.	
d. My application for a regular absentee ballot was mailed in time to be received by the local election official 30 days prior to this election, or this requirement has been waived by appropriate authority.		h. I have mailed this ballot from outside the United States, or my state has made special provisions to allow me to mail this ballot from inside the U.S.	
		i. The information on this form is true and complete.	
WITNESS(ES) SIGNATURE AND ADDRESS <i>(If required by law)</i>		APPLICANT SIGNATURE <i>(Sign here)</i>	DATE SIGNED <i>(MMDDYYYY)</i>
		X	
INSTRUCTIONS TO ELECTION OFFICIALS			
This is an official Federal Write-in Absentee Ballot (FWAB) authorized by 42 USC Section 1973ff-2.			
1. Upon receipt of this ballot, examine the voter's declarations. If it appears that the voter is eligible to vote in your jurisdiction and has applied in a timely fashion for a regular absentee ballot, or this requirement has been waived by appropriate authority, then this ballot is valid unless you receive the voted regular absentee ballot in time for it to be counted. This ballot should be handled in the same manner as required by state law for other absentee ballots. If this ballot is to be counted, deposit the voted ballot in the ballot box without examining the voter's choices.			
2. The oath on this ballot is self-executing and need not be notarized or witnessed, unless required by state law.			
3. Unless provided by law, or special provisions have been made, this ballot should not be counted if:			
a. It was submitted from within the United States (an APO/FPO address is considered outside the U.S.); or			
b. This voter's application for a regular absentee ballot was received by you less than 30 days prior to the election; or			
c. This voter's completed regular absentee ballot was received by you by the state deadline for receipt of absentee ballots; or			
d. This ballot is not received by the state deadline for receipt of voted absentee ballots.			

OFFICIAL FEDERAL WRITE-IN ABSENTEE BALLOT

PRESIDENT/VICE PRESIDENT

U.S. SENATOR(S)*

U.S. REPRESENTATIVE/DELEGATE/RESIDENT COMMISSIONER****

* Legal residents of the District of Columbia may vote only for President/Vice President and Delegate.

** Legal residents of American Samoa, Guam, Puerto Rico, and the Virgin Islands may vote only for non-voting Delegate or Resident Commissioner to the Congress.

ADDENDUM

Some states allow the Federal Write-in Absentee Ballot to be used by military and overseas civilian voters in elections other than general elections or for offices other than Federal offices. Consult your state section in the *Voting Assistance Guide* to determine your state's policy. *If you are eligible to use this ballot to vote for offices/candidates other than those listed above*, please indicate in the spaces provided below, the office for which you wish to vote (for example: Governor, Attorney General, Mayor, State Senator, etc.), and the name and/or party affiliation of the candidate for whom you wish to vote.

OFFICE

CANDIDATE NAME or PARTY AFFILIATION

OFFICE	CANDIDATE NAME or PARTY AFFILIATION
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

[FR Doc. 04-23572 Filed 10-18-04; 12:40 pm]

BILLING CODE 5001-06-C

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS)

AGENCY: Department of Defense; Notice of Meeting.

ACTION: Notice.

SUMMARY: This notice is hereby given for a forthcoming meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS). The purpose of the Committee meeting is to discuss the 2004 DACOWITS Report. The meeting is open to the public, subject to the availability of space.

Interested persons may submit a written statement for consideration by the Committee and make an oral presentation of such. Persons desiring to make an oral presentation or submit a written statement to the Committee must notify the point of contact listed below no later than 5 p.m., November 1, 2004. Oral presentations by members of the public will be permitted only on Tuesday, November 9, 2004, from 4:30 p.m. to 4:45 p.m. before the full Committee. Presentations will be limited to two minutes. Number of oral presentations to be made will depend on the number of requests received from members of the public. Each person desiring to make an oral presentation must provide the point of contact listed below with one (1) copy of the presentation by 5 p.m., November 1, 2004, and bring 35 copies of any material that is intended for distribution at the meeting. Persons submitting a written statement must submit 35 copies of the statement to the DACOWITS staff by 5 p.m. on November 1, 2004.

DATES: November 8, 2004, 8:30 a.m.–5 p.m., November 9, 2004, 8:30 a.m.–5 p.m.

LOCATION: Embassy Suites Hotel, Crystal City—National Airport, 1300 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: MSgt Gerald T. Posey, USAF, DACOWITS, 4000 Defense Pentagon, Room 2C548A, Washington, DC 20301-4000. Telephone (703) 697-2122. Fax (703) 614-6233.

SUPPLEMENTARY INFORMATION: Meeting Agenda.

Monday, November 8, 2004, 8:30 a.m.–5 p.m.

2004 Committee Report.
Tuesday, November 9, 2004, 8:30 a.m.–5 p.m.

2004 Committee Report.
4:30 p.m.–4:45 p.m. (Public Forum)

Note: Exact order may vary.

Dated: October 14, 2004.

Jeannette Owings-Ballard,
OSD Federal Register Liaison Officer,
Department of Defense.

[FR Doc. 04-23542 Filed 10-20-04; 8:45 am]

BILLING CODE 5001-08-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

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 proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 20, 2004.

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.

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 the respondents, including through the use of information technology.

Dated: October 15, 2004.

Angela C. Arrington,

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

Institute of Education Sciences

Type of Review: New.
Title: 2005 High School Transcript Study.

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

Reporting and Recordkeeping Hour Burden:

Responses: 768.
Burden Hours: 2,304.

Abstract: This clearance package contains descriptions, supporting statements, and burden information for the 2005 High School Transcript Study. The Study collects transcripts for graduating high school students from schools participating in the 2005 National Assessment of Educational Progress (NAEP) 12th grade assessment. To interpret the transcript information, school catalogs are collected and school administrative personnel are interviewed.

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 2627. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to the Internet address OCIO_RIMG@ed.gov or faxed to 202-245-6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at Kathy.Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal

Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E4–2737 Filed 10–20–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, 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 22, 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.

Dated: October 15, 2004.

Angela C. Arrington,

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

Office of Postsecondary Education

Type of Review: Reinstatement.
Title: Student Support Services Annual Performance Report.

Frequency: Annually.
Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 936.

Burden Hours: 5,616.

Abstract: Student Support Services Program grantees must submit the report annually. The reports are used to evaluate grantees' performance, and to award prior experience points at the end of each project (budget) period. The Department also aggregates the data to provide descriptive information on the projects and to analyze the impact of the Student Support Services Program on the academic progress of participating students.

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 2599. 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. E4–2738 Filed 10–20–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

American Statistical Association Committee on Energy Statistics

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the American Statistical Association Committee on Energy Statistics, a utilized Federal Advisory Committee. The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, October 28, 2004, 8:30 a.m.–4:55 p.m.; Friday, October 29, 2004, 8:30 a.m.–12:15 p.m.

ADDRESSES: U.S. Department of Energy, Room 8E–089, 1000 Independence Ave., SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Mr. William I. Weinig, EI–70, Committee Liaison, Energy Information Administration, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, Telephone: (202) 287–1709. Alternately, Mr. Weinig may be contacted by e-mail at william.weinig@eia.doe.gov or by fax at (202) 287–1705.

Purpose of the Committee: To advise the Department of Energy, Energy Information Administration (EIA), on EIA technical statistical issues and to enable the EIA to benefit from the Committee's experience concerning other energy-related statistical matters.

Tentative Agenda

Thursday, October 28, 2004

- A. Opening Remarks by the ASA Committee Chair, the EIA Administrator and the Director, Statistics and Methods Group, EIA, Room 8E–089
- B. Major Topics (Room 8E–089 unless otherwise noted)
 1. Evaluation of Impact of Cognitive Testing
 2. Update on Applying ListServ Sampling to Evaluate EIA's Analytical Products (5E–069)
 3. Assessing EIA Frames, including Progress on Frames Evaluations Being Conducted by the Census Bureau for EIA, and Lessons Learned from EIA Project on Frames Evaluation: MECS and the Refinery Surveys
 4. The EIA Short-Term Regional Electricity Model: Capabilities and Data Requirements Issues in Short-Term Modeling (5E–069)
 5. Invitation for Public Questions and Comments
 6. Natural Gas Production, Frames, Samples and Estimation
 7. Methods for Assessing NEMS Solution Data for Interpretive and Diagnostic Purposes (5E–069)
 8. External Evaluations of Survey

- Programs
9. Evaluations of Forecasting Models (5E-069)
 10. How the ASA Energy Committee Might Help in Program Evaluation under PART?
 11. Invitation for Public Questions and Comments

Friday, October 29, 2004

C. Major Topics

1. Data Analysis on the EIA-826/906
2. Post-Stratification Methodology for the 2002 Manufacturing Energy Consumption Survey (MECS)
3. Time Series Edits for the Electric Power EIA-920 (5E-069)
4. If (EIA's budget really looked grim and) You Were King?
5. Invitation for Public Questions and Comments

D. Closing Remarks by the ASA Committee Chair.

Public Participation: The meeting is open to the public.

The Chair of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the committee either before or after the meeting. If there are any questions, please contact Mr. William I. Weinig, EIA Committee Liaison, at the address or telephone number listed above. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

A Meeting Summary and Transcript will subsequently be available through Mr. Weinig who may be contacted at (202) 287-1709 or by e-mail at william.weinig@eia.doe.gov.

Issued at Washington, DC on October 18, 2004.

Rachel M. Samuel,

Deputy Advisory Committee, Management Officer.

[FR Doc. 04-23580 Filed 10-20-04; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05-3-000]

CenterPoint Energy Gas Transmission Company; Notice of Application

October 14, 2004.

Take notice that on October 6, 2004, CenterPoint Energy Gas Transmission Company (CenterPoint), 1111 Louisiana Street, Houston, Texas 77002-5231, filed in the above referenced docket

pursuant to section 7(c) of the Natural Gas Act (NGA), and part 157 of the Commission's regulations for an order granting a certificate of public convenience to construct, own and operate mainline compression facilities and appurtenances located in Oklahoma, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll free at (866) 208-3676, or TTY, contact (202) 502-8659.

Specifically, CenterPoint proposes to construct, own, and operate 28,265 horsepower of new mainline compression by installing one compressor units and appurtenant facilities at each of its new Hinton and Allen Compressor Stations located on CenterPoint's Line AD in Caddo and Hughes counties, respectively, Oklahoma and one additional compressor unit and appurtenant facilities at its Amber Compressor Station located on CenterPoint's Line AD in Grady County, Oklahoma. CenterPoint states that this additional compression will serve to increase Line AD capacity by 112,900 Dth per day to receive Rocky Mountain gas supplies for transportation west to east across CenterPoint's system. Total construction costs are estimated to be approximately \$31.9 million.

Any questions regarding this application should be directed to Lawrence O. Thomas, Director, Rates & Regulatory, CenterPoint Energy Gas Transmission Company, P.O. Box 21734, Shreveport, Louisiana 71151, or call (318) 429-2804.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other

parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Persons who wish to comment only on the environmental review of this project, or in support of or in opposition to this project, should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the applicant. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov>) under the "e-Filing" link.

Comment Date: 5 p.m. eastern time on November 4, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4-2748 Filed 10-20-04; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96-200-131]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rates

October 13, 2004.

Take notice that on September 29, 2004, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets to be effective October 1, 2004:

First Revised Sheet No. 828,

First Revised Sheet No. 888,
First Revised Sheet No. 889.

CEGT states that the purpose of this filing is to reflect the termination of negotiated rates with respect to two transactions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,
Secretary.

[FR Doc. E4-2776 Filed 10-20-04; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03-302-004]

Cheyenne Plains Gas Pipeline Company, L.L.C.; Notice of Compliance Filing

October 12, 2004.

Take notice that on September 23, 2004, Cheyenne Plains Gas Pipeline Company, L.L.C. (Cheyenne Plains) submitted a compliance filing pursuant to the Commission's Order Issuing Certificates issued on March 24, 2004, at Docket No. CP03-302-000, *et al.*

Cheyenne Plains states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,
Secretary.

[FR Doc. E4-2744 Filed 10-20-04; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03-301-001]

Colorado Interstate Gas Company; Notice of Compliance Filing

October 12, 2004.

Take notice that on October 4, 2004, Colorado Interstate Gas Company (CIG) submitted a compliance filing pursuant to the Commission's Order issued October 22, 2003, at Docket No. CP03-301-000, *et al.*

CIG states that the tariff sheets implement the pro forma Cheyenne Firm Compression tariff provisions filed in this proceeding. The tariff sheets are proposed to become effective December 4, 2004.

CIG states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call

(866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,
Secretary.

[FR Doc. E4-2762 Filed 10-20-04; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05-21-000]

Columbia Gas Transmission Corporation; Notice of Tariff Filing

October 13, 2004.

Take notice that on October 8, 2004, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Seventh Revised Sheet No. 500B, with a proposed effective date of November 1, 2004.

Columbia submitted five discount letter agreements that may have non-conforming provisions, as well as two new service agreements containing a non-conforming provision that was previously approved by the Commission.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the

"eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,
Secretary.

[FR Doc. E4-2774 Filed 10-20-04; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05-20-000]

Columbia Gulf Transmission Company; Notice of Tariff Filing

October 13, 2004.

Take notice that on October 8, 2004, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Thirteenth Revised Sheet No. 316, with a proposed effective date of November 1, 2004.

Columbia Gulf submitted four discount letter agreements that may have non-conforming provisions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies

of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,
Secretary.

[FR Doc. E4-2773 Filed 10-20-04; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03-36-009]

Dauphin Island Gathering Partners; Notice of Negotiated Rate

October 14, 2004.

Take notice that on October 12, 2004, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing additional information in compliance with an order (108 FERC ¶ 61,320) issued by the Commission on September 29, 2004, which relates to Dauphin Island's August 30, 2004, Negotiated Rate and Nonconforming Tariff Filing.

Dauphin Island states it is providing additional information explaining the specific changes made to each contract. Dauphin Island further states that it tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Third Revised Sheet No. 359 to make a correction to the original filing.

Dauphin Island states that copies of the filing are being served contemporaneously on all participants listed on the service list in this proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of

intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,
Secretary.

[FR Doc. E4-2765 Filed 10-20-04; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05-18-000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 13, 2004.

Take notice that on October 7, 2004, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, with a proposed effective date of October 1, 2004.

Fifty-Fourth Revised Sheet No. 7
Fifty-Fourth Revised Sheet No. 8

ESNG states that the purpose of this filing is to track rate changes attributable to storage services purchased from Transcontinental Gas Pipe Line Corporation (Transco) under their Rate Schedules GSS and LSS. ESNG further states that the costs of the above referenced storage services comprise the rates and charges payable under ESNG's Rate Schedules GSS and

LSS. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedules GSS and LSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,
Secretary.

[FR Doc. E4-2771 Filed 10-20-04; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05-22-000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 14, 2004.

Take notice that on October 12, 2004, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with a proposed effective date of November 1, 2004:

Fifty-Fifth Revised Sheet No. 7,
Fifty-Fifth Revised Sheet No. 8.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC

Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4-2775 Filed 10-20-04; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05-2-000]

El Paso Natural Gas Company; Notice of Application

October 14, 2004.

Take notice that on October 5, 2004, El Paso Natural Gas Company (El Paso), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP05-2-000 an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations for an order granting a certificate of public convenience and necessity authorizing El Paso to acquire and convert a crude oil pipeline to a natural gas pipeline, the construction and operation of certain connection, extension, and miscellaneous appurtenant facilities, and the operation of the converted pipeline as a part of El Paso's existing interstate transmission system all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502-3676 or TTY, (202) 502-8659.

Specifically, El Paso seeks authority to: (1) Acquire, convert and operate approximately 88 miles of 30-inch diameter crude oil pipeline which will extend from an interconnection with El Paso's system near Ehrenberg in La Paz County, Arizona through Riverside County, California to Cadiz in San Bernardino County, California; (2) construct and operate a 6.4 mile, 30-inch diameter pipeline from Cadiz to an interconnection with Mojave Pipeline Company in San Bernadino County; and (3) construct and operate various appurtenant facilities. El Paso estimates that the project will cost \$73,557,000.

Any questions regarding the application should be directed to Robert T. Tomlinson, Director, El Paso Natural Company, Post Office Box 1087,

Colorado Springs, Colorado 80944, at (719) 520-3788 or fax at (719) 667-7534 or Craig V. Richardson, Vice President and General Counsel, El Paso Natural Gas Company; Post Office Box 1087, Colorado Springs, Colorado, 80944 at (719) 520-4829 or fax at (719) 520-4898.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Persons who wish to comment only on the environmental review of this project, or in support of or in opposition to this project, should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the applicant. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov>) under the "e-Filing" link.

Comment Date: 5 p.m. eastern time on November 4, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4-2747 Filed 10-20-04; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RT04-2-004, ER04-116-004, and EL01-39-004]

ISO New England Inc., et al.; The Consumers of New England v. New England Power Pool; Notice Of Filing

October 13, 2004.

Take notice that on September 14, 2004, the New England Power Pool, through its Participants Committee, ISO New England Inc., and the New England Transmission Owners (Filing Parties) submitted for Commission approval a compliance filing in response to the March 24, 2004 order issued in this proceeding. See ISO New England, Inc., et al., 106 FERC ¶ 61,280 (2004).

The Filing Parties state that copies of these materials were sent to the NEPOOL Participants and the New England state governors and regulatory commissions, as well as to all parties on the official service lists of this proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicants and all parties to these proceedings.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of their protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for

review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: October 22, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4-2763 Filed 10-20-04; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00-157-015]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

October 12, 2004.

Take notice that on October 5, 2004, Kern River Gas Transmission Company (Kern River) tendered Ninth Revised Sheet No. 495 for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, to be effective November 1, 2004.

Kern River states that the purpose of this filing is to submit a corrected tariff sheet to replace the sheet filed in this proceeding on October 1, 2004.

Kern River states that it has served a copy of this filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory

Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4-2779 Filed 10-20-04; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05-19-000]

KO Transmission Company; Notice of Tariff Filing

October 13, 2004.

Take notice that on October 8, 2004, KO Transmission Company (KOT) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Sixteenth Revised Sheet No. 10, with a proposed effective date of November 15, 2004.

KOT states that the purpose of the filing is to eliminate the Gas Research Institute (GRI) surcharge, which is currently reflected on the rate sheet of KOT's Tariff, and to modify the Title Sheet consistent to Commission regulations.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or

protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4-2772 Filed 10-20-04; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03-51-001]

Natural Gas Pipeline Company of America; Notice of Amendment to Certificate

October 13, 2004.

Take notice that on October 5, 2004, Natural Gas Pipeline Company of America (Natural), filed an abbreviated application under section 7 of the NGA, as amended, and sections 157.7 and 157.14 of the Commission's Regulations to amend the certificate authority that was previously granted in Docket No. CP03-51-000. By order issued July 29, 2003, Natural was authorized to drill six new injection/ withdrawal (I/W) wells and convert three observation wells to I/W wells at the Sayre Storage Field (Sayre) in Beckham County, Oklahoma.

Natural seeks amended certificate authority to convert a fourth observation well, in place of one of the original three observation wells authorized to be converted. Natural states that the well will be converted to I/W status, and the replaced well will continue to be used as an observation well. Natural believes this minor change in its existing certificate authority is in the public interest and urges prompt consideration

of and action on this application, so that the necessary work can be completed as soon as possible.

Any questions regarding this application should be directed to Bruce H. Newsome, Vice President, Natural Gas Pipeline of America, 747 East 22nd Street, Lombard, Illinois 60148 at (630) 691-3526.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: October 29, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4-2745 Filed 10-20-04; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-176-103]

Natural Gas Pipeline Company of America; Notice of Negotiated Rate

October 14, 2004.

Take notice that on October 8, 2004, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Fourth Revised Sheet No. 26C, to become effective November 1, 2004.

Natural states that the purpose of this filing is to reflect an amendment to an existing negotiated rate agreement between Natural and North Shore Gas Company under Natural's Rate Schedule FTS pursuant to section 49 of the General Terms and Conditions of its Tariff.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99-176.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC

Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4-2777 Filed 10-20-04; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket RP00-404-015]

Northern Natural Gas Company; Notice of Compliance Filing

October 14, 2004.

Take notice that on October 12, 2004, Northern Natural Gas Company (Northern) filed the information requested by the Commission in compliance with the Commission's September 24, 2004 Order Accepting and Suspending Tariff Sheets Subject To Refund, Conditions and Further Review (Order). Northern states that it also tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Substitute Seventeenth Revised Sheet No. 62, with an effective date of September 1, 2004.

Northern states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC.

There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,
Secretary.

[FR Doc. E4-2764 Filed 10-20-04; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03-398-010]

Northern Natural Gas Company; Notice of Compliance Filing

October 13, 2004.

Take notice that on October 7, 2004, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Second Substitute First Revised Sheet No. 142B, with an effective date of January 1, 2004.

Northern states that the above-referenced tariff sheet was filed in compliance with the Commission's September 22, 2004, Order Conditionally Accepting Tariff Sheets requiring clarification that the PDD Rollover Charge must be applied to each PDD shipper's storage balance on March 31 of each year unless the contract provides otherwise.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to

the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,
Secretary.

[FR Doc. E4-2766 Filed 10-20-04; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04-155-003]

Northern Natural Gas Company; Notice of Motion To Place Suspended Rates and Tariff Sheets Into Effect

October 13, 2004.

Take notice that on October 8, 2004, Northern Natural Gas Company, tendered for a motion to place the suspended tariff sheets listed in Appendix A to the filing, into effect on November 1, 2004.

Northern states that it has also deleted references to the Gas Research Institute (GRI) surcharge in its Gas Tariff as well as incorporated a Field Area Segmentation filing.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically

should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. eastern time on October 20, 2004.

Magalie R. Salas,
Secretary.

[FR Doc. E4-2767 Filed 10-20-04; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05-17-000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 13, 2004.

Take notice that Northern Natural Gas Company (Northern), on October 7, 2004, tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, with an effective date of November 7, 2004:

Fourth Revised Sheet No. 400
Second revised Sheet No. 400A
Third Revised Sheet No. 403
Third Revised Sheet No. 403A
Fifth Revised Sheet No. 431
Fourth Revised Sheet No. 443
Fifth Revised Sheet No. 446

Northern states that it is filing the above-referenced tariff sheets to clarify components of the *pro forma* service agreements. In addition, Northern states that it is adding a standard evergreen provision to the TI, IDD and PDD service agreements.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by

the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,
Secretary.

[FR Doc. E4-2770 Filed 10-20-04; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04-276-000]

Southern Star Central Gas Pipeline, Inc.; Notice of Informal Settlement Conference

October 14, 2004.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 10 a.m. (e.s.t.) on Thursday, November 18, 2004, and continuing Friday, November 19, 2004, in a room to be designated at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose

of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Bob Keegan at (202) 502-8158, James.Keegan@ferc.gov.

Magalie R. Salas,
Secretary.

[FR Doc. E4-2769 Filed 10-20-04; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-480-011]

Texas Eastern Transmission, LP; Notice of Compliance Filing

October 14, 2004.

Take notice that on October 8, 2004, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets proposed to become effective November 1, 2004:

Substitute Original Sheet No. 109,
Substitute Original Sheet No. 110,
Substitute Original Sheet No. 111.

Texas Eastern states that the purpose of this filing is to correct certain typographical errors in Texas Eastern's October 4, 2004, submission of negotiated rate agreements for service on the M-1 Expansion Project facilities pursuant to Rate Schedule FT-1. Texas Eastern further states that it is submitting a revised page from one of the negotiated rate service agreements to correct the reference to the termination year.

Texas Eastern states that copies of the filing were served upon all affected customers of Texas Eastern and interested state commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone

filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,
Secretary.

[FR Doc. E4-2778 Filed 10-20-04; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04-237-003]

Trailblazer Pipeline Company; Notice of Refund Report

October 14, 2004.

Take notice that on October 8, 2004, Trailblazer Pipeline Company (Trailblazer) tendered for filing its Refund Report. Trailblazer states that the Refund Report sets out the refund calculations for Trailblazer's shippers for the period May 1, 2004, through July 31, 2004.

Trailblazer explains that the refund is filed pursuant to the Commission's July 9, 2004, order on its fuel tracking states that the purpose of this filing is to inform the Commission of its refund made to shipper on September 8, 2004, mechanism.

Trailblazer states that copies of the filing are being mailed to its affected customers, interested state commissions and all parties set out on the official service list.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. eastern time on October 21, 2004.

Magalie R. Salas,
Secretary.

[FR Doc. E4-2768 Filed 10-20-04; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES05-2-000]

Trans-Elect NTD Path 15, LLC; Notice of Filing

October 12, 2004.

Take notice that on October 4, 2004, Trans-Elect NTD Path 15, LLC (NTD Path 15) filed an application requesting that the Commission issue an order disclaiming jurisdiction over certain security issuances, or, in the alternative, granting authorization, pursuant to section 204 of the Federal Power Act, to issue \$95.5 million in long-term secured debt and borrow under a \$19.5 million credit facility.

NTD Path 15 also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and

Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. eastern time on October 29, 2004.

Magalie R. Salas,
Secretary.

[FR Doc. E4-2751 Filed 10-20-04; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05-4-000]

Transwestern Pipeline Company; Notice of Application

October 13, 2004.

Take notice that Transwestern Pipeline Company (Transwestern), 1331 Lamar Street, Houston, Texas 77010, filed in Docket No. CP05-4-000 on October 8, 2004, an application pursuant to section 7(c) of the Natural Gas Act (NGA) for authorization to replace the compressor wheels at its P-1 and P-2 Compressor Stations located

in Roosevelt County, New Mexico, and Deaf Smith County, Texas, respectively, in order to increase the capacity on its Panhandle Lateral by 10,000 Dth of natural gas per day, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be also viewed on the Web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502-8222 or TTY, (202) 208-1659.

Any questions regarding this application should be directed to Stephen T. Veatch, Senior Director, Certificates and Regulatory Reporting, Transwestern Pipeline Company at (713) 853-6549.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. Unless filing electronically, a party must submit 14 copies of any paper filing made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and

two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: October 22, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4-2749 Filed 10-20-04; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG05-4-000, et al.]

Dominion Energy Brayton Point, LLC, et al.; Electric Rate and Corporate Filings

October 14, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Dominion Energy Brayton Point, LLC

[Docket No. EG05-4-000]

On October 8, 2004, Dominion Energy Brayton Point, LLC, (Dominion Energy), 120 Tredegar Street, Richmond, Virginia 23219, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's Regulations.

Dominion Energy states that it is a Virginia company and, upon closing of a purchase and sale transaction with USGen New England, Inc., will own the Brayton Point Station in Somerset, Massachusetts. Dominion Energy states that the Brayton Point Station consists of three coal-fired units, one oil/gas-fired unit, and a 10-MW diesel/oil unit

with a total net capacity of 1594 MW. Dominion Energy further states that in connection with a prior sale of these facilities to USGenNE in 1998, in accordance with section 32(c) of PUHCA and section 365.3 of the Commission's Regulations, Massachusetts, New Hampshire, Rhode Island, and Vermont made specific determinations that allowing the facilities to be eligible facilities: (1) Will benefit customers, (2) is in the public interest; and (3) does not violate state laws.

Comment Date: 5 p.m. eastern time on October 29, 2004.

2. Dominion Energy Manchester Street, Inc.

[Docket No. EG05-5-000]

On October 8, 2004, Dominion Energy Manchester States, Inc., (Dominion Energy Manchester), 120 Tredegar Street, Richmond, Virginia 23219, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's Regulations.

Dominion Energy Manchester states that it is a Virginia company and, upon closing of a purchase and sale transaction with USGen New England, Inc., will own the Manchester Street Station in Providence, Rhode Island. Dominion Energy Manchester states that Manchester Street Station is a combined cycle natural-gas fired generating facility consisting of three combustion turbines and three heat recovery steam generators with a net capacity of 495 MW. Dominion Energy Manchester further states that in connection with a prior sale of these facilities to USGenNE in 1998, in accordance with section 32(c) of PUHCA and section 365.3 of the Commission's Regulations, Massachusetts, New Hampshire, Rhode Island, and Vermont made specific determinations that allowing the facilities to be eligible facilities: (1) Will benefit customers, (2) is in the public interest; and (3) does not violate state laws.

Comment Date: 5 p.m. eastern time on October 29, 2004.

3. Dominion Energy New England, Inc.

[Docket No. EG05-6-000]

On October 8, 2004, Dominion Energy New England, Inc., (Dominion Energy New England), 120 Tredegar Street, Richmond, Virginia 23219, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's Regulations.

Dominion Energy New England states that it is a Massachusetts corporation formed to acquire the Brayton Point Station in Somerset, Massachusetts, the Manchester Street Station in Providence, Rhode Island, and the Salem Harbor Station in Salem, Massachusetts (collectively, the Facilities) from USGen New England, Inc. Dominion Energy New England states that upon closing of this purchase and sale transaction, the Applicant will operate the Facilities. Dominion Energy New England further states that the Brayton Point Station consists of three coal-fired units, one oil/gas-fired unit, and a 10-MW diesel/oil unit with a total net capacity of 1594 MW. The Manchester Street Station is a combined cycle natural-gas fired generating facility consisting of three combustion turbines and three heat recovery steam generators with a net capacity of 495 MW.

The Salem Harbor Station consists of three coal-fired units and one oil-fired unit with a total net capacity of 745 MW. In connection with a prior sale of these Facilities to USGenNE in 1998, in accordance with section 32(c) of PUHCA and section 365.3 of the Commission's Regulations, Massachusetts, New Hampshire, Rhode Island, and Vermont made specific determinations that allowing the facilities to be eligible facilities: (1) Will benefit customers, (2) is in the public interest; and (3) does not violate state laws.

Comment Date: 5 p.m. eastern time on October 29, 2004.

4. Dominion Energy Salem Harbor, LLC

[Docket No. EG05-7-000]

On October 8, 2004, Dominion Energy Salem Harbor, LLC, (Dominion Energy Salem), 120 Tredegar Street, Richmond, Virginia 23219, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's Regulations.

Dominion Energy Salem states that it is a Virginia company and, upon closing of a purchase and sale transaction with USGen New England, Inc., will own the Salem Harbor Station in Salem, Massachusetts (the Facilities). Dominion Energy Salem states that the Salem Harbor Station consists of three coal-fired units and one oil-fired unit with a total net capacity of 745 MW. Dominion Energy Salem further states that in connection with a prior sale of these facilities to USGenNE in 1998, in accordance with section 32(c) of PUHCA and section 365.3 of the Commission's Regulations,

Massachusetts, New Hampshire, Rhode Island, and Vermont made specific determinations that allowing the facilities to be eligible facilities: (1) Will benefit customers, (2) is in the public interest; and (3) does not violate state laws.

Comment Date: 5 p.m. eastern time on October 29, 2004.

5. Idaho Power Company

[Docket No. ER97-1481-004]

Take notice that on October 8, 2004, Idaho Power Company (Idaho Power) submitted an amendment to its September 27, 2004 filing in Docket No. ER97-1481-004 of a revised market-based rate tariff three-year update filing.

Comment Date: 5 p.m. eastern time on October 29, 2004.

6. Dynegy Power Marketing, Inc.

[Docket No. ER99-4160-006]

Take notice that on September 22, 2004, Dynegy Power Marketing, Inc. (Dynegy) pursuant to section 205 of the Federal Power Act (FPA), 16 U.S.C. 824d, and part 35 of the Commission's regulations, 18 CFR part 35, submitted for filing amended rate schedules implementing provisions for sales of market-based ancillary services (Market-Based Ancillary Services Tariff). Dynegy states that this amended Rate Schedule was originally submitted September 10, 2004, in compliance with the Commission's order issued July 29, 2004, in *Ameren Corporation*, 108 FERC ¶ 61,094. Dynegy submitted for filing revisions to its tariff implementing the Market Behavior Rules, *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003) (Market Behavior Rules Tariff). Dynegy's also states that this filing does not reflect further substantive changes, but is ministerial in nature, reflecting both the requested tariff change and a subsequently filed tariff change. Dynegy requests an effective date of January 1, 2005, for the Market-Based Ancillary Services Tariffs and December 17, 2003, for the Market Behavior Rules Tariffs.

Comment Date: 5 p.m. eastern time on October 25, 2004.

7. PPL Wallingford Energy LLC

[Docket No. ER01-1559-003]

Take notice that on October 8, 2004, PPL Wallingford Energy LLC (PPL Wallingford) submitted a supplement to the updated market power analysis that was filed with the Commission on July 12, 2004 in Docket No. ER01-1559-002.

PPL Wallingford states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Comment Date: 5 p.m. eastern time on October 29, 2004.

8. New England Power Pool, ISO New England Inc.

[Docket Nos. ER04-1005-001 and ER04-798-003 (not consolidated)]

Take notice that on October 8, 2004, the New England Power Pool (NEPOOL) Participants Committee submitted changes to section 2.9 of Market Rule 1 in response to the requirements of the Commission's orders issued September 10, 2004, in Docket No. ER04-1005-000 and July 15, 2004, in Docket No. ER04-798-000.

NEPOOL Participants Committee and ISO-NE state that copies of these materials were sent to all persons identified on the service lists in the captioned proceedings, the NEPOOL Participants and the New England state governors and regulatory commissions.

Comment Date: 5 p.m. eastern time on October 29, 2004.

9. MeadWestvaco Energy Services, LLC

[Docket No. ER04-1137-001]

Take notice that on October 6, 2004, MeadWestvaco Energy Services, LLC, (MWES) filed a supplement to its petition for market-based rates as power marketer filed August 18, 2004, in Docket No. ER04-1137-000. MWES states that the supplemental information pertains to additional analysis of generation market power and supplemental information regarding generation owned or controlled by MWES affiliates.

Comment Date: 5 p.m. eastern time on October 29, 2004.

10. California Independent System Operator Corporation

[Docket No. ER04-1228-001]

Take notice that, on October 8, 2004, the California Independent System Operator Corporation (ISO) submitted an errata to its informational filing of September 15, 2004, regarding the ISO's revised transmission Access Charge rates for the period of August 13, 2003, through December 31, 2003, to implement the settled rate for Pacific Gas and Electric Company TO6. ISO states that the purpose of the errata filing is to correct the information provided in the September 15 Filing regarding the Access Charge rate for the period from October 1, 2003, through December 31, 2003.

The ISO states that this filing has been served upon the Public Utilities Commission of the State of California, the California Energy Commission, the California Electricity Oversight Board, the Participating Transmission Owners,

and upon all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff. In addition, the ISO is posting the filing on the ISO Home Page.

Comment Date: 5 p.m. eastern time on October 29, 2004.

11. Sierra Pacific Power Company.

[Docket No. ER05-27-000]

Take notice that on October 8, 2004, Sierra Pacific Power Company (Sierra) filed a Notification of Rate Decrease under Bonneville Power Administration General Transfer Agreement, designated Rate Schedule FERC No. 27.

Sierra states that copies of the filing were served upon the Bonneville Power Administration, Public Utilities Commission of Nevada, California Public Utilities Commission and Nevada Bureau of Consumer Protection.

Comment Date: 5 p.m. eastern time on October 29, 2004.

12. Pacific Gas and Electric Company

[Docket No. ER05-28-000]

Take notice that on October 8, 2004, Pacific Gas and Electric Company (PG&E) tendered for filing the 2002 true-up of rates pursuant to Contract No. 14-06-200-2948A (Contract 2948A), PG&E First Revised Rate Schedule FERC No. 79, between PG&E and the Western Area Power Administration (Western).

PG&E states that copies of this filing have been served upon Western and the California Public Utilities Commission.

Comment Date: 5 p.m. eastern time on October 29, 2004.

13. New England Power Company

[Docket No. ER05-29-000]

Take notice that on October 8, 2004, New England Power Company (NEP) submitted for filing an Original Service Agreement No. 216 between the Water and Light Department of the Town of Littleton, New Hampshire for Network Integration Transmission Service under NEP's FERC Electric Tariff, Second Revised Volume No. 9 and a Notice of Cancellation of Service Agreement No. 13. NEP requests an effective date of November 1, 2004.

Comment Date: 5 p.m. eastern time on October 29, 2004.

14. Central Hudson Gas & Electric Corporation.

[Docket No. ER05-30-000]

Take notice that on October 8, 2004, Central Hudson Gas & Electric Corporation (Central Hudson) submitted a Notice of Cancellation of Service Agreement No. 8 approved by the Commission in Docket No. ER97-1879, under Central Hudson's FERC Electric

Tariff, Original Volume 2. Central Hudson requests an effective date of October 1, 2004.

Central Hudson states that copies of the filing were served upon Mirant and the State of New York Public Service Commission.

Comment Date: 5 p.m. eastern time on October 29, 2004.

15. Dominion Energy New England, Inc., Dominion Energy Salem Harbor, LLC, Dominion Energy Brayton Point, LLC, Dominion Energy Manchester Street, Inc.

[Docket Nos. ER05-34-000, ER05-35-000, ER05-36-000, ER05-37-000]

Take notice that on October 8, 2004, Dominion Energy New England, Inc., Dominion Energy Salem Harbor, LLC, Dominion Energy Brayton Point, LLC, and Dominion Energy Manchester Street, Inc. submitted for filing Market-Based Rate Tariffs (FERC Electric Tariff, Original Volume No. 1) providing for sales of capacity, energy and/or ancillary services at negotiated rates and terms and for the resale of transmission rights.

Comment Date: 5 p.m. eastern time on October 29, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a

document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,
Secretary.

[FR Doc. E4-2742 Filed 10-20-04; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF04-15-000]

Dominion Cove Point LNG, LP; Dominion Transmission, Inc.; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Dominion Cove Point LNG Expansion Project Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings and Site Visits

October 14, 2004.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of Dominion Cove Point LNG, LP's and Dominion Transmission, Inc.'s (DTI) (collectively referred to as Dominion) proposed Cove Point LNG Expansion Project. This notice explains the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help us determine which issues need to be evaluated in the EIS. Please note that the scoping period for the project will close on November 23, 2004.

Comments may be submitted by electronic submission, in written form, or verbally. Further details on how to submit comments are provided in the public participation section of this notice. In lieu of sending comments, you are invited to attend the public scoping meetings scheduled as follows:

Dates and Times of Meetings

Wednesday, November 3, 2004: 7 p.m. (EST), Old Courthouse, 1 Market Street, Lewistown, PA 17044, (717) 248-6733.

Thursday, November 4, 2004: 7 p.m. (EST), Hilton Garden Inn, 1101 East College Ave., State College, PA 16801, (814) 231-1590.

Tuesday, November 16, 2004: 7 p.m. (EST), Holiday Inn—Solomons, 155 Holiday Drive, Solomons, MD 20688, (410) 326-1069.

Thursday, November 18, 2004: 7 p.m. (EST), Holiday Inn—Waldorf, U.S. 301 and St. Patrick's Drive, Waldorf, MD 20603, (301) 645-8200.

In addition, on Thursday, November 4 and Wednesday, November 17, 2004 starting at 9 a.m. (EST), we¹ will be conducting a site visit to inspect Dominion's pipeline routes. Anyone interested in participating in the site visit on November 4th (Pennsylvania facilities) should meet at the parking lot of the Hilton Garden Inn, 1101 East College Avenue, State College, Pennsylvania at 9 a.m. We will depart at 9:15 a.m.

Anyone interested in participating in the site visit on November 17th for the TL-532 pipeline loop in Maryland should meet at the parking lot at the Safeway Shopping Center, 80 West Dares Beach Road, Prince Frederick, Maryland at 9 a.m. We will depart at 9:15 a.m.

Participants must provide their own transportation. For additional information, please contact the Commission's Office of External Affairs at (866) 208-FERC (3372).

This notice is being sent to affected landowners; Federal, State, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. We encourage government representatives to notify their constituents of this planned project and encourage them to comment on their areas of concern.

Summary of the Proposed Cove Point LNG Expansion Project

Dominion states that (1) the expansion at the terminal and the additional pipeline projects are key to delivering new gas supplies to where they are needed in the Mid-Atlantic and Northeast; and (2) the project facilities in Maryland would bring more winter supplies to the Mid-Atlantic region, and the project facilities in Pennsylvania would allow supplies to be stored in the summer and moved to the Northeast for use during the winter.

Dominion proposes to expand its existing liquefied natural gas (LNG) terminal by adding two new 160,000 cubic meter LNG storage tanks at its site in Calvert County, Maryland. The terminal expansion would increase the send-out capability by 800 million standard cubic feet per day and increase the storage capacity by about 14.6 billion cubic feet.

¹ "We," "us," and "our" refer to the environmental staff of the Office of Energy Projects.

In addition, Dominion plans to construct five new natural gas pipelines totaling about 161 miles in length to deliver additional capacity to pipeline connections in Virginia and Pennsylvania. These pipelines include:

- About 47 miles of 36-inch-diameter loop² pipeline in Calvert, Prince Georges, and Charles County, Maryland (TL-532);
- About 81 miles of 24-inch-diameter pipeline lateral in Juniata, Mifflin, Huntingdon, Centre, and Clinton Counties, Pennsylvania (PL-1 EXT2).

As part of the new Pennsylvania lateral system, Dominion plans to construct two new compressor stations in Juniata and Centre Counties, Pennsylvania.

Dominion also plans to construct three pipelines in Pennsylvania to support the storage and transportation of natural gas at the Leidy Hub. These would include:

- 11 miles of 24-inch diameter pipeline loop in Greene County;
- 12 miles of 24-inch-diameter pipeline loop in Potter County; and
- 10 miles of 20-inch-diameter pipeline loop in Potter County, Pennsylvania.

The expansion would also include pipeline upgrades, modifications at existing above-ground facilities, and other minor facility modifications, including metering facilities at the existing Leesburg Compressor Station in Loudoun County, Virginia; and pipeline pressure restoration on Dominion's existing pipeline system in Franklin County, Pennsylvania.

The general location of facilities is shown in appendix 1³.

Dominion indicates that the expansion of facilities at its existing Racket Newberne storage facility in Gilmer County, West Virginia would include the addition of new wells, well gathering lines, compression and related piping and equipment necessary to more effectively utilize the already certificated pool capacity. Certain of these modifications may be performed pursuant to DTI's blanket certificate authority, as permitted by 18 Code of Federal Regulations 157 subpart F.

Dominion expects to file a formal application with the Commission in the

first quarter 2005. Pending Commission approval, Dominion would begin the expansion at the Cove Point LNG facility as soon as authorization is received; and would construct the pipeline facilities in the spring of 2008. Dominion plans on placing all of the facilities into service in the fall of 2008.

The EIS Process

The FERC will use the EIS to consider the environmental impact that could result if it issues Cove Point LNG Expansion project authorization under Sections 3 and 7 of the Natural Gas Act.

This notice formally announces our preparation of the EIS and invites your input into the process referred to as "scoping." We are soliciting input from the public and interested agencies to help us focus the analysis on the potentially significant environmental issues related to the proposed actions.

Our independent analysis of the issues for the project will be included in the draft EIS. The draft EIS will be mailed to Federal, State, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; affected landowners; other interested parties; local libraries and newspapers; and the FERC's official service lists for these proceedings. A 45-day comment period will be allotted for review of the draft EIS. We will consider all comments on the draft EIS and revise the documents, as necessary, before issuing final EIS.

Although no formal application has been filed, the FERC staff has already initiated its National Environmental Policy Act (NEPA) review at this time. The purpose of the Pre-filing Process is to encourage the early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC. We previously mailed an information fact sheet, called "Pre-filing Review for the Cove Point LNG Expansion Project" to our preliminary environmental mailing list in late September. You may also view this sheet in FERC's eLibrary system (see the "Availability of Additional Information" to access this and other documents that are filed in this proceeding).

The FERC will be the lead federal agency in the preparation of the EIS. The document will satisfy the FERC's requirements of the NEPA. We are currently involved in discussions with other jurisdictional agencies in Maryland and Pennsylvania to identify their issues and concerns.

With this notice, we are asking Federal, State, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to

formally cooperate with us in the preparation of the EIS. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating status should follow the instructions for filing comments provided under the Public Participation section of this Notice.

The U.S. Army Corps of Engineers (USACE) has already agreed to cooperate in the preparation of the EIS. In order to meet both the FERC's and the USACE's regulatory requirements for fulfilling NEPA, we have prepared this Notice with the cooperation of the USACE staff. This joint notice eliminates the redundancy and costs of duplicate mailings. In addition, staff of the USACE will participate with the FERC staff at the scoping meetings listed above to provide convenience to interested parties and agencies.

Currently Identified Environmental Issues

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project. We have already identified several issues that we think deserve attention based on a preliminary review of the project site and the information provided by Dominion. This preliminary list of issues may be changed based on your comments and our analysis. The following issues will be addressed in the EIS:

- Impacts on waterbodies crossed by the pipelines, particularly St. Leonard's Creek, the Patuxent River, and the West Branch of the Susquehanna River.
- Impacts on tidal and non-tidal wetlands crossed by the pipelines, particularly in Calvert, Prince Georges and Charles Counties, Maryland.
- Impacts on State and/or federally-listed threatened and endangered species, including bald eagle, timber rattlesnake, and Indiana bat.
- Impacts on residential areas located along the pipeline routes, particularly those subdivisions located along TL-532 pipeline loop route and alternatives.
- Impacts on State-managed lands crossed by the pipelines, particularly the Sproul, Rothrock, Bald Eagle, and Tuscarora State Forests in Pennsylvania.
- Visual impacts associated with LNG terminal expansion.
- Impact and potential benefits of construction workforce on local housing, infrastructure, public services, and economy.
- Impacts on local air quality and noise, particularly with the addition of two new compressor stations in Pennsylvania.

² A loop is a segment of pipeline that is adjacent to an existing pipeline and connected to it at both ends. The loop allows more gas to be moved through the system.

³ The appendix referenced in this notice is not being printed in the **Federal Register**. Copies of the appendix were sent to all those receiving this notice in the mail. Requests for detailed maps of the proposed facilities should be made directly to Dominion (see <http://www.dom.com/about/gas-transmission/covepoint/expansion/index.jsp> for contact information).

- Hazards associated with the transport, unloading, storage, and vaporization of LNG.
- Pipeline route alternatives and variations, including the no action alternative.
- Impacts on any Section 4(f) Lands in Pennsylvania.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the proposal. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. To expedite our receipt and consideration of your comments, the Commission strongly encourages electronic submission of any comments on this project. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov> under the "e-Filing" link and the link to the User's Guide. Before you can submit comments you will need to create a free account, which can be created by clicking on "Login to File" and then "New User Account." You will be asked to select the type of submission you are making. This submission is considered a "Comment on Filing."

If you wish to mail comments, please mail your comments so that they will be received in Washington, DC on or before November 23, 2004, and carefully follow these instructions:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of your comments for the attention of Gas Branch 1;
- Reference Docket No. PF04-15-000 (Dominion) on the original and both copies.

The public scoping meetings to be held next month are designed to provide another opportunity to offer comments on the proposed project. Interested groups and individuals are encouraged to attend one of the meetings and to present comments on the environmental issues they believe should be addressed in the EIS. A transcript of the meetings will be generated so that your comments will be accurately recorded.

We will include all comments that we receive within a reasonable time frame in our environmental analysis of the project.

Availability of Additional Information

A docket number (PF04-15-000) has been established to place information filed by Dominion and related

documents issued by the Commission, into the public record. To view information in the docket, follow the instructions for using the eLibrary link (see below). Once a formal application is filed, the Commission will:

- Publish a Notice of Application in the **Federal Register**;
- Establish a new docket number; and
- Set a deadline for interested persons to intervene in the proceeding.

Because the Commission's Pre-Filing Process occurs before an application to begin a proceeding is officially filed, petitions to intervene during this process are premature and will not be accepted by the Commission.

Additional information about the project is available from the Commission's Office of External Affairs, at 1-866-208-FERC or on the FERC Internet Web site (<http://www.ferc.gov>) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached at 1-866-208-3676, TTY (202) 502-8659, or at ferconlinesupport@ferc.gov. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to <http://www.ferc.gov/esubscribenow.htm>.

Finally, public meetings or site visits will be posted on the Commission's calendar located at <http://www.ferc.gov/EventCalendar/EventsList.aspx> along with other related information.

Finally, Dominion has established an Internet Web site for its project at <http://www.dom.com/about/gas-transmission/covepoint/expansion/index.jsp>. The Web site includes a description of the project, maps of the proposed site, and links to related documents.

Magalie R. Salas,
Secretary.

[FR Doc. E4-2761 Filed 10-20-04; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04-420-000]

Trunkline Gas Company, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Edna Horsepower Replacement Project and Request for Comments on Environmental Issues

October 14, 2004.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Edna Horsepower Replacement Project involving abandonment, construction, and operation of facilities by Trunkline Gas Company, LLC (Trunkline) in Jackson County, Texas.¹ These facilities would consist of abandoning a 6,350 horsepower (hp) compressor unit and associated piping and valving and installing a 1,675-hp compressor unit. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice Trunkline provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (<http://www.ferc.gov>).

Summary of the Proposed Project

Trunkline proposes to deactivate and abandon in place an existing 6,350-hp compressor unit and related auxiliary equipment at the Edna Compressor Station in Jackson County, Texas. Trunkline proposes to use parts from this compressor unit to repair, when needed, an existing 6,350-hp compressor at the Kountze Compressor Station. The applicant also proposes to replace the original unit at the Edna Compressor Station by installing a new 1,675-hp natural gas fired engine with a 4-throw single stage compressor package. The compressor would be skid-mounted and would be inside the existing compressor station yard west of the existing compressor unit. It would

¹ Trunkline's application was filed with the Commission under section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

be contained in a weather enclosure consisting of a concrete foundation, a roof, and insulated walls on the north, east, and west sides.

The location of the project facilities is shown in appendix 1.²

Land Requirements for Construction

Construction of the proposed facilities would require about 2.0 acres of land at Trunkline's existing Edna Compressor Station. Following construction, about 0.1 acres would be maintained as aboveground facility sites that are already currently owned by Trunkline. The remaining 1.9 acres of land would be restored to its current state (grass).

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we³ will discuss impacts that could occur as a result of the construction and operation of the proposed project.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state,

and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 1.
- Reference Docket No. CP04-420-000.
- Mail your comments so that they will be received in Washington, DC on or before November 15, 2004.

Please note that the commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov> under the "e-Filing" link and the link to the User's Guide. Prepare your submission in the same manner as you would if filing on paper and save it to a file on your hard drive. Before you can file comments, you will need to create an account by clicking on "login to file" and then "New User Account". You will be asked to select the type of filing you are making. This filing is considered a "comment on filing."

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenor play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor

must send one electronic copy (using the Commission's eFiling system) or 14 paper copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, see appendix 2)⁴. Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities.

Availability of Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1-866-208-FERC or on the FERC Internet Web site (<http://www.ferc.gov>) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached at 1-866-208-3676, TTY (202) 502-8659, or at ferconlinesupport@ferc.gov. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to

² The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than appendix 1 (maps), are available on the Commission's Web site at the "eLibrary" link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502-8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

³ "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

⁴ Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

the documents. Go to <http://www.ferc.gov/esubscribenow.htm>.

Magalie R. Salas,
Secretary.

[FR Doc. E4-2746 Filed 10-20-04; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Declaration of Intention and Soliciting Comments, Protests, and/or Motions To Intervene

October 14, 2004.

Take notice that the following application has been filed with the Commission and is available for public inspection:

- a. *Application Type:* Declaration of intention.
 - b. *Docket No.:* DI04-6-000.
 - c. *Date Filed:* August 30, 2004, with supplementary information filed September 21 and October 7, 2004.
 - d. *Applicant:* Georgia State Parks and Historic Sites, Georgia Department of Natural Resources.
 - e. *Name of Project:* High Falls State Park Demonstration Project.
 - f. *Location:* The proposed High Falls State Park Demonstration project will be located in the High Falls State Park in Monroe County near Jackson, Georgia, on the Towaliga River.
 - g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).
 - h. *Applicant Contact:* David Freedman, 2 Martin Luther King, Jr., Drive SE., Suite 1352 East Tower, Atlanta, Georgia 30334-9000, telephone (404) 656-6531, fax (404) 651-5871, e-mail: DavidF@dnr.state.ga.us.
 - i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton (202) 502-8768, or e-mail address: henry.ecton@ferc.gov.
 - j. *Deadline for Filing Comments and/or Motions:* November 15, 2004.
- All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov>. Please include the docket number (DI04-6-000) on any comments or motions filed.
- k. *Description of Project:* The proposed High Falls State Park Demonstration Project would use an

abandoned hydroelectric facility within the State Park. The proposed project would use water from an 1,890-foot-long raceway, which is connected to a dam located on the Towaliga River. A pipe from the outlet of the raceway to the old mill would power a 7.2 kW generator. The generated power would be used to run an exhibit at the State Park. The project would not be connected to the interstate grid.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

1. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Web at <http://www.ferc.gov> using the "eLibrary" link, select "Docket#" and follow the instructions. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "PROTESTS", and/or

"MOTIONS TO INTERVENE", as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,
Secretary.

[FR Doc. E4-2750 Filed 10-20-04; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

October 15, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. *Type of Application:* Preliminary permit.
- b. *Project No.:* 12497-000.
- c. *Date Filed:* May 14, 2004.
- d. *Applicant:* Red Circle Systems Corporation.
- e. *Name of Project:* Sea Gen Miami Project.
- f. *Location:* On Gulf Stream in the Atlantic Ocean, near Dade County, Florida. No federal land or facilities would be used.
- g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).
- h. *Applicant Contact:* Mr. Paul H. Wells, Red Circle Systems Corp., 2430 NE. 199 Street, North Miami Beach, FL 33180, (305) 936-1515.
- i. *FERC Contact:* Robert Bell, (202) 502-6062.
- j. *Deadline for Filing Comments, Protests, and Motions to Intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the

Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) A generation farm containing 20 to 40 submerged SeaGen twin rotor machine generating units having a total installed capacity of 20 to 40 megawatts, (2) a proposed 25 to 30-mile-long, 33 kilovolt transmission line; and (3) appurtenant facilities.

The project would have an annual generation of 168 to 336 gigawatt-hours that would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For online assistance, call toll-free 1-866-208-3676 or e-mail FERCOnlineSupport@ferc.gov. For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person

to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's

regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E4-2752 Filed 10-20-04; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

October 15, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12498-000.

c. *Date Filed:* May 14, 2004.

d. *Applicant:* Red Circle Systems Corporation.

e. *Name of Project:* Sea Gen Ft. Lauderdale Project.

f. *Location:* On Gulf Stream in the Atlantic Ocean, near Broward County, Florida. No federal land or facilities would be used.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Paul H. Wells, Red Circle Systems Corp., 2430 NE. 199 Street, North Miami Beach, FL 33180, (305) 936-1515.

i. *FERC Contact:* Robert Bell, (202) 502-6062.

j. *Deadline for Filing Comments, Protests, and Motions to Intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the

Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) A generation farm containing 20 to 40 submerged SeaGen twin rotor machine generating units having a total installed capacity of 20 to 40 megawatts, (2) a proposed 25 to 30-mile-long, 33 kilovolt transmission line, and (3) appurtenant facilities.

The project would have an annual generation of 168 to 336 gigawatt-hours that would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail FERCOnlineSupport@ferc.gov. For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person

to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's

regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E4-2753 Filed 10-20-04; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

October 15, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12499-000.

c. *Date Filed:* May 14, 2004.

d. *Applicant:* Red Circle Systems Corporation.

e. *Name of Project:* Sea Gen St Lucie Project.

f. *Location:* On Gulf Stream in the Atlantic Ocean, near St Lucie County, Florida. No federal land or facilities would be used.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Paul H. Wells, Red Circle Systems Corp., 2430 NE 199 Street, North Miami Beach, FL 33180, (305) 936-1515.

i. *FERC Contact:* Robert Bell, (202) 502-6062.

j. *Deadline for Filing Comments, Protests, and Motions To Intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the

Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) A generation farm containing 20 to 40 submerged SeaGen twin rotor machine generating units having a total installed capacity of 20 to 40 megawatts, (2) a proposed 25 to 30-mile-long, 33 kilovolt transmission line, and (3) appurtenant facilities.

The project would have an annual generation of 168 to 336 gigawatt-hours that would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail FERCOnlineSupport@ferc.gov. For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person

to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's

regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E4-2754 Filed 10-20-04; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

October 15, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12500-000.

c. *Date Filed:* May 14, 2004.

d. *Applicant:* Red Circle Systems Corporation.

e. *Name of Project:* Sea Gen West Palm Beach Project.

f. *Location:* On Gulf Stream in the Atlantic Ocean, near Palm Beach County, Florida. No federal land or facilities would be used.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Paul H. Wells, Red Circle Systems Corp., 2430 NE 199 Street, North Miami Beach, FL 33180, (305) 936-1515.

i. *FERC Contact:* Robert Bell, (202) 502-6062.

j. *Deadline for Filing Comments, Protests, and Motions To Intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the

Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) A generation farm containing 20 to 40 submerged SeaGen twin rotor machine generating units having a total installed capacity of 20 to 40 megawatts, (2) a proposed 25 to 30-mile-long, 33 kilovolt transmission line, and (3) appurtenant facilities.

The project would have an annual generation of 168 to 336 gigawatt-hours that would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail FERCOnlineSupport@ferc.gov. For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person

to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's web site under "e-filing" link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's

regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E4-2755 Filed 10-20-04; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

October 15, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12502-000.

c. *Date Filed:* May 18, 2004.

d. *Applicant:* Red Circle Systems Corporation.

e. *Name of Project:* Sea Gen St. Sebastien Project.

f. *Location:* On Gulf Stream in the Atlantic Ocean, near Indian River County, Florida. No federal land or facilities would be used.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Paul H. Wells, Red Circle Systems Corp., 2430 NE. 199 Street, North Miami Beach, FL 33180, (305) 936-1515.

i. *FERC Contact:* Robert Bell, (202) 502-6062.

j. *Deadline for Filing Comments, Protests, and Motions to Intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the

Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) A generation farm containing 20 to 40 submerged SeaGen twin rotor machine generating units having a total installed capacity of 20 to 40 megawatts, (2) a proposed 25 to 30-mile-long, 33 kilovolt transmission line, and (3) appurtenant facilities.

The project would have an annual generation of 168 to 336 gigawatt-hours that would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail FERCOnlineSupport@ferc.gov. For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person

to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's

regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E4-2756 Filed 10-20-04; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

October 15, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12503-000.

c. *Date Filed:* May 18, 2004.

d. *Applicant:* Red Circle Systems Corporation.

e. *Name of Project:* Sea Gen Key Largo Project.

f. *Location:* On Gulf Stream in the Atlantic Ocean, near Monroe County, Florida. No federal land or facilities would be used.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Paul H. Wells, Red Circle Systems Corp., 2430 NE. 199 Street, North Miami Beach, FL 33180, (305) 936-1515.

i. *FERC Contact:* Robert Bell, (202) 502-6062.

j. *Deadline for Filing Comments, Protests, and Motions to Intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the

Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) A generation farm containing 20 to 40 submerged SeaGen twin rotor machine generating units having a total installed capacity of 20 to 40 megawatts, (2) a proposed 25 to 30-mile-long, 33 kilovolt transmission line, and (3) appurtenant facilities.

The project would have an annual generation of 168 to 336 gigawatt-hours that would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail FERCOnlineSupport@ferc.gov. For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person

to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

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s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's

regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E4-2757 Filed 10-20-04; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

October 15, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12504-000.

c. *Date Filed:* May 18, 2004.

d. *Applicant:* Red Circle Systems Corporation.

e. *Name of Project:* Sea Gen Tavernier Project.

f. *Location:* On Gulf Stream in the Atlantic Ocean, near Monroe County, Florida. No federal land or facilities would be used.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Paul H. Wells, Red Circle Systems Corp., 2430 NE 199 Street, North Miami Beach, FL 33180, (305) 936-1515.

i. *FERC Contact:* Robert Bell, (202) 502-6062.

j. *Deadline for Filing Comments, Protests, and Motions to Intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the

Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) A generation farm containing 20 to 40 submerged SeaGen twin rotor machine generating units having a total installed capacity of 20 to 40 megawatts, (2) a proposed 25 to 30-mile-long, 33 kilovolt transmission line, and (3) appurtenant facilities.

The project would have an annual generation of 168 to 336 gigawatt-hours that would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail FERCOnlineSupport@ferc.gov. For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person

to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's

regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E4-2758 Filed 10-20-04; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[P-2603-012]

Duke Power; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

October 14, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent minor license.

b. *Project No.:* 2603-012.

c. *Date Filed:* July 22, 2003.

d. *Applicant:* Duke Power.

e. *Name of Project:* Franklin Hydroelectric Project.

f. *Location:* The Franklin Project is located on the Little Tennessee River in Macon County, North Carolina. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* John C. Wishon, Nantahala Area Relicensing Project Manager, Duke Power, 301 NP&L Loop, Franklin, NC 28734, (828) 369-4604, jcwishon@duke-energy.com.

i. *FERC Contact:* Carolyn Holsopple at (202) 502-6407 or carolyn.holsopple@ferc.gov.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions is 60 days from the issuance of this notice; reply comments are due 105 days from the issuance date of this notice.*

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov>) under the "e-filing" link.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. The existing Franklin Hydroelectric Project operates in a run-of-river mode, within a 6-inch tolerance band. Project operation is dependent on available flow in the Little Tennessee River. The Franklin Project consists of the following features: (1) A 462.5-foot-long, 35.5-foot-high concrete masonry dam, consisting of, from left to right facing downstream, (a) a 15-foot-long non-overflow section, (b) a 54-foot-long ungated Ogee spillway, (c) a 181.5-foot-long gated spillway section, having six gated, ogee spillway bays, (d) a 54-foot-long ungated Ogee spillway, (e) a 25-foot-long non-overflow section, and (f) a 70-foot-long non-overflow section; (2) a 4.6-mile-long, 174-acre impoundment at elevation 2000.22 msl; (3) three intake bays, each consisting of a flume and grated trashracks having a clear bar spacing of 3 inches; (4) a powerhouse having a reinforced concrete substructure and a brick superstructure, containing two turbine/generating units, having a total installed capacity of 1.040 kW; (5) a switchyard, with a single three-phase transformer; and (6) appurtenant facilities.

Duke Power estimates that the average annual generation is 5,313.065 kWh. Duke Power uses the Franklin Project facilities to generate electricity for use by retail customers living in the Duke Power-Nantahala Area.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the

"eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at 1-866-208-3676, or for TTY, (202) 502-8659. A copy is also available for inspection and reproduction at the address in item (h) above.

You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Magalie R. Salas,
Secretary.

[FR Doc. E4-2759 Filed 10-20-04; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[P-2619-012]

Duke Power; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

October 14, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New major license.

b. *Project No.:* 2619-012.

c. *Date Filed:* July 22, 2003.

d. *Applicant:* Duke Power.

e. *Name of Project:* Mission Hydroelectric Project.

f. *Location:* The Mission Project is located on the Hiwassee River in Clay County, North Carolina. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* John C. Wishon, Nantahala Area Relicensing Project Manager, Duke Power, 301 NP&L Loop, Franklin, NC 28734, (828) 369-4604, jcwishon@duke-energy.com.

i. *FERC Contact:* Carolyn Holsopple at (202) 502-6407 or carolyn.holsopple@ferc.gov.

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions is 60 days from the issuance of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov>) under the "e-filing" link.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. The existing Mission Hydroelectric Project operates in a run-of-river mode, within a 6-inch tolerance band. Project operation is dependent on available flow in the Hiwassee River, which is regulated by TVA's Chatuge dam located approximately 15 miles upstream. The Mission Project consists of the following features: (1) A 397-foot-long, 50-foot-high concrete gravity dam, consisting of, from left to right facing downstream, (a) three bulkhead sections, (b) seven ogee spillway sections, surmounted by 14-foot-high by 16-foot-wide gates, (c) four bulkhead sections, (d) a powerhouse intake structure, and (e) four bulkhead sections; (2) a 47-acre impoundment at elevation 1658.17 msl; (3) three intake bays, each consisting of an 8-foot-diameter steel-cased penstock and a grated trashrack having a clear bar spacing of between 2.25 to 2.5 inches; (4) a powerhouse consisting of a reinforced concrete substructure and a brick superstructure, containing three turbine/generating units, having a total installed capacity of 1,800 kW; (5) a switchyard, with a single three-phase transformer; and (6) appurtenant facilities.

Duke Power estimates that the average annual generation is 8,134,370 kWh. Duke Power uses the Mission Project facilities to generate electricity for use by retail customers living in the Duke Power-Nantahala Area.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at 1-866-208-3676, or for TTY, (202) 502-8659. A copy is also available for inspection and reproduction at the address in item (h) above.

You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application

must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Magalie R. Salas,

Secretary.

[FR Doc. E4-2760 Filed 10-20-04; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PL04-17-000 and AD04-11-000]

State of the Natural Gas Industry Conference; Staff Report on Natural Gas Storage; Notice of Public Conference and Agenda

October 13, 2004.

As announced in the Notice of Conference issued September 30, 2004, the Federal Energy Regulatory Commission will convene a public conference on October 21, 2004, at 9 a.m., at the Commission's Offices in Washington, DC to engage industry members and the public in a dialogue about policy issues facing the natural gas industry today and the Commission's regulation of the industry for the future, as stated in the previous notice. All interested persons are invited to attend.

Location

The conference will be held in the Commission Meeting Room (Room 2-C). Observers will be accommodated on a space available basis, but seating will also be available in an overflow room, which will have a broadcast of the discussion. All visitors must check-in at the First Street entrance. All visitors should have picture identification readily available to ensure a quick check-in.

Participation

The conference will consist of keynote opening remarks, three panel sessions and an open forum. Each panelist will give a short oral presentation lasting no more than ten minutes on their views of the panel topic and then the Commission Staff and the panelist will exchange views and questions, followed by comments or questions from the audience. If panelists are going to refer to any detailed charts or figures, they should bring 25 copies for Commission Staff and 100 copies for the audience.

The first panel session will be for comments on findings and ideas presented in the FERC Staff Report, "Current State of and Issues Concerning Underground Natural Gas Storage" and also focus on how the decisions to develop natural gas pipeline or storage projects have been impacted by existing Commission policies. The second session will consider whether a program for creating more uncommitted reserve storage and pipeline capacity could be feasible and useful for the gas industry and customers. The third session will explore the changing roles of industry segments and how that affects commodity price volatility.

Following the panel session presentations, the Commission will provide an open forum for interested persons to raise issues and make policy recommendations for Commission consideration not discussed by the panels. All open forum statements should be limited to five minutes. A sign-up sheet for the open forum will be available the morning of the conference.

Procedures To File Written Comments

Pre-Conference Background Information

If the panel participants shown in the Conference Agenda below want to submit background information, position statements or power point presentations concerning their topics, they are encouraged to file such items with the Commission by October 18, 2004 using the procedures below. However, live power point presentations are not going to be

included during the panel discussions. Any such items filed in advance of the Conference will then be available on the Commission's e-Library.

Post-Conference Comments

After the conference, panel participants and all other interested persons may file additional comments on the issues discussed at the conference, or other matters relevant to this proceeding, by November 15, 2004. Comments should include a one-page, single spaced, position summary.

Paper or Electronic Comments

Comments may be filed in paper format or electronically. Those filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, and should refer to Docket Nos. PL04-17-000 and AD04-11-000.

Documents filed electronically via the Internet can be prepared in a variety of formats, including MS Word, Portable Document Format, Real Text Format, or ASCII format, as listed on the Commission's at <http://www.ferc.gov>, under the e-Filing link. The e-Filing link provides instructions for how to Login and complete an electronic filing. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington, DC 20426, during regular business hours. In addition, all comments may be viewed, printed, or downloaded remotely via the Internet through FERC's home page using the eLibrary link.

Off-the-Record Communications

The purpose of this conference is to discuss generic issues and not contested cases pending before the Commission. If any comments raise specific issues concerning pending contested cases, those comments will be subject to the Commission's Off-the-Record Communications rules located in subpart V of part 385 of the Commission's regulations, including the public notice requirements and sanctions listed in sections 385.2201(h) and (i).

Transcripts

Transcripts of the conference will be available from Ace Reporting Company (202-347-3700) for a fee. The transcript also will be available on the Commission's FERRIS system two weeks after the conference. Additionally, Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live or over the Internet, via C-Band Satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at Capitol Connection (703-993-3100) as soon as possible or visit the Capitol Connection Web site at <http://www.capitolconnection.gmu.edu> and click on "FERC."

Additional Information

For additional information, please contact Richard Foley at 202 502-8955 or by e-mail at Richard.Foley@ferc.gov.

Magalie R. Salas,
Secretary.

State of the Natural Gas Industry Conference; Agenda (as of October 13, 2004)

- 9 a.m. Opening Remarks—Berne Mosley, Director, Division of Pipeline Certificates, Office of Energy Projects.
- 9:10 a.m. Keynote Remarks—Commissioner Donald L. Mason, Public Utilities Commission of Ohio; Chairman of the Gas Committee, National Association of Regulatory Utility Commissioners; Committee(s) Chairman of the Interstate Oil and Gas Compact Commission.
- 9:25 a.m. Session I—Comments on Staff Report and Storage Development Policy. Moderator—Berne Mosley.
Richard Daniel, President, EnCana Gas Storage.
Matt Morrow, President, ENSTOR.
Ryan O'Neal, Vice President—Development, Semptra Energy International.
James F. Bowe, Jr., Dewey Ballantine LLP & Red Lake Gas Storage, L.P.
Mark D. Cook, Principal, SGR Holdings, LLC.
Donald J. Zinko, Vice President, Business Development Western Pipelines and EPNG Marketing, El Paso Corp.
Carl Levander, Vice President, Marketing and Regulatory Strategy Columbia Gas Transmission Corporation.
- 11:25 a.m. Break.
- 11:45 a.m. Session II—Concept of a Program for Creating More Uncommitted Reserve Storage and Pipeline Capacity. Moderator—Berne Mosley.
James F. Wilson, Principal, LECG, LLC.
John M. Hopper, President and CEO, Falcon Gas Storage Company.
Jay Dickerson, Vice President, Tennessee Gas Pipeline.
Timothy J. Oaks, Manager Federal Regulatory Affairs, UGI Utilities, Inc.
Craig Chancellor, Director, National Fuels Regulatory, Calpine Corp.

- 12:45 p.m. Session III—Changing Roles of Industry Segments and How That Affects Commodity Price Volatility. Moderator—Berne Mosley.
Scott R. Smith, Sr. Vice President & Partner, Lukens Energy Group.
Mr. Greg Rizzo, Group Vice President, Duke Energy Gas Transmission.
Thomas L. Price, Vice President Marketing, Colorado Interstate Gas.
Representative of NiSource Distribution Companies.
- 1:45 p.m. Open Forum—Moderator—Berne Mosley.
- 2:30 p.m. Closing Remarks—Berne Mosley.
- [FR Doc. E4-2743 Filed 10-20-04; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7829-6]

Subject to Availability of Funding Solicitation Notice; Environmental Information Exchange Network Grant Program; Fiscal Year 2005

SUMMARY: The United States Environmental Protection Agency (EPA) is now soliciting applications for the FY 2005 Environmental Information Exchange Network Grant Program. The Exchange Network is a nationwide information systems network that facilitates the electronic reporting and exchange of environmental data among EPA and its state, tribal, and territorial partners. The Exchange Network will make it easier for EPA and its partners to obtain the timely and accurate information they need when making decisions concerning the natural environment and related human health issues.

Subject to the availability of funding, the FY 2005 Exchange Network Grant Program will provide funding to states, territories, tribes, and tribal consortia to develop the information management and technology (IM/IT) capabilities they need to participate in the Exchange Network. This financial assistance program supports the development of Exchange Network infrastructure; common data standards and formats; and various data flows, including exchanges of geospatial data.

The FY 2005 Exchange Network Grant Program will provide the following categories of assistance:

- Readiness Category—supports the development of IM/IT capabilities needed to participate in the Exchange Network; provides up to \$75,000 per tribal entity and up to \$150,000 per state/territorial entity;
- Implementation Category—supports the development of Exchange Network data flows, data standards, eXtensible

Markup Language (XML) schema, and Web services; provides up to \$150,000 per tribal entity and up to \$300,000 per state/territorial entity; and

- Challenge Category—supports the planning and development of collaborative, innovative projects that demonstrate the value of the Exchange Network; provides up to \$300,000 per tribal entity and up to \$750,000 per state/territorial entity.

Applications must be submitted to EPA by January 15, 2005. Provided funding is available, EPA expects to notify applicants of its funding recommendations in May 2005 and issue the awards in August/September 2005.

DATES: Applications must be submitted to EPA in hard copy by January 15, 2005.

FOR FURTHER INFORMATION CONTACT: For a copy of the full solicitation notice and application instructions, see the Exchange Network Grant Program Web site at <http://www.epa.gov/Networkg>. (This Web site address is case sensitive.) For further information about the grant program, please contact Rebecca Moser, Exchange Network Grant Program Manager, Office of Information Collection, Office of Environmental Information, U.S. EPA, 1200 Pennsylvania Ave., NW., Mail Code 2823-T, Washington, DC 20460; phone, (202) 566-1679; e-mail, moser.rebecca@epa.gov.

Dated: October 15, 2004.

Mark A. Luttner,

Director, Office of Information Collection, Office of Environmental Information, U.S. Environmental Protection Agency.

[FR Doc. 04-23582 Filed 10-20-04; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7829-3]

Science Advisory Board Staff Office; Notification of an Upcoming Meeting of the Advisory Council on Clean Air Compliance Analysis

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public teleconference of the Advisory Council on Clean Air Compliance Analysis (Council) to finalize a draft advisory letter prepared by its Health Effects Subcommittee (HES) on the cessation lag issue, *i.e.*, the time lag

between reductions in air pollution and reductions in human health effects.

DATES: The public teleconference of the Council will be held on November 1, 2004, from 1 p.m. to 2 p.m. (eastern time).

FOR FURTHER INFORMATION CONTACT:

Members of the public who wish to obtain the call-in number and access code or who wish to obtain further information regarding the Council and its subcommittees may contact Dr. Holly Stallworth, Designated Federal Officer, at telephone/voice mail: (202) 343-9867 or via e-mail at:

stallworth.holly@epa.gov. General information about the SAB may be found on the SAB Web site at: <http://www.epa.gov/sab>.

SUPPLEMENTARY INFORMATION:

Background: The Council and its subcommittees provide EPA's Office of Air and Radiation (OAR) with advice on the data, methods and analyses conducted by OAR for implementing its programs under the Clean Air Act. Additional background on the Council and its advice was provided in 68 FR 7531-7534.

In its March 2004 Advisory report, posted at http://www.epa.gov/sab/pdf/council_adv_04002.pdf, the Council HES provided advice on the health science aspects of EPA's analytic blueprint for its second prospective analysis. EPA's OAR and Office of Policy, Economics and Innovation recently requested that the Council clarify its particular advice in this March 2004 report pertaining to cessation lags, *i.e.*, the time delay between reductions in air pollution and reductions in adverse health effects. On September 21, 2004, the HES addressed the Agency's questions in a public teleconference, noticed in 69 FR 54783-54784. The agenda and background documents related to the September 21, 2004, teleconference on the cessation lag issue are posted at: http://www.epa.gov/sab/pdf/council_hes_background_info_092104.pdf. Subsequent to this teleconference, the HES drafted an advisory letter summarizing its conclusions. The chartered Council will finalize this draft advisory letter on the November 1, 2004, teleconference.

Availability of Meeting Materials: The HES draft advisory letter and a meeting agenda will be posted on the SAB Web site at: <http://www.epa.gov/sab> prior to the teleconference.

Procedures for Providing Public Comments: It is the policy of the EPA SAB to accept written public comments of any length, and to accommodate oral public comments whenever possible.

The SAB Staff Office expects that public statements presented at the Council meeting will not be repetitive of previously submitted oral or written statements. Oral Comments: In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). Interested parties should contact the DFO in writing (e-mail, fax or mail—see contact information above) by close of business October 25, 2004, in order to be placed on the public speaker list for the meeting. Written Comments: Although the SAB Staff Office accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least seven business days prior to the meeting date so that the comments may be made available to the panel for their consideration. Comments should be supplied to the DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files in IBM-PC/Windows 98/2000/XP format).

Dated: October 15, 2004.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 04-23583 Filed 10-20-04; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[E-DOCKET ID No. ORD-2004-0003; FRL-7829-7]

Draft Proposed Sampling Program To Determine Extent of World Trade Center Impacts to the Indoor Environment

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of external review draft and public comment period.

SUMMARY: This notice announces the availability of the External Review Draft entitled, Draft Proposed Sampling Program to Determine Extent of World Trade Center Impacts to the Indoor Environment (EPA/600/R-04/169A), and a 30-day public comment period. The document was prepared by the U.S. Environmental Protection Agency's Office of Research and Development and EPA's Region 2 office in New York City. EPA will consider the public

comment submissions in revising the document.

DATES: The 30-day public comment period begins October 21, 2004, and ends November 19, 2004. Technical comments should be in writing and must be postmarked by November 19, 2004.

ADDRESSES: The External Review Draft, Draft Proposed Sampling Program to Determine Extent of World Trade Center Impacts to the Indoor Environment, is available via the Internet on the Web page of the World Trade Center (WTC) Expert Technical Review Panel, <http://www.epa.gov/wtc/panel/>. Comments may be submitted electronically, by mail, by facsimile or by hand delivery/courier. Please follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For further information on the draft sampling proposal, please contact Matthew Lorber at (202) 564-3243 or lorber.matthew@epa.gov. For further information regarding the WTC Expert Technical Review Panel, please contact Lisa Matthews at (202) 564-6669 or matthews.lisa@epa.gov.

SUPPLEMENTARY INFORMATION:

1. Background Information

Immediately following the September 11, 2001, terrorist attack on New York City's World Trade Center, many Federal agencies, including the EPA, were called upon to focus their technical and scientific expertise on the national emergency. EPA, other Federal agencies, New York City and New York State public health and environmental authorities focused on numerous cleanup, dust collection and ambient air monitoring activities to ameliorate and better understand the human health impacts of the disaster. Detailed information concerning the environmental monitoring activities that were conducted as part of this response is available at the EPA Response to 9-11 Web site at <http://www.epa.gov/wtc/>.

In addition to environmental monitoring, EPA efforts also included toxicity testing of the dust on laboratory mice, as well as the development of a human exposure and health risk assessment. This risk assessment document, Exposure and Human Health Evaluation of Airborne Pollution from the World Trade Center Disaster (<http://www.epa.gov/ncea/wtc.htm>), has been subjected to public comment and expert peer review and is currently undergoing revisions prior to finalization. Numerous additional studies by other

Federal and State agencies, universities and other organizations have documented impacts to both the outdoor and indoor environments and to human health.

While these monitoring and assessment activities were ongoing and the cleanup at Ground Zero itself was occurring, EPA began planning for a program to clean and monitor residential apartments. From June until December 2002, residents impacted by WTC dust and debris in an area of about 1 mile by 1 mile south of Canal Street were eligible to request federally funded cleaning and monitoring for airborne asbestos or only monitoring of their residences. The cleanup continued into the summer of 2003, by which time EPA had cleaned and monitored 3,400 apartments and monitored an additional 800 apartments. Detailed information on this portion of the EPA response is also available at <http://www.epa.gov/wtc/>.

A critical component of understanding long-term human health impacts is the establishment of health registries. The WTC Health Registry is a comprehensive and confidential health survey of those most directly exposed to the contamination resulting from the collapse of the WTC towers. It is intended to give health professionals a better picture of the health consequences of 9/11. It was established by the Agency for Toxic Substances and Disease Registry (ATSDR) and the New York City Department of Health and Mental Hygiene (NYCDHMH), in cooperation with a number of academic institutions, public agencies and community groups. Detailed information about the registry can be obtained from the registry Web site at: <http://www.nyc.gov/html/doh/html/wtc/index.html>.

In order to obtain individual advice on the effectiveness of these programs, unmet needs and data gaps, EPA has convened a technical panel of experts who have been involved with WTC assessment activities. Dr. Paul Gilman, EPA Science Advisor, serves as Chair of the panel, and Dr. Paul Liroy, Professor of Environmental and Community Medicine at the Environmental and Occupational Health Sciences Institute of the Robert Wood Johnson Medical School—UMDNJ and Rutgers University, serves as Vice Chair. A full list of the panel members and a charge statement and operating principles for the panel are available from the panel Web site listed above. Panel members will provide individual advice on issues the panel addresses. Panel meetings will occur in New York City and nearby locations. All of the meetings will be announced on the Web site and by a

Federal Register notice, and they will be open to the public for attendance and also to provide brief oral comment.

The WTC Expert Panel has met seven times as of the date of this notice. Mostly, panel members have addressed the development of a design for a sampling program to determine the geographic extent of WTC impacts to the indoor environment. For the last two meetings, there have also been presentations and discussions on studies, either underway or completed, which have addressed human health impacts resulting from the collapse of the WTC towers.

Changes will be made to the Draft Proposed Sampling Program to Determine Extent of World Trade Center Impacts to the Indoor Environment based on comments received as a result of this notice. A final sampling program document will then be posted on the WTC Expert Panel's Web site.

2. How to Submit Information to E-Docket

EPA has established an official public docket for information pertaining to this action, Docket ID No. ORD-2004-0003. The official public docket is the collection of materials, excluding Confidential Business Information (CBI) or other information whose disclosure is restricted by statute, that is available for public viewing at the Office of Environmental Information (OEI) Docket in the Headquarters EPA Docket Center (EPA/DC), EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752; facsimile: (202) 566-1753; or e-mail: ORD.Docket@epa.gov.

An electronic version of the official 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, to access the index listing of the contents of the official public docket, and to view those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in EPA Dockets. As indicated above, information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket; the same

information will not be available for public viewing in EPA Dockets. Copyrighted material also will not be placed in EPA Dockets but will be referenced there and available as printed material in the official public docket.

Persons submitting information should note that EPA's policy makes the information available as received and at no charge for public viewing in EPA Dockets. This policy applies to information submitted electronically or in paper, except where restricted by copyright, CBI or statute.

Unless restricted as above, information submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA Dockets. Physical objects will be photographed, where practical, and the photograph will be placed in EPA Dockets along with a brief description written by the docket staff.

You may submit information electronically, by mail, by facsimile or by hand delivery/courier. To ensure proper receipt by EPA, include the appropriate docket identification number with your submission. Please adhere to the specified submitting period. Information received or submitted past the close date will be marked "late" and will only be considered if time permits.

If you submit information electronically, EPA recommends that you include your name, mailing address, and an e-mail address or other details for contacting you. Also include these contact details 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 person submitting the information and allows EPA to contact you in case the Agency cannot read what you submit due to technical difficulties or needs to clarify issues raised by what you submit. If EPA cannot read what you submit due to technical difficulties and cannot contact you for clarification, this situation may delay or prevent the Agency's consideration of the information.

To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. ORD-2004-0003. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address or other contact details unless you provide it with the information you submit.

Information may be sent by electronic mail (e-mail) to ORD.Docket@epa.gov, Attention Docket ID No. ORD-2004-

0003. 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 directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address, and it becomes part of the information in the official public docket and is made available in EPA's electronic public docket.

You may submit information on a disk or CD ROM that you mail to the OEI Docket mailing address. Files will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

If you provide information in writing, please submit one unbound original, with pages numbered consecutively, and three copies. For attachments, provide an index, number pages consecutively with the main text, and submit an unbound original and three copies.

Dated: October 18, 2004.

Paul Gilman,

EPA Science Advisor and Assistant Administrator for Research and Development.
[FR Doc. 04-23581 Filed 10-20-04; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 4, 2004.

A. Federal Reserve Bank of Atlanta
(Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. *Kenneth Edwin Arnold*, Gainesville, Florida; *Nancy Carol Etheridge*; *Victoria Rene Arnold*; *Betty Whitehurst Arnold*; *Vivian Elliot Whitehurst III*; *Gerald*

Frank Etheridge; *Margaret Whitehurst Hubbard*; *V. E. Whitehurst, Jr.* Irrevocable Family Trust *FBO Betty W. Arnold, Betty W. Arnold, Trustee*; *V. E. Whitehurst, Jr.* Irrevocable Family Trust *FBO Margaret W. Hubbard, Margaret W. Hubbard, Trustee*; *V. E. Whitehurst, Jr.* Irrevocable Family Trust *FBO Nancy W. Etheridge, Nancy W. Etheridge; Trustee, V. E. Whitehurst, Jr.* Irrevocable Family Trust *FBO V. E. Whitehurst, III, V. E. Whitehurst III, Trustee; Florelle H. Whitehurst Irrevocable Family Trust*; *V. E. Whitehurst, III*; *Betty W. Arnold*; *Nancy W. Etheridge*; and *Margaret W. Hubbard, Trustees*; *Betty W. and William E. Arnold Irrevocable Trust*; *Kenneth E. Arnold and Victoria R. Arnold; Trustees*; all of *Williston, Florida*, to collectively retain voting shares of *Williston Holding Company*, and thereby indirectly retain voting shares of *Perkins State Bank*, both of *Williston, Florida*.

B. Federal Reserve Bank of St. Louis
(Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. *Russell Badgett, Jr. Irrevocable Trust, with Bentley F. Badgett, Jr. as trustee*, both of *Madisonville, Kentucky*; to acquire voting shares of *Hancock Bancorp, Inc., Hawesville, Kentucky*, and thereby indirectly retain voting shares of *Hancock Bank & Trust Company, Hawesville, Kentucky*.

In connection with this application, the *Badgett Control Group*, which consists of *Russell Badgett, Jr., Madisonville, Kentucky*; *Russell Badgett, Jr. Irrevocable Trust, Madisonville, Kentucky*; *Bentley F. Badgett, individually and as trustee, Madisonville, Kentucky*; *Dr. C. B. Badgett, Lewisport, Kentucky*; *Russell Badgett III, Owensboro, Kentucky*; *Joseph Rockney Badgett, Madisonville, Kentucky*; *Nita Anne Smaldone, Nashville, Tennessee*; and *Claudia Badgett Riner, Louisville, Kentucky*, also have applied to retain voting shares of *Hancock Bancorp, Inc., Hawesville, Kentucky*, and thereby indirectly retain voting shares of *Hancock Bank & Trust Company, Hawesville, Kentucky*.

Board of Governors of the Federal Reserve System, October 15, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04-23556 Filed 10-20-04; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL RESERVE SYSTEM**Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies**

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 5, 2004.

A. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Rebecca Ann Ritchey*, Wichita, Kansas; Gregory and Anne Ritchey, Shenandoah, Iowa; and Michael Bauer, Shenandoah, Iowa; to acquire voting shares of CNB Corp., Shenandoah, Iowa, and thereby indirectly voting shares of City National Bank of Shenandoah, Shenandoah, Iowa.

Board of Governors of the Federal Reserve System, October 18, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04-23607 Filed 10-20-04; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL RESERVE SYSTEM**Formations of, Acquisitions by, and Mergers of Bank Holding Companies**

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank

indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 15, 2004.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. *The Toronto-Dominion Bank*, Toronto, Ontario; to acquire at least 51 percent of the voting shares of Banknorth Group, Inc., Portland, Maine, and thereby indirectly acquire voting shares of Banknorth, National Association, Portland, Maine.

B. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. *Citizens Bancshares, Co.*, Chillicothe, Missouri; to acquire 12 percent of the voting shares of First Community Bancshares, Inc., Overland Park, Kansas, and thereby indirectly acquire voting shares of First Community Bank, Lee's Summit, Missouri.

C. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. *Franklin Resources, Inc.*, San Mateo, California; to acquire 14 percent of Centennial Bank Holdings, Inc., Fort Collins, Colorado, and thereby indirectly acquire voting shares of Centennial Bank of the West, Fort Collins, Colorado; Guaranty Corporation, Denver, Colorado; Guaranty Bank & Trust Company, Denver, Colorado; The First National Bank of Strasburg, Strasburg, Colorado; and Collegiate Peaks Bank, Buena Vista, Colorado.

Board of Governors of the Federal Reserve System, October 15, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04-23555 Filed 10-20-04; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL RESERVE SYSTEM**Formations of, Acquisitions by, and Mergers of Bank Holding Companies**

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 15, 2004.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. *Abington Mutual Holding Company, and Abington Community Bancorp, Inc.*, both of Jenkintown, Pennsylvania; to become bank holding companies by acquiring 100 percent of the voting shares of Abington Savings Bank, Jenkintown, Pennsylvania.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411

Locust Street, St. Louis, Missouri 63166-2034:

2. *FCB Financial Services, Inc.*, Marion, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of First Community Bank of Eastern Arkansas, Marion, Arkansas.

Board of Governors of the Federal Reserve System, October 18, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04-23606 Filed 10-20-04; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL TRADE COMMISSION

Public Workshop: Peer-to-Peer File-Sharing Technology: Consumer Protection and Competition Issues

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Notice announcing public workshop and requesting public comment and participation.

SUMMARY: The FTC is planning to host a public workshop, "Peer-to-Peer File-Sharing Technology: Consumer Protection and Competition Issues," to explore consumer protection and competition issues associated with the distribution and use of peer-to-peer file-sharing technology.

DATES: The workshop will be held on December 15 and 16, 2004, at the Federal Trade Commission's Satellite Building located at 601 New Jersey Avenue, NW., Washington, DC. The event is open to the public and there is no fee for attendance. Pre-registration is not required. Additional information about the workshop will be posted on the FTC's Web site at <http://www.ftc.gov/bcp/workshops/filesharing/index.htm>.

Requests to Participate as a Panelist: As discussed below, written requests to participate as a panelist in the workshop must be received on or before Monday, November 15, 2004. Persons filing requests to participate as a panelist will be notified on or before Monday, November 29, 2004, if they have been selected. For further instructions, please see the "Requests to Participate as a Panelist in the Workshop" section below.

Written an Electronic Comments: Regardless of whether they are selected to participate, persons may submit written or electronic comments on the topics to be discussed by the panelists. Such comments must be received on or before Monday, November 15, 2004. For further instructions on submitting

comments, please see the **ADDRESSES** and the "Form and Availability of Comments" sections below. To read our policy on how we handle the information you submit, please visit <http://www.ftc.gov/ftc/privacy.htm>.

ADDRESSES: Comments and requests to participate as a panelist in the workshop filed in paper form should be mailed or delivered, as prescribed in the "Form and Availability of Comments" sections below, to the following address: Federal Trade Commission/Office of the Secretary, Room 159-H (Annex B), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Because paper mail in the Washington area and at the Agency is subject to delay, please consider submitting your comments via electronic mail. Comments and requests to participate filed in electronic form (except comments and requests containing any confidential material) should be sent, as prescribed in the "Form and Availability of Comments" section below.

FOR FURTHER INFORMATION CONTACT: Elizabeth Delaney, (202) 326-2903, Bureau of Consumer Protection; Theodore Gebhard, (202) 326-3699, Bureau of Competition; or Hajime Hadeishi, (202) 326-2320, Bureau of Economics. The above staff can be reached by mail at: Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. A detailed agenda and additional information on the workshop will be posted on the FTC's Web site at <http://www.ftc.gov/bcp/workshops/filesharing/index.htm> by Monday, November 15, 2004.

SUPPLEMENTARY INFORMATION:

Background and Workshop Goals

The FTC's workshop, "Peer-to-Peer File-Sharing Technology: Consumer Protection and Competition Issues," will continue the Commission's long-standing efforts to assess the impact on consumers and businesses of new and significant technologies, such as peer-to-peer (P2P) file-sharing technology. P2P file-sharing technology provides individuals with the ability to share files, including music, video, or software files, with other users. The files do not reside in a central location, but rather are stored on the hard drives of the users of the software.¹ Users

¹ See "File-Sharing Programs: Peer-to-Peer Networks Provide Ready Access to Child Pornography," General Accounting Office Report to the Chairman and Ranking Minority Member, Committee on Government Reform, U.S. House of Representatives, Feb. 2003, at 21-24; and "P2P Fear and Loathing: Operational Hazards of File Trading Networks," John Hale, Nicholas Davis, James Arrowood, and Gavin Manes, Center for

download particular file-sharing software that gives the user access to selected files on the computer hard drives of other users on the same P2P file-sharing network. Users may also place files that they have labeled into a shared folder on their hard drive, thereby making these files available for sharing with users of the same network. By eliminating the need for a central storage point for files, P2P file-sharing technology allows for faster file transfers and conservation of bandwidth.

There appear to be many current and potential business and consumer applications for P2P file-sharing technology. However, some commentators have pointed out that perhaps the most common use has been the exchange of copyrighted materials, including music, movies, video games and software.

Downloading and using current P2P file-sharing software programs can create risks for users.² When users download P2P file-sharing software programs, they may download other, unwanted, software, such as "spyware" or "adware," with the P2P file-sharing software program.³ Some users may not understand how to configure properly the P2P file-sharing software's "shared folder" and may inadvertently share sensitive personal files residing on their hard drives.⁴ Users also may receive files with viruses and other programs when sharing files using P2P programs, and these viruses could impair the operation of their personal computers.⁵ Individuals may receive or redistribute files that may subject them to civil or criminal liability under laws governing copyright infringement and pornography. Finally, because of the way some files are labeled, users,

Information Security, University of Tulsa, Sept. 2002, at 2.

² The FTC has developed an online brochure to provide consumers with information about the risks associated with P2P file-sharing software. See Federal Trade Commission, Consumer Alert: "File-Sharing: A Fair Share? Maybe Not," July 2003, available at: <http://www.ftc.gov/bcp/conline/pubs/alerts/sharealt.htm>.

³ See "File Sharing Programs and Peer-to-Peer Networks Privacy and Security Risks," Staff Report Prepared for Rep. Tom Davis and Rep. Henry A. Waxman, United States House of Representatives Committee on Government Reform, May 2003, at 9-10; and "P2P Fear and Loathing: Operational Hazards of File Trading Networks," *supra* note 1, at 2.

⁴ See "File Sharing Programs and Peer-to-Peer Networks Privacy and Security Risks," *supra* note 3, at 5-9; and "Usability and Privacy: A Study of Kazaa P2P File-Sharing," by Nathaniel S. Good (HP Laboratories) and Aaron Krekelberg (University of Minnesota), June 2002.

⁵ See "File Sharing Programs and Peer-to-Peer Networks Privacy and Security Risks," *supra* note 3, at 11-12; and "P2P Fear and Loathing: Operational Hazards of File Trading Networks," *supra* note 1, at 2.

including children, may be exposed to unwanted and disturbing pornographic images.⁶

The FTC's workshop is intended to provide an opportunity to learn how P2P file-sharing works and to discuss current and future applications of the technology. It will discuss the risks to consumers related to file-sharing activities. The workshop also will address self-regulatory initiatives, technological efforts, and legislative proposals. It will discuss competition issues such as the models for distributing music and the impact of file-sharing on copyright holders.

Questions to be addressed at the workshop may include:

A. Use of P2P File-Sharing Technology

1. What are the differences between P2P file-sharing technologies and technologies that use central server or other models?

2. What are the different models of P2P file-sharing technology? Please describe the differences between the models and the applications that use each model.

3. Who uses P2P file-sharing technology or programs? What proportion of users are children, teenagers or college students? Are these proportions likely to change with the development of future uses of P2P file-sharing technology?

4. What must consumers do to uninstall P2P file-sharing software programs? Are there P2P file-sharing programs that are more difficult to uninstall than others?

B. The Role of P2P File-Sharing Technology in the Economy

1. What are the current commercial, scientific, and/or industrial uses for P2P file-sharing technology?

2. Can current P2P file-sharing technology enhance business and industrial efficiency? If so, how? How are the benefits different from those available under a central server model?

3. What are the future commercial, scientific, and/or industrial uses for P2P file-sharing technology?

4. How will these future uses of P2P file-sharing technology enhance business and industrial efficiency? How are these benefits different from those that would be available under a central server model?

5. If P2P file-sharing technology will enhance business and industrial efficiency, what effect will that have on the nature and extent of competition in the economy?

6. What are the current business models for P2P file-sharing software companies? What are the anticipated business models for the future?

7. What is the likely future competitive and/or economic impact of P2P file-sharing technology across the economy as the technology improves (speed, amount of data that can be cost-effectively transmitted, etc.) and as the number and variety of P2P file-sharing applications expand over time? Which industries will be most likely affected? How will they be affected? How will P2P file-sharing technology change competition in affected industries in the future?

8. To what extent does P2P file-sharing technology have the promise to impact the manufacture, inventorying, and delivery of goods and services?

C. Identification of P2P File-Sharing Software Program Risks

1. What are the risks to consumers caused by the downloading and use of P2P file-sharing software?

2. Does the use of P2P file-sharing software pose a security risk to the personal information of consumers? If so, what is the nature and extent of this risk? Can consumers avoid this risk? Is this risk different from the risk that a central server model or other models pose? If so, how?

3. Does the use of P2P file-sharing software inadvertently expose consumers, particularly children, to pornographic or other inappropriate materials? If so, what is the nature and extent of this risk? Can consumers avoid this risk? Is this risk different from the risk that a central server model or other models pose? If so, how?

4. Does the distribution and use of P2P file-sharing software pose a risk to consumers for installing spyware? If so, what is the nature and extent of the risk? Can consumers avoid this risk? Is this risk different from the risk that a central server model or other models pose? If so, how?

5. Does the distribution and use of P2P file-sharing software cause consumers to install adware? Does adware pose a risk to consumers? If so, what is the nature and extent of the risk? Can consumers avoid this risk? Is this risk different from the risk that a central server model or other models pose? If so, how?

6. Does the use of P2P file-sharing software expose consumers to viruses or other malicious code? If so, what is the

nature and extent of this risk? Can consumers avoid this risk? Is this risk different from the risk that a central server model or other models pose? If so, how?

7. Does the installation and use of P2P file-sharing software impair computer functionality, such as processing speed? If so, what is the nature and extent of this risk? Can consumers avoid this risk? Is this risk different from the risk that a central server model or other models pose? If so, how?

D. Disclosure of P2P File-Sharing Software Program Risks

1. What do studies, surveys, or other empirical research reveal about the extent to which users of P2P file-sharing software programs are aware of the risks associated with these programs? Are there differences in awareness between children and adults? Are there differences in awareness between teenagers and parents?

2. To the extent that users are unaware of the risks associated with P2P file-sharing software programs, would disclosure requirements be an effective method of educating consumers about these risks? If disclosures would not be effective, is there a more effective means of communicating such information? To whom (e.g., parents, children, all users) should the disclosure of risk information be made?

3. Do P2P file-sharing software programs currently disclose risks adequately to users? If not, how could these disclosures be modified to make them more effective? What are the costs associated with making disclosures more frequent or prominent?

4. What methods, other than risk disclosures, can be used to educate consumers about potential risks associated with P2P file-sharing software?

E. Technological Solutions To Protect Consumers From Risks Associated With P2P File-Sharing Software Programs

1. What types of blocking and filtering technology exist to protect users from the risks associated with P2P file-sharing software programs? How do they compare with blocking and filtering available with a central server model?

2. Are existing blocking and filtering programs effective? If not, what steps can the P2P file-sharing software industry take to improve blocking and filtering technology included with its programs?

3. What future changes to blocking and filtering technologies might enhance the protection of users from the

⁶ See "Children's Exposure to Pornography on Peer-to-Peer Networks," Staff Report Prepared for Rep. Tom Davis and Rep. Henry A. Waxman, United States House of Representatives Committee on Government Reform, Mar. 2003, at 7-11; and "File-Sharing Programs: Peer-to-Peer Networks Provide Ready Access to Child Pornography," *supra* note 1, at 14-15.

risks associated with P2P file-sharing software programs?

4. What changes to the architecture of P2P file-sharing software programs (e.g., the configuration of shared folders or the addition of anti-virus software) might reduce the risks associated with P2P file-sharing software programs for users?

F. P2P File-Sharing and Music Distribution

1. What are the economic models of music distribution that use P2P file-sharing technology? How is music likely to be distributed in the future using P2P file-sharing technology?

2. How is P2P file-sharing technology different from single server downloading sources such as Walmart.com?

3. To what extent do P2P file-sharing software programs currently compete with pay-per-download services such as iTunes? Would existing or future technology enable copyright holders to be compensated when users of P2P file-sharing software programs transfer copyrighted files? If so, what would be the effect on competition?

4. Does P2P file-sharing technology lower the cost of music dissemination? If so, how much? What do the data show?

5. Are record labels willing to distribute music through P2P file-sharing? Why or why not?

6. Is there empirical support for P2P file-sharing technology increasing music sales through sampling or greater awareness of artists? What do the data show?

7. Are music files on P2P file-sharing networks being intentionally "polluted" or "corrupted"? What effect does the intentional pollution or corruption of files have on P2P file-sharing software as an evolving technology?

G. P2P File-Sharing and Its Impact on Copyright Holders

1. What is the impact of P2P file-sharing on copyright holders?

2. Is it possible to measure downloading of copyrighted materials by users of P2P file-sharing programs? If so, how would such a study be designed?

3. Can P2P file-sharing program providers effectively protect against copying in violation of copyright laws? Can P2P file-sharing program providers protect against content degradation? What effect would such protective measures have on consumers and competition?

4. Is there technological capability for the P2P file-sharing technology industry to implement a system that either

prevents the unauthorized sharing of content or only permits the sharing of content when there is compensation to the copyright holder?

5. Will technological changes allow content providers to protect their copyrighted materials from infringement by P2P file-sharing software program users? If so, what effects would these changes have on competition and consumers?

6. Would consumers and competition benefit from or be harmed by industry-wide standards for the protection of copyrighted materials, e.g., encryption or other digital rights management? What, if any, information should consumers be given about the effect of these standards on their use of copyrighted materials?

7. Are licensing proposals available that would address the impact of P2P file-sharing on copyright holders?

Requests To Participate as a Panelist in the Workshop

Parties seeking to participate as panelists in the workshop must notify the FTC in writing of their interest in participating on or before Monday, November 15, 2004. Request to participate as a panelist should be submitted electronically by e-mail to filesharingworkshop@ftc.gov or if mailed, should be submitted in the manner detailed in the "Form and Availability of Comments" section below, and should be captioned "P2P File-Sharing Workshop—Request to Participate, PO34517." Parties are asked to include in their requests a statement setting forth their expertise in or knowledge of the issues on which the workshop will focus and their contact information, including a telephone number, facsimile number, and e-mail address (if available), to enable the FTC to notify them if they are selected. For requests filed in paper form, an original and two copies of each document should be submitted. Panelists will be notified on or before Monday, November 29, 2004, if they have been selected.

Using the following criteria, FTC staff will select a limited number of panelists to participate in the workshop:

1. The party has expertise in or knowledge of the issues that are the focus of the workshop.

2. The party's participation would promote a balance of interests being represented at the workshop.

3. The party has been designated by one or more interested parties (who timely file requests to participate) as a party who shares group interests with the designator(s).

In addition, there will be time during the workshop for those not serving as panelists to ask questions.

Form and Availability of Comments

The FTC requests that interested parties submit written comments on the above questions and other related issues to foster greater understanding of these topics. Especially useful are any studies, surveys, research, and empirical data. Comments should be captioned "P2P File-Sharing Workshop—Comment, PO34517"; must be received on or before Monday, November 15, 2004; and may be filed with the Commission in either paper or electronic form.

1. A public comment filed in paper form should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission/Office of the Secretary, Room 159-H (Annex B), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Both the comment itself and its envelope should be captioned "P2P File-Sharing Workshop—Comment, PO34517." If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled "Confidential."⁷

2. A public comment that does not contain any material for which confidential treatment is requested may instead be filed in electronic form by clicking on the following weblink: <https://secure.commentworks.com/ftc-p2pfilesharing/> and following the instructions on the web-based form. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the <https://secure.commentworks.com/ftc-p2pfilesharing/> weblink.

3. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. Regardless of the form in which they are filed, all timely and responsive public comments will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at <http://www.ftc.gov>. As a matter of discretion, the FTC makes every effort to remove home contact information for

⁷ Commission Rule 4.2(d) 16 CFR 4.2(d). The comment must also be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(C).

individuals from the public comments it receives, before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

By direction of the Commission,
Commissioner Leibowitz not participating.

Donald S. Clark,
Secretary.

[FR Doc. 04-23574 Filed 10-20-04; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Emergency Clearance

[Document Identifier: OS-0990-New]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

#1 Type of Information Collection Request: New collection;

Title of Information Collection: 2005 Dietary Guidelines Message and Communication Materials Development;
Form/OMB No.: OS-0990-New;

Use: This information will be used as formative research to develop messages and materials in support of the sixth edition, Nutrition and Your Health: Dietary Guidelines for Americans, to be published in early 2005.

Frequency: Reporting on occasion;
Affected Public: Individuals or household, not-for-profit institutions;
Annual Number of Respondents: 290;
Total Annual Responses: 290;

Average Burden Per Response: 2 hours;

Total Annual Hours: 712;

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at <http://www.hhs.gov/oirm/infocollect/pending/> or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to Naomi.Cook@hhs.gov or call the Reports Clearance Office on (202) 690-6162.

Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer at the address below: OMB Desk Officer: John Kraemer, OMB Human Resources and Housing Branch, Attention: (OMB #0990-New), New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 12, 2004.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 04-23541 Filed 10-20-04; 8:45 am]

BILLING CODE 4168-17-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Meeting of the National Advisory Council for Healthcare Research and Quality

AGENCY: Agency for Healthcare Research and Quality (AHRQ).

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council for Healthcare Research and Quality.

DATES: The meeting will be held on Friday, November 5, 2004, from 9 a.m. to 4 p.m. and is open to the public.

ADDRESSES: The meeting will be held at the Agency for Healthcare Research and Quality, John M. Eisenberg Building Conference Center, 540 Gaither Road, Rockville, Maryland 20850.

FOR FURTHER INFORMATION CONTACT: Deborah Queenan, Coordinator of the Advisory Council, at the Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, Maryland 20850, (301) 427-1330. For press-related information, please contact Karen Migdail at (301) 427-1855.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact Mr. Donald L. Inniss, Director, Office of Equal Employment Opportunity Program, Program Support Center, on (301) 443-1144 no later than October 22, 2004. Agenda, roster, and minutes are available from Ms. Bonnie Campbell, Committee Management Officer, Agency for Healthcare Quality and Research, 540 Gaither Road, Rockville, Maryland 20850. Her phone number is (301) 427-1554.

SUPPLEMENTARY INFORMATION:

I. Purpose

Section 921 of the Public Health Service Act (42 U.S.C. 299c) established the National Advisory Council for Healthcare Research and Quality. In accordance with its statutory mandate, the Council is to advise the Secretary of the Department of Health and Human Services and the Director, Agency for Healthcare Research and Quality (AHRQ), on matters related to actions of the Agency to enhance the quality, improve the outcomes, reduce the costs of health care services, improve access to such services through scientific research, and to promote improvements in clinical practice and in the organization, financing, and delivery of health care services.

The Council is composed of members of the public appointed by the Secretary and Federal ex-officio members.

II. Agenda

On Friday, November 5, 2004, the meeting will begin at 9 a.m., with the call to order by the Council Chair. The Director, AHRQ, will present the status of the Agency's current research, programs, and initiatives. The official agenda will be available on AHRQ's Web site at <http://www.ahrq.gov> no later than October 29, 2004. The meeting will adjourn at 4 p.m.

Dated: October 14, 2004.

Carolyn M. Clancy,
Director.

[FR Doc. 04-23557 Filed 10-20-04; 8:45 am]

BILLING CODE 4160-90-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Third National Study of Older Americans Act Title III Service Recipients

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by November 22, 2004.

ADDRESSES: Submit written comments on the collection of information by fax 202.395.6974 or by mail to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Brenda Aguilar, Desk Officer for AoA.

FOR FURTHER INFORMATION CONTACT: Cynthia Bauer at 202-357-0145.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, AoA has submitted the following proposed collection of information to OMB for review and clearance.

The Third National Study of Older Americans Act Title III Service Recipients—NEW—This information collection, which builds on earlier national pilot studies and performance measurement tools developed by grantees in the Performance Outcomes Measures Project (POMP) will include consumer assessment surveys for the Home-delivered Nutrition Program, Transportation Services and the National Family Caregiver Support Program. Copies of the POMP instruments can be located at <http://www.gpra.net>. Information collected through this study will be used by AoA to track performance outcome measures; support budget requests; comply with Government Performance and Results Act (GPRA) reporting requirements; provide information for OMB's program assessment (PART) process; provide national benchmark information for grantees and inform program improvement and management initiatives.

AoA estimates the burden of this collection of information as follows: Recipient Surveys—Respondents: individuals; Number of Respondents: 6,000; Number of Responses per Respondent: one; Average Burden per Response: 17.5 minutes; Total Burden for Recipient Surveys: 1,750 hours—Administrative Assistance form Area Agencies on Aging (AAA)—Number of AAAs: 250; Average Burden per Respondent: 2 hours; Total Burden for AAAs: 500 hours—Total Burden for Study: 2,250 hours.

Dated: October 18, 2004.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 04-23567 Filed 10-20-04; 8:45 am]

BILLING CODE 4154-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Environmental Health Specialist Network

Announcement Type: New.

Funding Opportunity Number: RFA EH 05013.

Catalog of Federal Domestic Assistance Number: 93.283.

Key Dates:

Letter of Intent Deadline: November 22, 2004.

Application Deadline: December 20, 2004.

I. Funding Opportunity Description

Authority: Section 301 (42 U.S.C. 241) and section 317(k)(2) [42 U.S.C. 247b(k)(2)] of the Public Health Services Act, as amended.

Purpose: The purpose of this program is to help State health departments improve the practice of environmental health service programs by establishing a network of environmental health specialists (EHSs) who collaborate with epidemiologists and laboratorians to identify and prevent environmental factors contributing to foodborne and/or waterborne illness and disease outbreaks. This announcement expands the EHS Network (EHS-Net) from a project of FoodNet, a component of CDC's Emerging Infections Program, to an independent program that includes drinking water safety (see Appendix A, as posted on the CDC Web site at <http://www.cdc.gov/nceh/ehs/EHSNet/default.htm>).

This announcement covers:

1. Food Safety (*i.e.*, retail food safety)
2. Water Safety (*i.e.*, private and small drinking water systems not regulated under the Safe Drinking Water Act [SDWA])

Guiding principles for the EHS-Net can be found in Appendix B, as posted on the CDC Web site.

This program addresses "Healthy People 2010" focus areas of Environmental Health, Food Safety, and Public Health Infrastructure. The program also addresses all goals of CDC's "Strategy To Revitalize Environmental Public Health Services in the United States", located at <http://www.cdc.gov/nceh/ehs/default.htm>.

Measurable outcomes of the program will align with the following performance goal for the National Center for Environmental Health (NCEH): Increase the capacity of State and local health departments to deliver environmental health services in the community.

Research Objectives:

Research objectives of the network are to: (1) Monitor risk factors and prevention policies in foodborne and/or waterborne outbreaks and during routine (non-outbreak) environmental evaluations (*i.e.*, inspections); (2) conduct applied behavioral, environmental epidemiologic, and laboratory research on factors contributing to disease transmission; (3) evaluate food safety and/or drinking water safety service programs and their activities; (4) implement and evaluate pilot prevention and intervention projects; and (5) develop and disseminate the results of network activities and projects to the environmental and public health communities.

Activities:

Awardee activities for this program are as follows:

- Staffing

1. Establish and maintain a full-time senior staff position in the agency's food safety and/or drinking water safety program (*i.e.*, one full-time equivalent per program), with full responsibility for implementation and coordination of activities of the EHS-Net related to food safety and/or drinking water safety (non-SDWA regulated systems). The person in this position must report directly to a senior environmental health service program official who has agency (State and/or local) authority to participate in EHS-Net activities. The person in this position also must have demonstrated leadership skills; technical knowledge and program experience with the food safety and/or drinking water safety program; knowledge and understanding of the appropriate State environmental health program (food safety and/or drinking water safety); and communication skills necessary to effectively promote and facilitate network activities. The person will be involved in study design, data analysis and interpretation, and publication of results. The person also will be responsible for the accuracy, quality, and timely reporting of all data submitted to CDC's EHS-Net Web-based information system (See Appendix A, as posted on the CDC Web site).

2. Identify an existing staff position in the health agency's program with responsibilities and organizational authority for foodborne and/or

waterborne disease surveillance. The individual should know and understand the epidemiology and surveillance of foodborne and/or waterborne disease; demonstrate the leadership ability to inform and guide decisions concerning specific activities of the network; have the ability to lead and coordinate proposed activities; and possess a knowledge of the agency's environmental service program (food and/or drinking water). The individual should be active in study design, data analysis and interpretation, and publication of results.

3. Existing staff position(s) in State and/or local agencies with responsibility for carrying out specific EHS-Net activities also may be identified. These persons should have the technical program experience needed to implement proposed activities; an understanding of the State food and/or drinking water program; and the communication skills necessary to effectively implement proposed activities.

- State Agency Collaboration and Planning

1. Strengthen the partnership between the health agency and other State agencies responsible for food safety and/or drinking water safety (*i.e.*, departments of agriculture; agencies for institutional care, education, and environmental protection; etc.) by establishing an interagency plan that identifies complementary responsibilities and support functions to carry out planned EHS-Net activities. The interagency plan should address policies and programs, technical assistance, and resources; and identify participating local agencies.

2. Establish the EHS-Net in a defined area, which could include either an entire State or a geographically defined area (or areas) within a State that represents both rural and urban communities. Geographically defined areas may be represented as cities, counties, townships, parishes, or districts as defined by the public health agency or other partnering agency. Within this geographically defined area, local health agencies and/or other local agencies with regulatory responsibility for food safety and/or drinking water safety must be identified as partners.

3. Within the geographically defined area, develop partnerships with local agencies and others to provide in-kind assistance or other cost-sharing support to complement the basic assistance obtained from CDC to support network activities.

4. Establish and/or sustain effective partnerships with other public or private organizations interested in

addressing environmental health services issues related to their effectiveness in preventing disease (*e.g.*, universities, schools of public health, standard-setting organizations, multi-jurisdictional commissions with environmental responsibilities, community-based organizations, other Federal and State government agencies, research organizations, non-governmental organizations and foundations).

- Organize the network to:

1. Maintain the ability to accommodate changes in specific activities and priorities as the public health system's need for information changes, or as new and/or reemerging health problems or environmental issues emerge.

2. Include both rural and urban populations.

3. Have the capacity to conduct multiple, concurrent projects.

4. Enlist participation of local public health departments and other public or private organizations with a role in protecting the public's health.

- Operate the network to function effectively as part of a national network of EHSs. Collaborate with CDC and other EHS sites, through the EHS-Net steering committee and EHS working groups, to establish priorities, coordinate and monitor projects, and ensure that projects address existing and emerging infections issues.

- Propose and conduct activities in collaboration with CDC and appropriate partner agencies or organizations. Collaborate with CDC and other network sites to finalize protocols for network activities. Collaborate with CDC and other network sites to develop mutually agreed upon standardized protocols.

1. Categories of food safety activities:

(a) Monitoring of risk factors and prevention policies for foodborne disease in outbreak investigations and during routine (non-outbreak) environmental evaluations (*i.e.*, inspections). This involves improving the data collection instrument and actual data collection and reporting data collected to CDC through the EHS-Net Web-based information system (see Appendix A, as posted on the CDC Web site). This also may involve collection of food and/or environmental surface samples and submission to State, CDC, or other laboratories.

(b) Applied behavioral, environmental epidemiologic, and laboratory research. Examples of potential behavioral projects include development of projects to evaluate barriers and facilitators for implementation of intervention strategies by food workers or managers; barriers and facilitators for

EHSs as risk communicators and risk managers; barriers and facilitators for food safety programs in enforcing regulatory requirements; and development and evaluation of training materials or prevention messages for EHSs, industry, or the public. Examples of potential environmental epidemiologic projects include descriptive epidemiology projects to determine the level of control of risk factors and status of food safety policies, and other studies to determine what factors and policies or combination prevent outbreaks of foodborne disease. Examples of potential laboratory research may include development or evaluation of environmental sampling techniques for norovirus or other pathogens of interest; development or evaluation of pathogen-specific environmental sampling techniques or policies for investigations of foodborne outbreaks, or for use during routine evaluations to establish baseline levels of pathogen-specific contamination; or projects to assess the route of pathogen-specific cross-contamination.

(c) Evaluation of food safety programs and their activities. Potential projects would attempt to assess the effectiveness of food safety programs and/or specific activities in reducing disease in the population served. Implementation and evaluation of pilot prevention and intervention projects (*i.e.*, evaluation of integrated communication projects designed to increase hand washing by food workers in restaurants, or evaluation of hand washing behaviors and the impact on infectious diseases in institutional food service). Potential projects could include evaluation of the effects of food workers' or managers' food safety training programs on active manager control of risk factors to foodborne outbreaks.

2. Propose and conduct these specific network activities for food safety:

(a) Ongoing EHS-Net data collection activity in restaurants, and propose implementation of a similar activity in institutional foodservice settings (*e.g.*, nursing homes, schools, day care centers, prisons) and in retail grocery stores (see Appendix A, as posted on the CDC website).

(b) Ongoing activity to establish a denominator number of restaurants, day care centers, nursing homes, hospitals, State or local prisons, jails, schools, retail grocery stores, and other food service establishments in the State or designated geographic area.

(c) Improved reporting of contributing factors to foodborne outbreaks through CDC's Electronic Foodborne Outbreak Reporting System.

3. Categories of drinking water safety activities:

(a) Monitoring risk factors and prevention policies for waterborne disease in outbreak investigations and during routine (non-outbreak) environmental evaluations (*i.e.*, inspections), especially for small, non-SDWA systems. This may involve development of data collection instruments, actual data collection, and reporting data collected to CDC through the EHS-Net web-based information system (see Appendix A, as posted on the CDC Web site). This activity also may involve collection of water samples for submission to State, CDC, or other laboratories.

(b) Applied behavioral, environmental epidemiologic, and laboratory research. Examples of potential behavioral projects may include evaluation of the barriers and facilitators to private well testing programs, either by owners or through other means, or evaluation of programs designed to introduce private well testing during property transfers. Examples of potential environmental epidemiologic projects include defining the actual public health impacts of drinking water from largely unregulated sources by linking water quality to levels of exposure or illness or by linking other factors (such as extreme storm events) to health outcomes. Examples of potential laboratory research may include development or evaluation of sampling techniques for norovirus or other pathogens of interest in drinking water.

(c) Evaluation of drinking water programs and their activities, especially as related to small systems not regulated under the SDWA. Potential projects could include evaluation of barriers or facilitators to improving drinking water from non-SDWA sources (such as lack of laboratory capacity to evaluate drinking water quality; lack of standards and guidelines for construction, maintenance, and monitoring of small systems, especially private wells; and fragmented responsibility and insufficient resources for oversight of small systems). Potential projects could include evaluation of existing or new programs to improve drinking water quality from small systems through testing or other monitoring; public awareness campaigns; implementation of standards and guidelines related to small systems; or development and implementation of targeted training and education for private well owners and operators of small drinking water systems.

• As part of network activities, collect and submit samples (*i.e.*, food, water, or environmental samples) to designated

laboratories for evaluation. Laboratories may include State, Federal, or academic facilities, as appropriate for the study proposed and approved by the EHS-Net.

• Manage, analyze, and interpret data from network activities; and publish and disseminate results.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring. CDC Activities for this program are as follows:

• Provide general coordination for the EHS-Net.

• Serve as the primary contact for and seek input from the U.S. Food and Drug Administration (FDA), the U.S. Department of Agriculture (USDA), the U.S. Environmental Protection Agency (EPA) and other Federal agencies with expertise in food safety and drinking water safety program areas and interest in EHS-Net activities.

• Seek input from participating food and drinking water programs to determine training needs of EHSs. Identify existing training resources. Develop unique training opportunities through partnerships within CDC, with other Federal agencies, and within the EHS-Net. Work with participating environmental health service programs to develop methods for effectively communicating the role of the EHS in protecting the health of their communities.

• Provide technical assistance by participating in outbreak evaluations as requested by participating States.

• Provide consultation, and scientific and technical assistance in the operation of the EHS-Net, and in designing, implementing, and evaluating individual EHS-Net projects.

• Assist with analysis and interpretation of data from EHS-Net projects.

• Participate in the dissemination of findings and information stemming from EHS-Net projects.

• Assist in monitoring and evaluation of scientific and operational accomplishments of the EHS-Net and progress in achieving the purpose and overall goals of this program by conducting conference calls, site visits, hosting meetings of participants and conducting a process evaluation of the EHS-Net.

• If needed, perform laboratory evaluation of samples collected in conjunction with EHS-Net projects and integrate results with data from other EHS-Net projects.

• Assist in the development of research protocols for Institutional Review Board (IRB) review by all institutions participating in any research project involving human

subjects and CDC scientists as co-investigators. CDC project managers will ensure that all relevant organizational IRBs have given their written approval. The CDC IRB will review and approve the protocol initially and at least annually until the research project is completed.

II. Award Information

Type of Award:

This award is a Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

Mechanism of Support: U01.

Fiscal Year Funds: 2005.

Approximate Total Funding: Up to \$2,100,000 will be available in 2005.

Approximate Number of Awards: 14.

Food Safety will involve a total number of 10 awards, eight of which will be targeted to existing awardees and two to new applicants. A total of four awards for Drinking Water Safety will be targeted exclusively for existing awardees.

Approximate Average Award: \$100,000 (This amount is for the first 12-month budget period, and includes both direct and indirect costs.)

Floor of Award Range: \$75,000.

Ceiling of Award Range: \$150,000 per program (food program/drinking water program).

Anticipated Award Date: March 30, 2005.

Budget Period Length: 12 Months.

Project Period Length: 5 years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Existing EHS-Net awardees may apply for both food safety and drinking water safety awards; new applicants may apply only for food safety awards.

Existing EHS-Net awardees are State infectious disease programs currently funded by CDC through the Emerging Infection Program (EIP), program announcement number 00011, and participating in the existing EHS-Net project under the EIP's FoodNet program with a current EHS-Net project period that expires December 31, 2004. Those states are California, Connecticut, Colorado, Georgia, Minnesota, New York, Oregon, and Tennessee.

New applicants are State infectious disease programs located in public health agencies in the 50 States.

III.2. Cost Sharing or Matching

Matching funds are not required. Applicants must demonstrate in-kind or other cost-sharing arrangements with partnering State and local agencies and with other partnering agencies or organizations as a demonstration of the capacity to carry out program activities. See V.1. Criteria.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

Special Requirements:

If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

- Late applications will be considered non-responsive. See section "IV.3. Submission Dates and Times" for more information on deadlines.

- CDC requires that you submit a LOI if you intend to apply for this program. The LOI will be used to gauge the level of interest in this program, and allow CDC to plan the application review. Although the LOI will not be evaluated, and does not enter into review of your subsequent application, failure to submit a timely LOI will preclude you from submitting an application.

- Funding preferences for existing EHS-Net awardees will be for those sites that: demonstrate, through their application, success in implementing EHS-Net activities related to food safety while part of the EHS-Net project under CDC's FoodNet project; demonstrate future in-kind or other cost-sharing arrangements with local agencies identified as partners; demonstrate leveraging of existing funding received from CDC or other Federal agencies for food safety and/or drinking water safety-related projects; and apply to expand their activities to include drinking water safety.

- For drinking water safety, funding preference will be given to applicants who have the capacity to address water safety issues related to small water systems (including private wells) that are not regulated under the SDWA.

- Funding preferences for new applicants will be given to applicants who: demonstrate leveraging of existing

funding received from CDC or other Federal agencies for food-related projects; demonstrate in-kind or other cost-sharing arrangements with local agencies or organizations to support this project; and demonstrate existing successful working relationships between the infectious disease program and the environmental health service program (food safety).

Note: Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

Individuals Eligible To Become Principal Investigators: Any individual with the skills, knowledge, and resources necessary to carry out the proposed research is invited to work with their institution to develop an application for support. Individuals from underrepresented racial and ethnic groups as well as individuals with disabilities are always encouraged to apply for CDC programs.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity, use application form PHS 398 (OMB number 0925-0001 rev. 5/2001). Forms and instructions are available in an interactive format on the CDC Web site, at the following Internet address: <http://www.cdc.gov/od/pgo/forminfo.htm>.

Forms and instructions also are available in an interactive format on the National Institutes of Health (NIH) Web site at the following Internet address: <http://grants.nih.gov/grants/funding/phs398/phs398.html>.

If you do not have access to the Internet or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office, Technical Information Management Section (PGO-TIM) staff at: 770-488-2700. Application forms can be mailed to you.

IV.2. Content and Form of Application Submission

Letter of Intent (LOI): Your LOI must be written in the following format:

- Maximum number of pages: Five pages.
- Font size: 12-point un-reduced.
- Double-spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Written in plain language; avoid jargon.

Your LOI must contain the following information:

- Descriptive title of the proposed research
- Name, address, e-mail address, and telephone number of the Principal Investigator.
- Names of other key personnel.
- Participating institutions.
- Number and title of this announcement.

Application: Follow the PHS 398 application instructions for content and formatting of your application. If the instructions in this announcement differ in any way from the PHS 398 instructions, follow the instructions in this announcement. For further assistance with the PHS 398 application form, contact PGO-TIM staff at 770-488-2700, or contact GrantsInfo, Telephone (301) 435-0714, e-mail: GrantsInfo@nih.gov.

Your research plan should address activities to be conducted over the entire project period.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access <http://www.dunandbradstreet.com> or call 1-866-705-5711. For more information, see the CDC Web site at: <http://www.cdc.gov/od/pgo/funding/pubcomm.htm>. If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover.

This announcement uses the modular budgeting as well as non-modular budgeting formats. See: <http://grants.nih.gov/grants/funding/modular/modular.htm> for additional guidance on modular budgets. Specifically, if you are submitting an application with direct costs in each year of \$250,000 or less, use the modular budget format. Otherwise, follow the instructions for the non-modular budget research grant applications.

You must submit a project narrative with your application forms. Each narrative must be submitted in the following format:

- Maximum number of pages: 36—If applying for both food and water safety. If your narrative exceeds the page limit, only the first 36 pages which are within the page limit will be reviewed.

- 18—If applying for only food safety. If your narrative exceeds the page limit,

only the first 18 pages which are within the page limit will be reviewed.

- Font size: 12 point unreduced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Held together only by rubber bands or metal clips, not bound in any other way

The application should include only one section for each item listed below. If applying for both food and drinking water safety, provide separate staffing plans and budgets. The application must include the following items in the order listed:

(1) Background (not more than 6 pages if applying for food and water safety; not more than 3 pages if applying for food safety):

Describe the background and objectives of this cooperative agreement. Describe the responsibilities, problems, constraints, and complexities that may be encountered in establishing and operating the EHS-Net. Describe the roles and responsibilities of participants in the EHS-Net. Describe the designated geographic area for this cooperative agreement and its population.

(2) Capacity (not more than 10 pages if applying for food and water safety; not more than 5 pages if applying for food safety):

(1) Describe your agency's authority to conduct food and/or waterborne disease surveillance activities. Describe your agency's authority, and the authority of other partners, to conduct outbreak investigations and routine environmental evaluations (*i.e.*, inspections or surveys). Describe the food and/or water safety program's authority to evaluate the effectiveness of regulatory requirements, programs, and activities in preventing disease and developing new disease prevention strategies.

(2) Describe the organizational structure of the health agency's disease surveillance programs (foodborne and/or waterborne disease), and how that structure supports environmental health service programs (food safety and/or drinking water safety). Describe the organizational structure of the food and/or water safety program.

(3) For food safety programs, identify the State or local agency with responsibility for restaurants, retail grocery stores, schools, day care centers, nursing homes, hospitals, mobile food units, State and local prisons, and other food service establishments, and the way they will participate in this cooperative agreement.

(4) For drinking water safety programs, identify the State or local agency or organization(s) with

responsibility for private and small drinking water systems and describe how these various agencies or organizations will participate in this cooperative agreement.

(5) Characterize your agency's and your significant partner's relationship with local environmental health service programs (food safety and/or drinking water safety).

(6) Characterize the role of the specific local environmental health services programs (food and/or drinking water), or other public health-related programs or agencies, that will be participating as active partners in this cooperative agreement.

(7) Describe how the health agency's disease surveillance program uses existing CDC or other Federal, State, or local funds to support foodborne or waterborne disease surveillance, and how this program announcement can be synergistically linked to existing activities.

(8) Describe any current or past activities of the health agency's disease surveillance program to assist an environmental health service program(s) to improve or assess prevention efforts.

(3) Operational Plan (not more than 10 pages if applying for food and water safety; not more than 5 pages if applying for food safety):

Using the examples of activities described above as a guide, describe the operational plan for the EHS-Net in the State.

(1) For food safety, propose the three specific activities identified under the previously listed awardee activities.

(2) Propose optional activities on the basis of local interest, concern, or expertise, and in keeping with the guiding principles of the EHS-Net.

- Project Management and Staffing Plan (not more than 10 pages if applying for food and water safety; not more than 5 if applying for food safety):

Provide a separate, clearly labeled project management and staffing plan for food safety and/or drinking water safety. Indicate staff credentials, training, and skills to ensure staff can carry out recipient activities.

Coordination between all participating programs should be fully described in the project management and staffing plans. All applicants should describe communication with staff working in related programs in other agencies. Each project management and staffing plan should include the following supporting documents in an application appendix:

(1) For organizational structure provide:

(a) A description of the proposed program management and control

systems. Include an organizational chart that indicates placement of the proposed full-time senior staff position in the agency and show lines of authority, communication, accountability, and reporting.

(b) A description of proposed staffing for network activities and job descriptions for existing and proposed positions that illustrate the staff's level of responsibility for implementing activities.

(c) A description of the business office responsible for monitoring Federal funds and how the office will work with proposed program management and staff. Identify the business staff person who will carry out these responsibilities.

(2) Include curriculum vitae (limited to two pages per person) for existing staff.

(3) Provide letters from all outside agencies or partners identified in the operational plan that describe their expertise, capacity, and commitment to fulfill their proposed responsibilities.

- Budget and Budget Justification (not included in narrative page limit):

Provide a separate, detailed budget and budget justification for food safety and/or drinking water safety. Each budget and justification should immediately follow its corresponding staffing plan described under Project Management and Staffing Plan above. All applicants applying for both food safety and drinking water safety should provide a budget summary page that displays each separate program budget, as well as a total budget by object class category. Each budget and budget justification should include the following:

(1) A detailed line-item budget for food safety and/or drinking water safety. The budget justification should describe and justify individual budget items that make up the total amount of funds requested in each object class category for the first 12-month budget period (January 1, 2005 through December 31, 2005).

(2) Travel: Participation is essential in the EHS-Net steering committee and CDC-sponsored training workshops for the EHS-Net. Travel for network implementation should be justified and related to implementation of activities. The annual travel budget should include travel funds for appropriate EHS-Net participants (including, at least, the senior EHS from the food and/or drinking water program and one appropriate infectious disease program representative) to participate in a one-week CDC-sponsored orientation meeting for FY2005 and one two-three day CDC-sponsored EHS-Net steering

committee meeting each year. Participation in non-CDC-sponsored professional meetings (e.g., Conference for Food Protection, International Association of Food Protection educational conference, National Rural Water Association, National Environmental Health Association) may be requested, but must be directly relevant to EHS-Net activities. Participation may include the presentation of papers, poster sessions, or exhibits on EHS-Net activities.

(3) Indirect Costs: If indirect costs are requested, include a copy of your agency's current negotiated Federal Indirect Cost Rate Agreement.

(4) Any cost sharing or in-kind support must be presented as a percentage of total requested costs and an amount.

- Evaluation Plan (not included in narrative page limit): Include in the evaluation plan a process evaluation of the network to determine the effectiveness of participation by outside agencies and other partners.

Additional information may be included in the application appendices. The appendices will not count toward the narrative page limit. This additional information includes:

- Curricula Vitaes.
- Resumes.
- Organizational Charts.
- Letters of Support.

Additional requirements that may require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

LOI Deadline Date: November 22, 2004.

CDC requires that you submit a LOI if you intend to apply for this program. The LOI will be used to gauge the level of interest in this program, and allow CDC to plan the application review. Although the LOI will not be evaluated, and does not enter into review of your subsequent application, failure to submit a timely LOI will preclude you from submitting an application.

Application Deadline Date: December 20, 2004.

Explanation of Deadlines: LOIs and Applications must be received in the CDC Procurement and Grants Office by 4 p.m. eastern time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing

due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on LOI and application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about receipt of your application, first contact your courier. If you still have a question, contact the PGO-TIM staff at: 770-488-2700. Before calling, please wait two to three days after the application deadline to allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: <http://www.whitehouse.gov/omb/grants/spoc.html>.

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- CDC will assist applicants in the development of research protocols for Institutional Review Board (IRB) review by all institutions participating in any research project involving human subjects and CDC scientists as co-investigators. CDC project managers will ensure that all relevant organizational IRBs have given their written approval. The CDC IRB will review and approve the protocol initially and at least annually until the research project is completed.

- Funds may not be used for data entry personnel because data collection

activities are to be carried out by State and/or local EHSs and entered into the CDC EHS-Net Web-based information system.

- Federal funds awarded under this program announcement may not be used to supplant State or local funds.
- Awards will not allow reimbursement of preaward costs.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months old.

Guidance for completing your budget can be found on the CDC web site, at the following Internet address: <http://www.cdc.gov/od/pgo/funding/budgetguide.htm>.

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail or delivery service to: Technical Information Management—PA# 05013, CDC Procurement and Grants Office, 2920 Brandywine Rd., Atlanta, GA 30341.

LOIs may not be submitted electronically at this time.

Application Submission Address: Submit the original and one hard copy of your application by mail or express delivery service to: Technical Information Management—PA# 05013, CDC Procurement and Grants Office, 2920 Brandywine Rd., Atlanta, GA 30341.

At the time of submission, four additional copies of the application, and all appendices must be sent to: Mildred Williams-Johnson, CDC, National Center for Environmental Health, Centers for Disease Control and Prevention, NCEH/ATSDR, MS E-28, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The goals of CDC-supported research are to advance the understanding of biological systems, improve the control

and prevention of disease and injury, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals.

Each application will be individually reviewed and scored. Each application will be allocated a total of 100 points, according to the following criteria:

• Staffing (25 points)

1. Has the applicant identified key professional personnel for assignment to the EHS-Net and network projects? Has the applicant identified key professional personnel from other participating or collaborating institutions, agencies, and organizations outside the applicant's agency that will be assigned to EHS-Net activities? Is a curriculum vitae provided for each in the appendix? Does the applicant clearly state participants' roles in the management and operation of the EHS-Net? Does the applicant provide descriptions of participants' experience in conducting work similar to that proposed in this announcement?

2. Does the applicant describe all support staff and services to be assigned to the EHS-Net?

• Capacity (25 points)

1. Does the applicant succeed in describing how they will implement multisite EHS-Net activities?

2. Does the applicant describe the agency's structure, and support from partnering programs and/or agencies?

3. Is the level of commitment from, and capacity of, the local agencies identified as partners demonstrated by: (a) In-kind or other cost-sharing arrangements described in the application to assist in supporting network activities; (b) technical knowledge and experience of local EHSs identified as potential sources of support for EHS-Net activities; and (c) capacity to electronically submit data to CDC through a Web-based information system?

4. Does the applicant describe the ability to develop and maintain cooperative relationships with public and private, local and regional, public health, laboratory, academic or other organizations that protect public health?

5. Is support from partnering agencies, institutions, organizations, laboratories, and individuals included in the operational plan? Does the applicant provide (in an appendix) letters of support indicating collaborators' commitments to participate in the EHS-Net, and describing their anticipated role?

6. Does the applicant describe the ability to participate in a multi-state collaborative network?

• Operational plan (20 points)

1. Does the applicant describe their plan for establishing and operating the EHS-Net? Does the applicant clearly identify the proposed organizational and operating structure and procedures? Does the applicant describe the roles and responsibilities of all participating agencies, organizations, institutions, and individuals?

2. Does the applicant describe plans to collaborate with CDC and other EHS-Net sites in the establishment and operation of the EHS-Net and individual EHS-Net projects, including project design and development (*e.g.*, protocols), management and analysis of data, and synthesis and dissemination of findings?

3. Does the applicant describe partnerships with necessary and appropriate organizations to establish and operate the proposed EHS-Net?

4. Does the applicant describe plans to provide training opportunities for one or more of the following individuals, groups, or agencies: (a) Persons in professional training, such as environmental health specialists, infectious disease fellows, laboratory fellows, public health students; or (b) partner organizations within the EHS-Net, such as EHSs, infection-control practitioners or local health department personnel? Does the applicant propose to act as a resource for States that are not participating in the EHS-Net, for example, by providing information, training, or recommendations about emerging public health issues and evolving public health practices?

5. Does the applicant describe proposed projects consistent with the guiding principles of the network and the public health needs?

6. Does the applicant describe how the EHS-Net organizational structure in the State will facilitate a swift response to new public health challenges in infectious diseases? Does the applicant describe how the proposed structure can facilitate the preparation of EHSs to recognize or respond to acts of terror?

• Leveraging of resources and in-kind support (20 points)

1. Does the applicant describe existing funds from CDC or other Federal agencies that are used to support foodborne and/or waterborne disease surveillance and food safety and/or drinking water safety programs? Does the applicant describe how these existing projects will be synergistically linked to this proposal?

2. Does the applicant describe in-kind or other forms of support from local agencies or organizations that will be used to supplement CDC funding to carry out network activities?

3. Does the applicant describe a plan to solicit and secure financial and/or technical assistance from other public and private organizations (*e.g.*, schools of public health, university medical schools, public health laboratories, community-based organizations, other Federal and State government agencies, research organizations, foundations) to supplement the core funding from CDC?

• Understanding the objectives of the EHS-Net (10 points)

Does the applicant:

1. Understand the objectives of this cooperative agreement program?

2. Describe the requirements, responsibilities, problems, constraints, and complexities that may be encountered in establishing and operating the EHS-Net?

3. Understand the roles and responsibilities of participation in the EHS-Net?

Recipient performance will be measured by:

• Quality of collaboration between the appropriate environmental health service program (food safety and/or drinking water safety), and the appropriate disease surveillance program (foodborne or waterborne) as evidenced by their ability to identify projects that provide environmental health service programs with information assisting them with control of risk factors to illness and outbreaks.

• Establishment of an interagency plan between State health and food safety and/or drinking water programs, and, when appropriate, their active participation in EHS-Net projects as evidenced by collection and submission of data or specimens, or evidence of other specific contributions to EHS-Net projects.

• Collection and submission to agreed-upon recipients (*e.g.*, CDC Web-based information system; CDC or State laboratories) of at least 95 percent of all data or specimens for those projects in which the State has agreed to participate.

• Active participation of local environmental health service programs as evidenced by data or specimen collection or evidence of other specific contributions to EHS-Net projects.

• Publication of articles and at least one formal presentation at a national conference during this cooperative agreement, as lead or supporting author.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for responsiveness by NCEH. Incomplete applications and applications that are nonresponsive to the eligibility criteria

will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

A Special Emphasis Panel will evaluate complete and responsive applications according to the criteria listed in the "V.1. Criteria" section above.

V.3. Anticipated Announcement and Award Dates

Awards anticipated to be effective March 30, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information about the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>.

The following additional requirements apply to this project:

- AR-1 Human Subjects Requirements
- AR-9 Paperwork Reduction Act Requirements
- AR-10 Smoke-Free Workplace Requirements
- AR-11 Healthy People 2010
- AR-12 Lobbying Restrictions
- AR-14 Accounting System Requirements

Additional information on these requirements can be found on the CDC Web site at the following Internet address: <http://www.cdc.gov/od/pgofunding/ARs.htm>.

VI.3. Reporting Requirements

You must provide CDC with an original, plus two hard copies, of the following reports:

1. Interim progress report no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

- a. Current Budget Period Activities Objectives.
 - b. Current Budget Period Financial Progress.
 - c. New Budget Period Program Proposed Activity Objectives.
 - d. Budget.
 - e. Additional Requested Information.
 - f. Measures of Effectiveness.
2. Financial status report no more than 90 days after the end of the budget period.
3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Rd., Atlanta, GA 30341, Telephone: 770-488-2700.

For scientific/research issues, contact: Extramural Project Officer, Carol A. Selman, 4770 Buford Hwy, NE, (F28), Chamblee, GA 30341, Telephone: 770-488-4352, E-mail: cselman@cdc.gov.

For financial, grants management or budget assistance, contact: Vivian F. Walker, Contract Specialist, CDC Procurement and Grants Office, 2920 Brandywine Rd., Atlanta, GA 30341, Telephone: 770-488-2724, E-mail: vwalker@cdc.gov.

VIII. Other Information

Background information concerning EHS-Net can be found on the CDC web site at the following Internet address: <http://www.cdc.gov/nceh/ehs/EHSNet/default.htm>.

Dated: October 15, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04-23618 Filed 10-20-04; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health/National Institute of Environmental Health Sciences

Proposed Collection; Comment Request; Dust Mite Allergen Reduction Study

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995,

for opportunity for public comment on proposed data collection projects, the National Institute of Environmental Health Sciences (NIEHS), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Tile: Dust Mite Allergen Reduction Study. Type of Information Collection Request: New. Need and Use of Information Collection: Asthmatics and others with dust mite allergies often implement strategies to avoid dust mite exposure, but have little objective evidence that their interventions are successful in reducing dust mite populations. Recently developed in-home test kits have introduced the capability to monitor the effectiveness of allergen reduction strategies by providing an affordable, simple way to measure dust mite allergens on a regular basis. The primary objective of this study is to determine if use of in-home test kits results in decreased dust mite allergen levels in home of children sensitive or allergic to dust mites. A secondary objective is to determine if use of in-home test kits result in attitudinal and behavioral changes related to implementing and maintaining dust mite reduction strategies. This study is a randomized intervention trial designed to test the efficacy of an in-home test kit in influencing behaviors to reduce dust mite allergen levels. Households will be recruited through flyers and will be screened for eligibility through a recruitment call line and a home visit to determine baseline dust mite levels in the household. Study participants will be randomly assigned to a treatment or control group. The treatment group will receive educational materials and an in-home test kit at set intervals, while the control group will receive educational materials alone. Vacuumed dust samples will be collected and delivered to the NIEHS laboratory for ELISA-based measurements of the dust mite allergens Der f 2 and Der p 2. A questionnaire will be used to collect information on home characteristics and on dust mite reduction attitudes and behaviors. Data will be collected at baseline, 6 months and 12 months. The results from this study will be used by NIEHS to plan future primary and secondary asthma prevention trials.

Frequency of Response: After two stages of eligibility screening, data will be collected at baseline, 6-months, and 12-months. *Affected Public:* Individuals or households. *Type of Respondents:* Parents of children with dust-mite allergies. The annual reporting burden

is as follows: *Estimated Number of Respondents*: See table below. *Estimated Number of Responses per Respondents*: See table below. *Average Burden Hours Per Response*: 0.25 hour for initial screening, 0.5 hour for dust mite eligibility screening, 1.5 hours for each baseline visit and 1 hour for each

follow-up home visit (6- and 12-month); and *Estimated Total Burden Hours Requested*: 690.5. The average annual burden hours requested is 112.5 for the initial screening, 140 for the dust mite eligibility screening, 216 for the baseline visit, 122 for the 6-month follow-up and 100 for the 12-month follow-up visits.

The annualized cost to respondents is estimated at \$13,810 (assuming \$20 hourly wage × 690.5 hours). There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total burden hours requested
Eligibility screening	450	1	0.25	112.5
Dust mite level eligibility screening	¹ 280	1	0.5	140
Baseline visit	² 144	1	1.5	216
6-month follow-up	122	1	1	122
12-month follow-up	³ 100	1	1	100
Total	⁴ 1,096	.....	.....	690.5

¹ Expect approximately 60% of the participants to satisfy the initial eligibility criteria.

² Expect approximately 50% of the participants who met initial eligibility to satisfy the dust mite level screening eligibility criteria.

³ Expect approximately 30% attrition rate over the 12 month period.

⁴ Individuals who participate in each step of data collection are counted more than once, for each phase of data collection. Total number of unduplicated respondents is 450.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) 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; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Leslie Elliott, Laboratory of Respiratory Biology, NIEHS, Building 101, A2-05, P.O. Box 12233, Research Triangle Park, NC 27709 or call non-toll-free number (919) 541-1161 or e-mail your request, including your address to: elliott1@niehs.nih.gov.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: October 8, 2004.

Rich Freed,

NIEHS, Associate Director for Management.

[FR Doc. 04-23560 Filed 10-20-04; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institutes of Health

National Institute of Environmental Health Sciences; Amended Notice of a Meeting of the Scientific Advisory Committee on Alternative Toxicological Methods: Availability of Video Casting and a Public Telephone Call-In Line

This notice announces the availability of video casting and a public telephone call-in line for the October 20, 2004 meeting of the Scientific Advisory Committee on Alternative Toxicological Methods (SACATM). The meeting will be held at the U.S. Environmental Protection Agency (EPA), 109 T.W. Alexander Drive, Research Triangle Park, NC (Building C, Room C111, Auditorium sections A. and B). Additional information about this SACATM meeting was published in a previous **Federal Register** notice (September 8 (Volume 69, Number 173) pages 54298—54299).

The National Toxicology Program (NTP) is making plans to video cast the SACATM meeting through the Internet at <http://www.niehs.nih.gov/external/>

video.htm. The following information is required for telephone access:

- **USA Toll Free Number:** 800-857-1738 (required).
- **Passcode:** 50250 (required).
- **Leader Name:** Kristina Thayer (required).
- **Press *6** to mute and unmute.

The NTP has reserved 50 telephone lines for this call and access availability will be on a first come first served basis. Comments from the phone will be solicited during public comment periods identified on the agenda (see below for revised draft agenda). Telephone comments should not exceed two minutes in length and each organization is allowed only one oral slot (in person or by the telephone) per agenda topic. Calls will be taken as time permits and at the discretion of the SACATM chairperson. Every effort will be made to accommodate callers, but the total time allotted for comments received via the telephone will be 30 minutes for the entire meeting. Priority will be given to callers who register to make public comments in advance of the meeting. Registration to present oral public comments or to submit written comments can be completed online at the SACATM meeting site (<http://ntp-server.niehs.nih.gov/index.cfm?objectid=26F6530D-BA27-9B29-FAE1657CB6DB907D>). Details about the meeting, Internet access and telephone call-in are also available at this site. The video casting and public telephone call-in are new remote access options for SACATM, thus their technical quality can not be guaranteed.

Revised Draft Agenda

*Scientific Advisory Committee on
Alternative Toxicological Methods
October 20, 2004*

U.S. Environmental Protection Agency, Building C, Room C111 (Auditorium sections A. and B), 109 T.W. Alexander Drive, Research Triangle Park, NC 27709. (A photo ID is required to access the EPA campus.)

8:30 a.m.

- Call to Order and Introductions
 - Welcome and Remarks from the National Institute of Environmental Health Sciences (NIEHS) and the National Toxicology Program (NTP)
 - Welcome and Remarks from the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) Chair
 - Update on Activities of the National Toxicology Program (NTP) Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM) and ICCVAM
 - Update on the European Center for the Validation of Alternative Methods (ECVAM) Workshop Recommendations and Validation Studies
 - Evaluation of the Under-Prediction Rate for the *in vivo* Rabbit Dermal Irritation Test
 - Public Comment
 - Preliminary Evaluation of the Under-Prediction Rate for the *in vivo* Rabbit Ocular Irritation Test
 - Public Comment
- 12 p.m.: Lunch Break (on your own, the EPA campus has a cafeteria)
- 1 p.m.
- ICCVAM Nominations
 - Public Comment
 - NTP Roadmap
 - Public Comment
 - ICCVAM Perspectives on Proposed OECD Draft guidance Document on the Validation and International Acceptance of New or Updated Test methods for Hazard Assessment (Guidance Document 34)
 - General Discussion

4:30 p.m.: Adjourn

Dated: October 8, 2004.

Samuel Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 04-23559 Filed 10-20-04; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Prospective Grant of Exclusive License: Human Parvovirus B19 Vaccine**

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of a worldwide exclusive license to practice the inventions embodied in PCT/US89/04948 filed November 14, 1989, and National Stage filed in Australia (patent no. 631159), Canada (patent no. 1284268), Israel (patent no. 92298) and Japan (patent no. 2755817), entitled "Parvovirus Capsids"; U.S. patent no. 5,508,186, U.S. patent no. 6,132,732, U.S. patent no. 6,001,371, U.S. patent no. 5,827,647, entitled "B19 Parvovirus Capsids"; U.S. patent no. 5,916,563, U.S. patent no. 6,558,676 entitled "Parvovirus Capsids"; and PCT/NL90/00130 filed September 11, 1990, and National Stage filed in Europe (patent no. 0491824), Austria (patent no. 122395), Denmark (patent no. 0491824), Germany (patent no. 69019359), Netherlands (patent no. 8902301), Spain (patent no. 2073036) and United States (patent nos. 6,204,044, 6,287,815 and 6,379,885), entitled "Human Parvovirus B19 Proteins and Virus-like Particles, Their Production and Their Use in Diagnostic Assays and Vaccines" to Viral Antigens, Inc., having a place of business in Memphis, Tennessee. The patent rights in these inventions have been assigned or exclusively licensed to the United States of America.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before January 19, 2005, will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Susan Ano, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852-3804; e-mail: anos@od.nih.gov; telephone: (301) 435-5515; Facsimile: (301) 402-0220.

SUPPLEMENTARY INFORMATION: This technology describes a method of producing non-infectious recombinant human parvovirus B-19 capsids

composed of viral proteins VP1 and VP2 or VP2. The technology further relates to diagnostic assays utilizing the recombinantly produced parvovirus capsid proteins, or antibodies to such proteins. The technology also describes a vaccine effective against parvovirus B19 infection, consisting of the recombinant capsid proteins. Data from the inventors show that the configuration of the vaccine optimal for eliciting neutralizing antibodies comprises approximately twenty five percent (25%) VP1 and seventy five percent (75%) VP2. In another embodiment, the technology describes the use of parvovirus B19 viral capsids as a gene delivery system for proteins.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 90 days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use may be limited to development of vaccines for parvovirus B19.

The licensed territory will be worldwide exclusive.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: October 14, 2004.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 04-23561 Filed 10-20-04; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY**Directorate of Science and Technology**

[Docket No. DHS-2004-0008]

Notice of Meeting of Homeland Security Science and Technology Advisory Committee

AGENCY: Office of the Under Secretary for Science and Technology, DHS.

ACTION: Notice.

SUMMARY: The Homeland Security Science and Technology Advisory

Committee (HSSTAC) will meet in a partially closed session on November 15–16, 2004.

DATES: The HSSTAC will meet in closed session on November 15, 2004, from 8:30 a.m. to 4:30 p.m. and on November 16, 2004, from 8:30 a.m. to 10 a.m. The Committee will meet in open session on November 16, 2004, from 10 a.m. to 12 p.m.

ADDRESSES: The meeting location for the open session is Booz Allen Hamilton, Virginia Square Plaza, 3811 Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Brenda Leckey, Homeland Security Science and Technology Advisory Committee, Department of Homeland Security, Directorate of Science and Technology, Washington, DC 20528; telephone (202) 254–5041; e-mail HSSTAC@dhs.gov.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act (FACA), Pub. L. 92–463, as amended (5 U.S.C. app. 2). The HSSTAC will meet for purposes of receiving briefings from its subcommittees on recent activities and findings in support of the annual report to Congress, deliberating subcommittee findings and providing recommendations to the Under Secretary, and determining future subcommittee and committee activities. In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. app. 2), the Under Secretary for Science and Technology has determined that this HSSTAC meeting will concern unclassified but sensitive matters to homeland security within the meaning of 5 U.S.C. 552b(c)(9)(B) and that, accordingly, the meeting will be partially closed to the public.

Public Attendance: Due to meeting space restrictions, the maximum number of public attendees will be 20. Members of the public will be registered to attend the public session on a first-come, first-served basis per the procedures that follow. Any member of the public who wishes to attend the public session must provide his or her name, affiliation, social security number, and date of birth no later than 5 p.m. e.s.t., Monday, November 8, 2004. Please provide the required information to Brenda Leckey via e-mail at HSSTAC@dhs.gov, or via phone at (202) 254–5721. Persons with disabilities who require special assistance should indicate so in their admittance request. Photo identification will be required for entry into the public session, and everyone in attendance

must be present and seated by 10 a.m. on November 16, 2004.

Public Comments: You may submit comments, identified by DHS–2004–0008, by one of the following methods:

- EPA Federal Partner EDOCKET Web site: <http://www.epa.gov/feddocket>. Follow instructions for submitting comments on the Web site. The Department of Homeland Security has joined the Environmental Protection Agency (EPA) online public docket and comment system on its Partner Electronic Docket System (Partner EDOCKET). The Department of Homeland Security and its agencies (excluding the United States Coast Guard and Transportation Security Administration) will use the EPA Federal Partner EDOCKET system. The USCG and TSA [legacy Department of Transportation (DOT) agencies] will continue to use the DOT Docket Management System until full migration to the electronic rulemaking Federal docket management system in 2005.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: hsstac@dhs.gov. Include DHS–2004–0008 in the subject line of the message.
- Fax: (202) 254–6177.
- Mail: Homeland Security Science and Technology Advisory Committee, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.epa.gov/feddocket>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.epa.gov/feddocket>.

Dated: October 14, 2004.

Charles E. McQueary,
Under Secretary for Science and Technology.
[FR Doc. 04–23575 Filed 10–20–04; 8:45 am]
BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2004–19205]

Senior Executive Service Performance Review Board Membership

AGENCY: Coast Guard, DHS.

ACTION: Notice of appointments.

SUMMARY: The Coast Guard is providing notice of the appointment of 11

individuals to serve on its Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Ronald Kogut, Chief, Office of Civilian Personnel, (202) 267–0921.

SUPPLEMENTARY INFORMATION: Under 5 U.S.C. 4314(c)(4), the Coast Guard is required to publish the names of individuals appointed to serve on the Coast Guard Performance Review Board (CGPRB). The following 11 persons have been selected to serve on the CGPRB:

Rear Admiral K.T. Venuto, Assistant Commandant for Human Resources, United States Coast Guard;

Rear Admiral D.G. Gabel, Assistant Commandant for Acquisition, United States Coast Guard;

Rear Admiral L.L. Hereth, Director of Port Security, United States Coast Guard;

Rear Admiral R.D. Sirois, Assistant Commandant for Operations, United States Coast Guard;

Rear Admiral J.C. Van Sice, Director of Reserve and Training, United States Coast Guard;

Rear Admiral D.W. Kunkel, Director of Operations Capability, United States Coast Guard;

Rear Admiral J.W. Underwood, Director of Operations Policy, United States Coast Guard;

Rear Admiral E.M. Brown, Assistant Commandant for Systems, United States Coast Guard;

Mr. John Matticks, Senior Planning Advisor, Federal Emergency Management Agency;

Ms. Sheila Lumsden, Deputy Assistant Director for Human Resources and Training, U.S. Secret Service; and

Mr. Sam Russ, Executive Director for Tactical Communications, U.S. Customs and Border Protection.

Dated: October 15, 2004.

Ronald Kogut,

Chief, Office of Civilian Personnel.

[FR Doc. 04–23565 Filed 10–20–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–030–1430 EU; AZA–32183]

Notice of Realty Action, Direct Sale of Public Lands in Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, direct sale.

SUMMARY: The following public lands have been found suitable for a direct sale under the authority of section (203)

(206) of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713), at not less than the estimated fair market value of \$2,750.00. The land will not be offered for sale for at least 30 days after the date of this notice. The following described lands are hereby classified for disposal by Direct Sale:

T. 24 N., R. 13 W., Gila and Salt River Meridian, Arizona; Section 34, E $\frac{1}{2}$ E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, Consisting of 2.5 acres.

The land described above is hereby segregated from appropriation under the public land laws including the mining laws.

This land will be offered to Sam Robinson the adjacent private landowner that had his house built on public land, and must be for not less than the appraised value specified above.

The private landowner will make an application for conveyance of those mineral interests offered under the authority of section 209(b) of the Federal Land Policy and Management Act of 1976 (90 Stat. 2757; 43 U.S.C. 1719). A nonrefundable fee of \$50 will be required from the private landowner for purchase of the mineral interests. Those mineral interests to be conveyed simultaneously with the sale of the land have been determined to have no known mineral value.

The conveyance document, when issued, will contain certain reservations to the United States and will be subject to any existing rights-of-way and any other valid existing rights.

On March 6, 2001, a notice was published in the **Federal Register**, volume 66, number 44, page 13566–13567, and the acreage figure was in error. The notice that was published on March 6, 2001, in the **Federal Register** had a 45-day comment period and stated that in the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Our office did not receive any comments and/or objections; therefore, a direct sale to resolve the trespass will proceed.

Dated: July 15, 2004.

Bonnie Winslow,

Acting Field Manager, Kingman Field Office.

[FR Doc. 04–23593 Filed 10–20–04; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS) Policy Committee; Notice and Agenda for Meeting

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meeting postponement.

SUMMARY: The OCS Policy Committee meeting scheduled for October 20–21, 2004, at the Holiday Inn Capitol in Washington, DC has been postponed until November.

DATES: Wednesday, November 17, 2004, from 8:30 a.m. to 5 p.m. and Thursday, November 18, 2004, from 8:30 a.m. to 12 p.m.

ADDRESSES: The Holiday Inn Capitol Hotel, 550 C Street, SW., Washington, DC 20024, telephone (202) 479–4000.

FOR FURTHER INFORMATION CONTACT: Ms. Jeryne Bryant at Minerals Management Service, 381 Elden Street, Mail Stop 4001, Herndon, Virginia 20170–4187. She can be reached by telephone at (703) 787–1211 or by electronic mail at jeryne.bryant@mms.gov.

SUPPLEMENTARY INFORMATION: The OCS Policy Committee represents the collective viewpoint of coastal states, local government, environmental community, industry and other parties involved with the OCS Program. It provides policy advice to the Secretary of the Interior through the Director of the MMS on all aspects of leasing, exploration, development, and protection of OCS resources.

The agenda for Wednesday, November 17 will cover the following principal subjects:

Overview of Global Oil and Gas and the Developing LNG Market in North America. This presentation will address the latest trends on oil and gas and the liquefied natural gas market with an emphasis on how it relates to DOI's role.

OCS and MMS Role in the Domestic Energy Picture. This presentation will address MMS's mission and business practices in managing mineral resource development on the OCS.

MMS Regional Issues. The Regional Directors will highlight activities off the California and Alaska coasts and the Gulf of Mexico.

Future Planning. This presentation will address the 5-Year Oil and Gas Program 2007–2012 and ways to prepare for future decision or direction of the Program.

Multiple Use of Existing Infrastructure. This presentation will address conversion of OCS oil and gas

infrastructure for other uses, proposed legislation and MMS's commitment to the challenge.

The agenda for Thursday, November 18 will cover the following principal subjects:

Committee Business. The new Committee will establish operating procedures and elect officers.

U.S. Commission on Ocean Policy. This presentation will highlight the Commission's final report and its recommendations for a national ocean policy.

The meeting is open to the public. Approximately 100 visitors can be accommodated on a first-come-first-served basis.

Upon request, interested parties may make oral or written presentations to the OCS Policy Committee. Such requests should be made no later than November 10, 2004, to Jeryne Bryant. Requests to make oral statements should be accompanied by a summary of the statement to be made. Please see **FOR FURTHER INFORMATION CONTACT** section for address and telephone number.

Minutes of the OCS Policy Committee meeting will be available for public inspection and copying at the MMS in Herndon, Virginia.

Authority: Federal Advisory Committee Act, Pub. L. 92–463, 5 U.S.C. appendix 1, and the Office of Management and Budget's Circular No. A–63, Revised.

Dated: October 15, 2004.

Thomas A. Readinger,

Associate Director for Offshore Minerals Management.

[FR Doc. 04–23576 Filed 10–20–04; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Meeting of Concessions Management Advisory Board

AGENCY: National Park Service.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. 1, Section 10), notice is hereby given that the Concessions Management Advisory Board (the Board) will hold its twelfth meeting on Thursday, November 4 and Friday, November 5, 2004. The meeting will be held at the Sheraton Denver West Hotel located at 360 Union Boulevard, Lakewood, CO 80228. The meeting will convene at 8:30 a.m. and will conclude at 4:30 p.m. each day.

SUPPLEMENTARY INFORMATION: The Board was established by Title IV, Section 409 of the National Park Omnibus Management Act of 1998, November 13,

1998 (Pub. L. 105–391). The purpose of the Board is to advise the Secretary and the National Park Service on matters relating to management of concessions in the National Park System.

The Board will meet at 8:30 a.m. for the regular business meeting for continued discussion on the following subjects:

- Discussion proposed work group solutions regarding Leasehold Surrender Interest (LSI)
- Report from the SERA Workgroup
- Update on CUA Regulations
- General Update of Concession Contracting
- Other Business (*e.g.*, logistics of next meeting) etc.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come first-served basis.

Assistance to Individuals With Disabilities at the Public Meeting

The meeting site is accessible to individuals with disabilities. If you plan to attend and will require an auxiliary aid or service to participate in the meeting (*e.g.*, interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least 2 weeks before the scheduled meeting date. Attempts will be made to meet any request(s) we receive after that date. However, we may not be able to make the requested auxiliary aid or service available because of insufficient time to arrange for it.

Anyone may file with the Board a written statement concerning matters to be discussed. The Board may also permit attendees to address the Board, but may restrict the length of the presentations, as necessary to allow the Board to complete its agenda within the allotted time. Such requests should be made to the Director, National Park Service, attention: Manager, Concession Program at least 7 days prior to the meeting.

Further information concerning the meeting may be obtained from National Park Service, Concession Program, 1849 C Street, NW., (2410), Washington, DC 20240, Telephone: (202) 513–7144. Draft minutes of the meeting will be available for public inspection approximately 6 weeks after the meeting, at the Concession Program Office located at 1201 Eye Street, NW., 11th Floor, Washington, DC.

Dated: October 12, 2004.

Randy Jones,

Acting Director, National Park Service.

[FR Doc. 04–23718 Filed 10–20–04; 8:45 am]

BILLING CODE 4312–53–M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: The United States International Trade Commission (USITC) has submitted a request for emergency processing to the Office of Management and Budget for review and clearance of a questionnaire, in accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The USITC has requested OMB approval of this submission by COB November 1, 2004.

Purpose of Information Collection: The form is for use by the Commission in connection with investigation No. 332–463, Logistic Services: An Overview of the Global Market and Potential Effects of Removing Trade Impediments, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). This investigation was requested by the Office of the United States Trade Representative (USTR). The Commission expects to deliver the results of its investigation to the USTR by May 6, 2005.

Summary of Proposal:

- (1) *Number of forms submitted:* One.
- (2) *Title of form:* Logistic Services: An Overview of the Global Market and Potential Effects of Removing Trade Impediments, Questionnaire for U.S. and Foreign-Based Service Suppliers.
- (3) *Type of request:* New.
- (4) *Frequency of use:* Service supplier questionnaire, single data gathering, scheduled for 2004.
- (5) *Description of respondents:* U.S. and foreign logistic services suppliers. Logistic services involve the efficient movement of raw materials, intermediate inputs, and finished goods between suppliers, manufacturers, and consumers.

(6) *Estimated number of respondents:* 42 (Service supplier questionnaire).

(7) *Estimated total number of hours to complete the forms:* 2100.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional Information or Comment: Copies of the forms and supporting documents may be obtained from Michael Nunes, Project Leader, (202) 205–3462, or Amanda Horan, Deputy Project Leader, (202) 205–3459.

Comments about the proposals should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10102 (Docket Library), Washington, DC 20503, Attention: Docket Librarian. All comments should be specific, indicating which part of the questionnaire is objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal (telephone no. (202) 205–1810). General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>).

By order of the Commission.

Issued: October 15, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–23554 Filed 10–20–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1073–1075 (Final)]

Certain Circular Welded Carbon Quality Line Pipe from China, Korea, and Mexico

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigations Nos. 731–TA–1073–1075 (Final) under section 735(b) of the Act (19 U.S.C. § 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China, Korea, and Mexico of certain circular welded carbon quality line pipe,

provided for in subheadings 7306.10.10 and 7306.10.50 of the Harmonized Tariff Schedule of the United States.¹

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

DATES: *Effective Date:* October 6, 2004 (with respect to the investigations on the subject merchandise from Korea and Mexico), and October 8, 2004 (with respect to the investigation on the subject merchandise from China).

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202-205-3187) or Douglas Corkran (202-205-3057), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background. The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that certain circular welded carbon quality line pipe from China, Korea, and Mexico are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on March 3, 2004 by American Steel Pipe Division of American Cast Iron Pipe Co., Birmingham, AL; IPSCO Tubulars, Inc., Camanche, IA; Lone Star Steel Co., Dallas, TX; Maverick Tube Corp.,

Chesterfield, MO; Northwest Pipe Co., Portland, OR; and Stupp Corp., Baton Rouge, LA.

Participation in the investigations and public service list. Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report. The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on December 7, 2004, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing. The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on December 21, 2004, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before December 14, 2004. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral

presentations should attend a prehearing conference to be held at 9:30 a.m. on December 17, 2004, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions. Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is December 14, 2004. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is December 29, 2004; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before December 29, 2004. On January 19, 2005, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before January 21, 2004. Parties may submit additional final comments pertaining to investigations in which Commerce has extended its final determinations on or before March 15, 2005. Such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be

¹ For purposes of these investigations, the Department of Commerce has defined the subject merchandise as "certain circular welded carbon quality steel line pipe of a kind used in oil and gas pipelines, over 32 mm (1.250 inches) in nominal diameter (1.660 inch actual outside diameter) and not more than 406.4 mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, or coated with any coatings compatible with line pipe), and regardless of end finish (plain end, beveled ends for welding, threaded ends or threaded and coupled, as well as any other special end finishes), and regardless of stenciling."

accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: October 18, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04-23612 Filed 10-20-04; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731-TA-1071 and 1072 (Final)]

Magnesium From China and Russia

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigations Nos. 731-TA-1071-1072 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 201673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports of alloy magnesium from China and of pure and alloy magnesium from Russia, provided for in subheadings 8104.11.00, 8104.19.00, and 8104.30.00 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this phase of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

DATES: Effective Date: October 4, 2004.

FOR FURTHER INFORMATION CONTACT:

Christopher J. Cassise (202-708-5408), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background

The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that imports of alloy magnesium from China and pure and alloy magnesium from Russia are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on February 27, 2004, by U.S. Magnesium Corp., Salt Lake City, UT; the United Steelworkers of America, Local 8319, Salt Lake City, UT; and the Glass, Molders, Pottery, Plastics & Allied Workers International, Local 374, Long Beach, CA.

Participation in the Investigations and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of these investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on February 8, 2005, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on February 23, 2005, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before February 16, 2005. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on February 18, 2005, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is February 15, 2005.

Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is March 2, 2005; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before March 2, 2005. On March 16, 2005, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before March 18, 2005, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: October 18, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04-23613 Filed 10-20-04; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree, Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on October 6, 2004, a proposed Consent Decree in United States and the *State of Colorado v. Asarco, Inc.*, an action for injunctive relief and the reimbursement of response costs pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, was lodged with the United States District Court for the District of Colorado, Civil Action No. 04-RB-2070 (CBS).

In this action, the United States and the State of Colorado sought injunctive relief to require defendant to perform certain remedial actions at the Vasquez Boulevard/Interstate 70 Superfund Site, located in Denver, Colorado, and to reimburse the United States and the State of Colorado for response costs incurred at the Site. Pursuant to the proposed Consent Decree, Asarco will remove and dispose of contaminated soils from 100 residential properties within the Site, and reimburse the United States and the State of Colorado for future response costs incurred at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to United States and the *State of Colorado v. Asarco, Inc.*, D.J. Ref. DJ# 90-11-3-138/7.

The Consent Decree may be examined at U.S. EPA Region 8, 999 18th Street, Suite 500, Denver, Colorado, 80202. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, <http://www.usdoj.gov/enrd/open.html>. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov),

fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check made payable to the United States Treasury in the amount of \$10.25 for the Consent Decree only or \$109.75 for the Consent Decree plus Appendices (25 cents per page reproduction cost).

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environmental and Natural Resources Division, United States Department of Justice.

[FR Doc. 04-23498 Filed 10-20-04; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on September 29, 2004, a proposed Consent Decree in *United States of America, The State of New Mexico, and The New Mexico Office of Natural Resources Trustee v. The Burlington Northern and Santa Fe Railway Company*, Civil Action No. CIV-04-1101 JH RHS, was lodged with the United States District Court for the District of New Mexico.

In this action the United States, on behalf of the United States Department of the Interior, the United States Fish and Wildlife Service ("DOI"), and the Attorney General of the State of New Mexico, on its own behalf and on behalf of The State of New Mexico and The New Mexico Office of Natural Resources Trustee ("NMONRT"), sought damages from The Burlington Northern and Santa Fe Railway Company ("BNSF") for injury to, destruction and loss of natural resources, under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9607(a), resulting from the release of hazardous substances from the AT & SF Albuquerque Superfund Site, located in Albuquerque, Bernalillo County, New Mexico. The Complaint alleges that hazardous substances, including PCP, zinc chloride, creosote and its constituents, were released from a wood treatment plant owned and operated by Defendant BNSF's predecessor to the environment, resulting in injury to wildlife habitat and groundwater resources. The Consent Decree provides for BNSF to pay a total of \$1.09 million to resolve the claims alleged in the Complaint. The Consent Decree also resolves BNSF's claim that the Federal government is partially responsible for

the injury, destruction and loss of natural resources due to alleged Federal control of the facility during World War I, by requiring the United States to pay a total of \$10,000. Of the total payments of \$1.1 million, a total of \$1,061,192.60 is to be paid into two separate Court Registry trust accounts: (1) \$400,000 for use by DOI and NMONRT jointly to plan and implement projects designed to restore, replace, and/or acquire the equivalent of injured habitat resources; and (2) \$661,192.60 for use by NMONRT to plan and implement projects designed to restore, replace, and/or acquire the equivalent of injured ground water resources. The remainder of the \$1.1 million is to be paid to reimburse costs incurred to assess the injury to, destruction and loss of natural resources, as follows: (1) \$11,625.32 to DOI; (2) \$26,101.04 to NMONRT; and (3) \$1,081.04 to the New Mexico Office of the Attorney General.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States, et al. v. The Burlington Northern and Santa Fe Railway Company*, D.J. Ref. 90-11-2-07889/1.

The Consent Decree may be examined at the Office of the United States Attorney, District of New Mexico, 201 Third St. NW., Ste. 900, Albuquerque, NM 87102. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, <http://www.usdoj.gov/enrd/open.html>. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC. 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$5.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Thomas A. Mariani, Jr.,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04-23495 Filed 10-20-04; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on September 29, 2004, a proposed Consent Decree in *United States of America, and the State of New Mexico v. The Burlington Northern and Santa Fe Railway Company*, Civil Action No. CIV-104-1102 RB WDS, was lodged with the United States District Court for the District of New Mexico.

In this action the United States, on behalf of the United States Environmental Protection Agency ("EPA"), and the State of New Mexico, on behalf of the New Mexico Environment Department, sought abatement of an imminent and substantial endangerment resulting from, and recovery of response costs incurred and to be incurred in response to releases of hazardous substances from the AT & SF Albuquerque Superfund Site, located in Albuquerque, Bernalillo County, New Mexico, under Sections 106(a) and 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9606(a) and 9607(a). The Complaint alleges that hazardous substances, including PCP, zinc chloride, creosote and its constituents, were released from a wood treatment plant owned and operated by Defendant The Burlington Northern and Santa Fe Railway Company's ("BNSF") predecessor, resulting in contamination of soil and groundwater, including a plume of dense non-aqueous phase liquid ("DNAPL") in the upper zone of the Santa Fe formation aquifer. The Consent Decree requires BNSF to remediate soil and groundwater contamination, including the DNAPL plume, by implementing the remedial action for the Site selected by EPA in its June 2002 Record of Decision. The Consent Decree also requires BNSF to reimburse EPA for past response costs of \$324,980.74 and to pay response costs incurred in the future by EPA and New Mexico in connection with the Site. The Consent Decree also resolves BNSF's claim that the federal government is partially responsible for Site remediation due to alleged federal control of the facility during World War I, by requiring the United States to pay BNSF \$590,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General,

Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States et al. v. The Burlington Northern and Santa Fe Railway Company*, D.J. Ref. 90-11-2-07889.

The Consent Decree may be examined at the Office of the United States Attorney, District of New Mexico, 201 Third Street NW., Ste. 900, Albuquerque, NM 87102, and at U.S. EPA Region 6, 1445 Ross Avenue, Ste. 1200, Dallas TX 75202. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, <http://www.usdoj.gov/enrd/open.html>. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please specify whether you would like a copy of the Consent Decree either with or without its appendices. For a copy of the Consent Decree with appendices enclose a check in the amount of \$78.50 (25 cents per page reproduction cost) payable to the U.S. Treasury. For a copy of the Consent Decree without appendices enclose a check in the amount of \$23.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Thomas A. Mariani, Jr.,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04-23496 Filed 10-20-04; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States v. ConocoPhillips Company*, Civ. No. H-04-3813, DOJ #90-5-1-1-07664, was lodged in the United States District Court for the Southern District of Texas on October 4, 2004. The Consent Decree resolves the liability of the named defendant to the United States for violations of section 301 of the Clean Water Act, 33 U.S.C. 1311. The claim arises from the defendant's discharge of effluent from a wastewater treatment facility at its Sweeney Refinery in Old Ocean, Texas,

in violation of effluent limits, including limits for Whole Effluent Toxicity, contained in its National Pollution Discharge Elimination System permit.

Under the proposed consent decree, Defendant will pay a civil penalty of \$610,000 and will perform a Supplemental Environmental Project which consists of the donation of 128 acres to the Austin Woods Unit of the San Bernard National Wildlife Refuge. Additionally, Defendant is required to take the necessary measures to comply with the CWA and its permit.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States v. ConocoPhillips Company*, DOJ #90-5-1-1-07664. The proposed Consent Decree may be examined at the Office of the United States Attorney, Southern District of Texas, 910 Travis Street, Suite 1500, Houston, Texas 77208, and at U.S. EPA Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202. During the public comment period, the proposed Consent Decree may also be examined on the following Department of Justice Web site, <http://www.usdoj.gov/enrd/open.html>. A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$13.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Thomas Mariani,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04-23497 Filed 10-21-04; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—American Architectural Manufacturers Association

Notice is hereby given that, on August 23, 2004, pursuant to section 6(a) of the

National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), American Architectural Manufacturers Association ("AAMA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: American Architectural Manufacturers Association, Schaumburg, IL. The nature and scope of AAMA's standards development activities are: The development of standards and other technical specifications for fenestration, door, and related products.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-23522 Filed 10-20-04; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—American Association of Motor Vehicle Administrators

Notice is hereby given that, on September 15, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), American Association of Motor Vehicle Administrators ("AAMVA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: American Association of Motor Vehicle Administrators, Arlington, VA. The nature and scope of AAMVA's

standards development activities are: common names, abbreviations, definitions, uses, sources, synonyms and representations of data elements transmitted and communicated by state and local traffic records systems. AAMVA is also responsible for specifications of contents and layouts for machine readable technologies such as smart cards, magnetic strips, 1D bar codes, 2D bar codes, in particular PDF 417 on state motor vehicle administration documentation such as titles, registrations, identification cards and driver licenses.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-23515 Filed 10-20-04; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—American Camping Association, Inc.

Notice is hereby given that, on September 17, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), American Camping Association, Inc. ("ACA") has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: American Camping Association, Inc., Martinsville, IN. The nature and scope of ACA's standards development activities are: To develop, promulgate, revise, amend, reissue, interpret, or otherwise maintain voluntary consensus standards related to youth camps, camp programs, and camp services, and use such standards in conformity assessment activities.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-23526 Filed 10-20-04; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE**Antitrust Division****Notice Pursuant To the National Cooperative Research and Production Act of 1993—American Society of Agricultural Engineers**

Notice is hereby given that, on September 21, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), American Society of Agricultural Engineers ("ASAE") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: American Society of Agricultural Engineers, St. Joseph, MI. The nature and scope of ASAE's standards development activities are: ASAE serves as the primary U.S. developer of standards, engineering practices and data (collectively referred to as standards) for engineering applicable to agricultural, food, and biological systems. The scope of these documents encompasses, but is not limited to, the following subject areas: agricultural equipment; biological and biological systems engineering; natural resources management; irrigation and drainage; agricultural structures and environment; livestock production; food and bioprocess engineering; information and electrical technologies; forest engineering; energy production and distribution for agricultural locales and operations; renewable fuels and biomass; aquacultural engineering; nursery and greenhouse operations; and agricultural safety and rural health.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-23504 Filed 10-20-04; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE**Antitrust Division****Notice Pursuant to the National Cooperative Research and Production Act of 1993—American Society of Safety Engineers**

Notice is hereby given that, on September 15, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), American Society of Safety Engineers ("ASSE") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: American Society of Safety Engineers, Des Plaines, IL. The nature and scope of ASSE's standards development activities are: To advance the technical, scientific, managerial and ethical knowledge and skills of occupational safety, health and environmental professionals.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-23513 Filed 10-20-04; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE**Antitrust Division****Notice Pursuant to the National Cooperative Research and Production Act of 1993—American Society of Heating, Refrigerating and Air-Conditioning Engineers**

Notice is hereby given that, on September 14, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the American Society of Heating, Refrigerating and Air-Conditioning Engineers ("ASHRAE") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its

standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: American Society of Heating, Refrigerating and Air-Conditioning Engineers, Atlanta, GA. The nature and scope of ASHRAE's standards development activities are: advancing the arts and sciences of heating, refrigeration, air conditioning and ventilation and the allied arts and sciences, and related human factors.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-23529 Filed 10-20-04; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE**Antitrust Division****Notice Pursuant to the National Cooperative Research and Production Act of 1993—American Society of Civil Engineers**

Notice is hereby given that, on September 17, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the American Society of Civil Engineers ("ASCE") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: American Society of Civil Engineers, Reston, VA. The nature and scope of ASCE's standards development activities are: to develop and publish standards covering a wide range of civil engineering areas, such as structural, geotechnical, transportation, construction, environmental, water and wastewater, coastal and waterway, fire

protection, utilities and architectural engineering.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-23534 Filed 10-20-04; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—American Veterinary Medical Association

Notice is hereby given that, on September 20, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), American Veterinary Medical Association (“AVMA”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: American Veterinary Medical Association, Schaumburg, IL. The nature and scope of AVMA’s standards development activities are: to develop, plan, establish, and coordinate voluntary consensus standards applicable to the advancement of the science and art of veterinary medicine, including its relationship to public health, biological science, and agriculture. AVMA conducts its standards development activities through the following committees: AVMA Council on Education; AVMA Educational Commission for Foreign Veterinary Graduates; AVMA Committee on Veterinary Technician Education and Activities; and AVMA American Board of Veterinary Specialties. These committees conduct standard setting activities relating to the certification of foreign veterinarians in the United States, the accreditation of foreign veterinarians in the United States, the accreditation of veterinary medical and technology programs, and the establishment of criteria for recognition of veterinary specialty organizations. Through its standard

development activities, AVMA seeks to advance the science and art of veterinary medicine, including its relationship to public health, biological science, and agriculture.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-23521 Filed 10-20-04; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Appraisal Institute

Notice is hereby given that, on September 7, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), the Appraisal Institute (“AI”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Appraisal Institute, Chicago, IL. The nature and scope of AI’s standards development activities are: to establish, maintain and publicize minimum requirements for AI membership and confer appropriate designations to properly qualified appraisers; to formulate and maintain a Code of Professional Ethics and Standards of Professional Practice for the real estate profession; to identify the body of knowledge in which the appraisal profession operates; and to establish, maintain and publicize educational standards for members.

Dorothy B. Fountain,

Deputy Director of Operations Antitrust Division.

[FR Doc. 04-23520 Filed 10-20-04; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Association of Records Managers and Administrators

Notice is hereby given that, on September 15, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Association of Records Managers and Administrators (“ARMA International”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Association of Records Managers and Administrators, Lenexa, KS. The nature and scope of ARMA International’s standards development activities are: standards and best practices for the implementation of policies, systems and procedures that manage recorded information in a variety of formats throughout the life cycle. These standards promote efficiency and cost savings by reducing wasted effort, ensuring consistency of procedures over time and reducing risk exposure.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-23514 Filed 10-20-04; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ASTM International

Notice is hereby given that, on September 14, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), ASTM International (“ASTM”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of

business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: ASTM International, West Conshohocken, PA. The nature and scope of ASTM's standards development activities are: ASTM International's Interlaboratory Crosscheck Programs provide participating laboratories with a statistical quality assurance (SQA) tool, enabling them to compare their performance in the use of ASTM methods against other laboratories worldwide. ASTM Committee D02 on Petroleum Products and Lubricants sponsors the programs and more than 600 published standards.

For additional information, please contact Thomas B. O'Brien, Jr., General Counsel, at the above address, telephone # (610) 832-9597, e-mail address tobrien@astm.org.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-23509 Filed 10-20-04; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ASTM International—Cement and Concrete Reference Laboratory

Notice is hereby given that, on September 14, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), ASTM International—The Cement and Concrete Reference Laboratory ("CCRL") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: ASTM International—The Cement and Concrete Reference Laboratory, Gaithersburg, MD. The nature and scope of CCRL's standards development activities are: CCRL provides conformity assessment activities. CCRL is a National Institute of Standards and Technology (NIST) Research Associate Program sponsored by ASTM International. ASTM Committees C-1 on Cement and C-9 on Concrete and Concrete Aggregates provide programmatic oversight to CCRL. CCRL operates two programs that promote the quality of testing in construction materials laboratories. These are the (1) Laboratory Inspection and (2) Proficiency Sample programs which provide laboratories with a mechanism for determining the quality of their testing of hydraulic cement, Portland cement concrete and aggregates, steel reinforcing bars, pozzolans and masonry materials using ASTM International standards.

The Laboratory Inspection Program provides a laboratory with a comprehensive account of how its procedures, practices, equipment and facilities compare with ASTM standards requirements. The CCRL laboratory inspector checks critical equipment dimensions and operating characteristics; watches a technician demonstrate test procedures; and reviews the quality system when covered by appropriate ASTM standards.

The Proficiency Sample Programs are a means for a laboratory to monitor the quality of its testing between CCRL on-site assessments. The test procedures to be performed are taken from current ASTM specifications. The specified tests are performed and the results reported to the CCRL for review and evaluation.

For additional information, please contact Thomas B. O'Brien, Jr., General Counsel, ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 10428-2959, telephone no. (610) 832-9597, e-mail address tobrien@astm.org.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-23531 Filed 10-20-04; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ASTM International—Intellectual Property Policy

Notice is hereby given that, on September 17, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), ASTM International—Intellectual Property Policy ("ASTM-IPP") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: ASTM International—Intellectual Property Policy, west Conshohocken, PA. The nature and scope of ASTM-IPP's standards development activities are: ASTM International develops standards in over 130 areas covering subjects including consumer products, medical services and devices, electronics, metals, paints, plastics, textiles, petroleum, construction, energy and the environment. ASTM International, as part of its standards development activities, has promulgated and adopted an Intellectual Property Policy as described in the Act (publicly available at <http://www.astm.org/Itpolicy.pdf>).

For additional information, please contact: Thomas B. O'Brien, Jr., General Counsel, ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA, telephone no. (610) 832-9597, e-mail address tobrien@astm.org.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-23535 Filed 10-20-04; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE**Antitrust Division****Notice Pursuant to the National Cooperative Research and Production Act of 1993—Caterpillar Inc.: Consortium To Develop Positioning System for Machine Information System**

Notice is hereby given that, on August 12, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Caterpillar Inc.: Consortium To Develop Positioning System for Machine Information System ("CAT") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the identities of the parties to the venture are: Caterpillar Inc., Mossville, IL; and Applanix Corporation, Richmond Hill, Ontario, CANADA. The general areas of CAT's planned activities are to investigate methods to compensate for satellite shading that cause Caterpillar's information-based products such as CAES to cease giving useful positioning data. The activities of this Consortium will be partially funded by an award from the Department of Energy/National Energy Technology Laboratory.

Dorothy F. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-23510 Filed 10-20-04; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE**Antitrust Division****Notice Pursuant to the National Cooperative Research and Production Act of 1993—Consumer Specialty Products Association Inc.**

Notice is hereby given that, on September 8, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Consumer Specialty Products Association Inc. ("CSPA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of

business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Consumer Specialty Products Association Inc., Washington, DC. The nature and scope of CSPA's standards development activities are: consumer-specialty product safety; product description, size and rating; product evaluation test procedures; definitions of terms; labeling and other product information; and recommended levels of performance, among others.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-23512 Filed 10-20-04; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE**Antitrust Division****Notice Pursuant to the National Cooperative Research and Production Act of 1993—Conveyor Equipment Manufacturers Association**

Notice is hereby given that, on September 15, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Conveyor Equipment Manufacturers Association ("CEMA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Conveyor Equipment Manufacturers Association, Naples, FL. The nature and scope of CEMA's standards development activities are: voluntary industry and ANSI standards, written for the mutual benefit of manufacturer, user, and distributor, associated with the proper identification, engineering, and application of conveyors and auxiliary equipment used in the

material handling sector of the economy.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-23533 Filed 10-20-04; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE**Antitrust Division****Notice Pursuant to the National Cooperative Research and Production Act of 1993—EIFS Industry Members Association**

Notice is hereby given that, on August 31, 2004, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the EIFS Industry Members Association ("EIMA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: EIFS Industry Members Association, Morrow, GA. The nature and scope of EIMA's standards development activities are: as a standards development institution accredited by the American National Standards Institute ("ANSI"), EIMA developed, maintains and updates the ANSI/EIMA 99-A-2001 standards which provides the requirements for specifying and installing Exterior Insulation and Finish Systems.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-23532 Filed 10-20-04; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE**Antitrust Division****Notice Pursuant to the National Cooperative Research and Production Act of 1993—Hydraulic Institute, Inc.**

Notice is hereby given that, on September 15, 2004, pursuant to section

6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Hydraulic Institute, Inc. ("HI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Hydraulic Institute, Inc., Parsippany, NJ. The nature and scope of HI's standards development activities are: more than twenty pump standards for pumps prepared and updated in accordance with the canvass approval process of the American National Standards Institute ("ANSI"). The HI standards define a product, material, process or procedure relating to, *inter alia*, centrifugal, reciprocating, vertical, rotary, sealless, air operated or controlled volume metering pumps, with reference to one or more of the following: nomenclature, composition, construction, dimensions, tolerances, safety, operating characteristics, performances, quality, rating, testing and service. Further HI's supplier members and others participate in the development of guidelines and standards within the scope of, *inter alia*, motors and drives, monitoring devices, seals, housings, and more broad-based topics such as electronic data exchange, pump piping, intake design, viscosity correction, variable speed pumping and life cycle cost.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-23511 Filed 10-20-04; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Interactive Advertising Bureau

Notice is hereby given that, on September 17, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Interactive Advertising Bureau ("IAB")

has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Interactive Advertising Bureau, New York, NY. The nature and scope of IAB's standards development activities are: to develop, promulgate and publish voluntary consensus standards for the Internet Advertising industry, using procedures that incorporate the attributes of openness, balance of interests, due process, and appeals process, and consensus. The IAB sets out to organize the industry to set standards and guidelines that make Interactive an easier medium for agencies and marketers to buy and capture value from advertising.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-23519 Filed 10-20-04; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—International code Council

Notice is hereby given that, on September 16, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the International Code Council ("ICC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization

is: International Code Council, Falls Church, VA. The nature and scope of ICC's standards development activities are: to develop, promulgate and publish voluntary consensus codes and standards and to provide related services and products regarding construction regulation and the built environment.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-23507 Filed 10-20-04; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IPC—Association Connecting Electronics Industries

Notice is hereby given that, on September 14, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), IPC—Association Connecting Electronics Industries ("IPC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: IPC—Association Connecting Electronics Industries, Bannockburn, IL. The nature and scope of IPC's standards development activities are: design and performance standards for all types of interconnections, including printed wiring boards, flexible circuits, flat cable and discrete wiring devices. In addition, IPC develops standards for materials used in these products. Also, IPC is involved in standards for computer-aided technology, used to define electronic description. IPC is therefore also involved not only in the development of product standards, but in standardization and in guidelines

that will impact the electronic packaging community.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-23516 Filed 10-20-04; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Laser Institute of America/Accredited Standards Committee (ASC) Z136

Notice is hereby given that, on September 13, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Laser Institute of America (“LIA”), as secretariat to and in conjunction with Accredited Standards Committee (ASC) Z136, has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Laser Institute of America (LIA)/ASC Z136, Orlando, FL. LIA serves as secretariat for Accredited Standards Committee (ASC) Z136, Orlando, FL. The nature and scope of LIA/ASC Z136’s standards development activities are: to provide protection against hazards which are created by the use of lasers and optically radiating diodes.

Additional information concerning LIA/ASC Z136 may be obtained from Barbara Sams, Standards Administrator, at (407) 380-1553.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-23517 Filed 10-20-04; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—NAHB Research Center, Inc.

Notice is hereby given that, on September 17, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), NAHB Research Center, Inc. (“NAHB”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: NAHB Research Center, Inc., Upper Marlboro, MD. The nature and scope of NAHB’s standards development activities are: To develop and publish consensus standards—including products, construction materials and systems, technology, and methodologies that facilitate commerce—in response to needs for performance and prescriptive standards for use in single-family and multi-family housing.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-23523 Filed 10-20-04; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The National Board of Boiler and Pressure Vessel Inspectors

Notice is hereby given that, on September 17, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), The National Board of Boiler and Pressure Vessel Inspectors (“National Board”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the

standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: The National Board of Boiler and Pressure Vessel Inspectors, Columbus, OH. The nature and scope of the National Board’s standards development activities are: securing concerted action and maintaining uniformity in the construction, installation, inspection, operation, repair and alteration of boilers, pressure vessels or other pressure retaining items and their appurtenances, thereby assuring acceptance and interchangeability among jurisdictional authorities.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-23530 Filed 10-20-04; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Fire Protection Association

Notice is hereby given that, on September 20, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), National Fire Protection Association (“NFPA”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: National Fire Protection Association, Quincy, MA. The nature and scope of NFPA’s standards development activities are: NFPA develops close to 300 standards (variously denominated as Codes, Standards, Guides, and Recommended Practices) in a broad

range of fields related to fire and electrical safety, safety in buildings and structures, life safety as well as other fields related to the safeguarding of life and property. NFPA standards cover an array of subjects including, but not limited to, prevention of and protection from fire, explosion, electricity, lightning and other hazards; test methods; design, installation and maintenance of fire protection and other safety systems; professional qualifications for enforcement officials and fire, medical and other emergency personnel; accident prevention; premises security; safety in buildings and other structures and locations; chemical and hazardous materials storage and handling; and a variety of subjects related to fire, medical and other emergency services including safety and health, training, organization, deployment and operations, and protective clothing and equipment. NFPA also engages in several conformity assessment activities using NFPA standards. These include several professional certification programs supporting the fire protection, fire service, building, and electrical inspection professions.

NFPA standards are developed by approximately 240 different Technical Committees (including committees known as Technical Correlating Committees that head multi-committee projects), and these Committees are the principal consensus-developed bodies within the NFPA standards development process. The full scope of NFPA's standards activities are reflected in the scope statements of NFPA Technical Committees and in NFPA standards that have been issued or are under development. This information together with other information showing the nature and scope of NFPA's standards development activities are available directly from NFPA, to the attention of Casey C. Grant, Assistant Vice President, Codes and Standards Administration, at the above address, telephone (617) 984-7241, e-mail cgrant@nfpa.org. NFPA also maintains current information about its standards development activities on its Web site at <http://www.nfpa.org>. For additional information, please contact: Maureen Brodoff, Vice President & General Counsel, at the above address, telephone (617) 984-7256, e-mail mbrodoff@nfpa.org.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-23518 Filed 10-20-04; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Marine Manufacturers Association

Notice is hereby given that, on September 20, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), National Marine Manufacturers Association ("NMMA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: National Marine Manufacturers Association, Chicago, IL. The nature and scope of NMMA's standards development activities are: to develop, promulgate and make available voluntary lubricant performance standards for the marine industry. NMMA establishes performance standards and testing procedures for marine engine oils to assist boaters and manufacturers in identifying engine oils which have been specially formulated to withstand the rigors of use in marine engines. NMMA's voluntary consensus standards are developed by NMMA members with comments from the public. NMMA members include original equipment manufacturers, test laboratories, oil marketers and oil additive companies.

Additional information concerning NMMA can be obtained from Tom Marhevko at NMMA at (312) 946-6213.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-23524 Filed 10-20-04; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Roofing Contractors Association

Notice is hereby given that, on September 10, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the National Roofing Contractors Association ("NRCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: National Roofing Contractors Association, Rosemont, IL. The nature and scope of NRCA's standards development activities are: To develop, plan, establish, and coordinate voluntary consensus standards applicable to a variety of constructed roof systems. In particular, NRCA is in the process of facilitating a long-term roofing industry initiative to develop and maintain suitable performance criteria for constructed roof systems. In order to achieve this initiative, NRCA has established a committee (referred to as PCCRS) made up of representatives from the roofing industry that will be responsible for developing voluntary consensus standards applicable to constructed roof systems. Through its standards development activities, NRCA seeks to enhance and build upon existing roofing-related standards by developing and maintaining suitable performance criteria applicable to a wide range of complete roof systems. Such performance criteria are intended to provide roofing industry professionals and building owners with a consensus opinion defining the attributes of a wide variety of successful, long-term roof systems.

Additional information concerning NRCA's standards development activities may be obtained from Mark Graham, Associate Executive Director for Technical Services, National Roofing

Contractors Association, at (847) 299-9070.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-23505 Filed 10-20-04; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National SPA and Pool Institute

Notice is hereby given that, on September 15, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the National Spa and Pool Institute ("NSPI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: National Spa and Pool Institute, Alexandria, VA. The nature and scope of NSPI's standards development activities are: to provide recommended minimum guidelines to builders, manufactures, installers and pool operators for the design, equipment, operation and installation of new construction and renovation of pools and spas.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-23527 Filed 10-20-04; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—NSF International

Notice is hereby given that, on September 8, 2004, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993,

15 U.S.C. 4301 *et seq.* ("the Act"), NSF International ("NSF") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: NSF International, Ann Arbor, MI. The nature and scope of NSF's standards development activities are: public health safety and environmental standards including, but not limited to: food additives and contaminants (chemical and microbiological), commercial and household food service equipment (powered, preparation, storage, and service products), food processing equipment; water quality and treatment, drinking water additives, drinking water treatment systems, commercial bottled water, home treatment devices, beverage treatment technologies; plumbing products, plastic pipe; recreational water standards, swimming pool, spa, and hot tubs and related equipment; waste water treatment systems (small, commercial, and home treatment systems and technologies), biosolids quality and treatment, waste water additives; air quality, product emissions and filtration equipment; and related management system standards.

Additional information concerning NSF may be obtained from Jane Wilson, Manager, Standards, NSF International at (734) 827-6835.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-23508 Filed 10-20-04; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Semiconductor Research Corporation

Notice is hereby given that, on September 14, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Semiconductor Research Corporation

has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Chartered Semiconductor Mfg., Singapore, SINGAPORE has been added to this venture as Member; and Rohm and Haas Electronic Materials, Marlborough, MA has been added as Science Area Member. Also, Compaq Computer Corporation, Shrewsbury, MA; Conexant Systems, Newport Beach, CA; CVC, Inc., Rochester, NY; Eastman Kodak Company, Rochester, NY; FLIPCHIP Technologies L.L.C., Phoenix, AZ; Genus, Inc., Sunnyvale, CA; Microcosm Technologies, Inc., Irvine, CA; Mission Research Corporation, Albuquerque, NM; Neo Linear, Inc., Pittsburgh, PA; Numerical Technologies, Inc., San Jose, CA; Physical Electronics Inc., Eden Prairie, NM; Shipley Company, Marlborough, MA; SILVACO Data Systems, Santa Clara, CA; Synopsys, Inc., Mountain View, CA; TestChip Technologies, Inc., Austin, TX; Tessera, Inc., San Jose, CA; Torrex Equipment Corporation, Livermore, CA; and Ziptronix, Inc., Research Triangle, NC have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SRC intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, SRC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 30, 1985 (50 FR 4281).

The last notification was filed with the Department on January 6, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 8, 2001 (66 FR 13972).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-23506 Filed 10-20-04; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE**Antitrust Division****Notice Pursuant to the National Cooperative Research and Production Act of 1993—Society of Cable Telecommunications Engineers**

Notice is hereby given that, on September 20, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Society of Cable Telecommunications Engineers ("SCTE") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Society of Cable Telecommunications Engineers, Exton, PA. The nature and scope of SCTE's standards development activities are: the development of standards, specifications, and technical reports in the field of cable telecommunications. Standardization topics include, but are not limited to, definitions and terminology; methods of measurement and test; products; systems, technology rating structures; thermal limits and applications guides; recommended practices; materials; and safety.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-23538 Filed 10-20-04; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE**Antitrust Division****Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Telecommunications Industry Association**

Notice is hereby given that, on August 12, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The Telecommunications Industry Association ("TIA") has filed written notifications simultaneously with the Attorney General and the Federal Trade

Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: The Telecommunications Industry Association, Arlington, VA. The nature and scope of TIA's standards development activities are: TIA is accredited by the American National Standards Institute ("ANSI") to develop voluntary industry standards for a wide variety of telecommunications products. TIA's Standards and Technology Department is composed of five divisions which sponsor more than 70 standards-setting formulating groups in Fiber Optics, User Premises Equipment, Network Equipment, Wireless Communications and Satellite Communications.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-23536 Filed 10-20-04; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE**Antitrust Division****Notice Pursuant to the National Cooperative Research and Production Act of 1993—Theatrical Dealers Association D/B/A Entertainment Services and Technology Association**

Notice is hereby given that, on September 9, 2004, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Theatrical Dealers Association d/b/a Entertainment Services and Technology Association ("ESTA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization

is: Theatrical Dealers Association d/b/a Entertainment Services and Technology Association, New York, NY. The nature and scope of ESTA's standards development activities are: The development of technical standards used in the entertainment industry, principally in the live entertainment industry, that promote compatibility among equipment, products, and systems of competing manufacturers or that are designed to prevent unreasonable risks of injury to either persons or property through equipment or products or the manner in which they are to be used.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-23525 Filed 10-20-04; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE**Antitrust Division****Notice Pursuant to the National Cooperative Research and Production Act of 1993—Third Generation Partnership Project 2**

Notice is hereby given that, on September 14, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Third Generation Partnership Project 2 ("3GPP2") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal name of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Third Generation Partnership Project 2, Arlington, VA. The nature and scope of 3GPP2's standards development activities are: for the purposes of preparing, approving, and maintaining globally applicable Technical Specifications and Technical Reports for a 3rd Generation Mobile System based on the evolving ANSI-41 Core Network and the relevant radio access technologies to be transposed by the relevant standardization bodies (Organizational Partners) into

appropriate deliverables (e.g., standards).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-23537 Filed 10-20-04; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Water Quality Association

Notice is hereby given that, on September 15, 2004, pursuant to section 6(b) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Water Quality Association (“WQA”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Water Quality Association, Lisle, IL. The nature and scope of WQA’s standards development activities are: planning, developing, establishing and coordinating voluntary harmonized consensus standards in the water treatment industry, either itself or through cooperative standards making activities with other not for profit standards development organizations.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-23528 Filed 10-20-04; 8:45 am]

BILLING CODE 4410-11-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (04-114)]

NASA Advisory Council, Space Science Advisory Committee Sun-Earth Connection Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Sun-Earth Connection Advisory Subcommittee (SECAS).

DATES: Wednesday, November 3, 2004, 8:30 a.m. to 5:30 p.m., Thursday, November 4, 2004, 8:30 a.m. to 5:30 p.m., and Friday, November 5, 2004, 8:30 a.m. to 3 p.m.

ADDRESSES: NASA Headquarters, Rooms 6H46 (November 3) and 9H46 (November 4 and 5), 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Giles, Science Mission Directorate, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358-1762, barbara.giles@nasa.gov.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

- Sun-Earth Systems Program Overview and Status
- Reports from Sun-Solar System Connection Management Operations Working Groups
- Sun-Solar System Connection Roadmap Status Report
- Revised Advisory Committee Structure Discussion

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information no less than 3 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, phone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship can provide identifying information in advance by contacting Marian Norris via e-mail at mnorris@nasa.gov or by telephone at (202) 358-4452. It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 04-23540 Filed 10-20-04; 8:45 am]

BILLING CODE 7510-03-P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Arts and Artifacts Indemnity Panel, Advisory Committee; Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended) notice is hereby given that a meeting of the Arts and Artifacts Indemnity Panel of the Federal Council on the Arts and the Humanities will be held at 1100 Pennsylvania Avenue, NW., Washington, DC 20506, in Room 315, from 9 a.m. to 5 p.m., on Monday, November 8, 2004.

The purpose of the meeting is to review applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities for exhibitions beginning after January 1, 2005.

Because the proposed meeting will consider financial and commercial data and because it is important to keep values of objects, methods of transportation and security measures confidential, pursuant to the authority granted me by the Chairman’s Delegation of Authority to Close Advisory Committee Meetings, dated July 19, 1993, I have determined that the meeting would fall within exemption (4) of 5 U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of views and to avoid interference with the operations of the Committee.

It is suggested that those desiring more specific information contact Acting Advisory Committee Management Officer, Michael P. McDonald, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or call (202) 606-8322.

Michael P. McDonald,

Acting, Advisory Committee Management Officer.

[FR Doc. 04-23501 Filed 10-20-04; 8:45 am]

BILLING CODE 7536-01-P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT:

Michael McDonald, Acting Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606-8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606-8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* November 3, 2004.
Time: 9 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Literature, submitted to the Division of Preservation and Access at the July 15, 2004, deadline.
2. *Date:* November 5, 2004.
Time: 9 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Material Culture Collections, submitted to the Division of Preservation and Access at the July 15, 2004, deadline.
3. *Date:* November 9, 2004.
Time: 9 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Visual Arts and Architecture, submitted to the Division of Preservation and Access at the July 15, 2004, deadline.
4. *Date:* November 15, 2004.
Time: 8:30 a.m. to 5:30 p.m.
Room: 426.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the

Division of Public Programs at the September 16, 2004, deadline.

5. *Date:* November 22, 2004.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs at the September 16, 2004, deadline.
6. *Date:* November 29, 2004.
Time: 8:30 a.m. to 5:30 p.m.
Room: 426.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs at the September 16, 2004, deadline.

Michael McDonald,

Acting Advisory Committee Management Officer.

[FR Doc. 04-23500 Filed 10-20-04; 8:45 am]

BILLING CODE 7536-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030-16033]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for Seiko Corporation of America's Facility in Mt. Olive, NJ

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT:

Donna M. Janda, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, telephone (610) 337-5371, fax (610) 337-5269; or by E-mail: dmj@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is issuing a license amendment to Seiko Corporation of America (Seiko) for Materials License No. 29-19080-01, to authorize release of its facility in Mt. Olive, New Jersey for unrestricted use. NRC has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR Part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this Notice.

II. EA Summary

The purpose of the action is to authorize the release of the licensee's Mt. Olive, New Jersey facility for unrestricted use. Seiko was authorized by NRC from 1985 for possession and storage of timepieces, hands, and dials containing radioactive material at the site prior to distribution. On June 9, 2004, Seiko requested that NRC release the facility for unrestricted use. Seiko has conducted surveys of the facility and provided information to the NRC to demonstrate that the site meets the license termination criteria in Subpart E of 10 CFR Part 20 for unrestricted release. Seiko will continue licensed activities at another location.

The NRC staff has prepared an EA in support of the license amendment. The facility was remediated and surveyed prior to the licensee requesting the license amendment. Therefore, the staff considered the impact of the residual radioactivity at the facility and concluded that since the residual radioactivity meets the requirements in Subpart E of 10 CFR Part 20, a Finding of No Significant Impact is appropriate.

III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of the license amendment to release the facility for unrestricted use. The NRC staff has evaluated Seiko's request and the results of the surveys and has concluded that the completed action complies with the criteria in Subpart E of 10 CFR Part 20. The staff has found that the environmental impacts from the action are bounded by the impacts evaluated by NUREG-1496, Volumes 1-3, "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities" (ML042310492, ML042320379, and ML042330385). On the basis of the EA, the NRC has concluded that the environmental impacts from the action are expected to be insignificant and has determined not to prepare an environmental impact statement for the action.

IV. Further Information

Documents related to this action, including the application and supporting documentation, are available electronically at NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession

numbers for the documents related to this Notice are: The Environmental Assessment (ML042520508), Letter dated June 9, 2004 requesting amendment (ML041610364), Letter dated July 8, 2004 providing additional information (ML042030186), and Letter from NJDEP dated July 29, 2004 (ML042290012). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at (800) 397-4209 or (301) 415-4737, or by e-mail to pdr@nrc.gov.

These documents may be viewed electronically at the NRC Public Document Room (PDR), O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD, 20852. The PDR reproduction contractor will copy documents for a fee. The PDR is open from 7:45 a.m. to 4:15 p.m., Monday through Friday, except on Federal holidays.

Dated in King of Prussia, Pennsylvania this 14th day of October, 2004.

For the Nuclear Regulatory Commission.

John D. Kinneman,

Chief, Nuclear Materials Safety Branch 2,
Division of Nuclear Materials Safety Region I.

[FR Doc. 04-23562 Filed 10-20-04; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of October 25, 2004:

An Open Meeting will be held on Tuesday, October 26, 2004, at 10 a.m., in Room 1C30, the William O. Douglas Room.

The subject matter of the Open Meeting scheduled for Tuesday, October 26, 2004 will be:

1. The Commission will consider whether to propose new and amended rules and form changes to modify the registration, communications, and offering processes under the Securities Act of 1933 ("Securities Act"). In addition, the proposals would seek to ensure more timely investment information to investors without mandating delays in the offering process and would further integrate disclosure processes under the Securities Act and the Securities Exchange Act of 1934. The proposals would address communications related to registered

securities offerings, delivery of information to investors, and procedural restrictions in the offering and capital formation process.

For further information, please contact Amy M. Starr, Consuelo Hitchcock, Andrew Thorpe, Daniel Horwood, or Anne Nguyen, in the Division of Corporation Finance, at (202) 824-5300.

2. The Commission will consider whether to adopt rule 203(b)(3)-2 under the Investment Advisers Act of 1940 to require hedge fund advisers to register with the Commission. The Commission also will consider whether to adopt certain conforming and transitional amendments to rules 203(b)(3)-1, 203A-3, 204-2, 205-3, 206(4)-2, 222-2 and Form ADV.

For further information, please contact Vivien Liu, Senior Counsel, in the Division of Investment Management, at (202) 942-0719.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: October 19, 2004.

Jonathan G. Katz,

Secretary.

[FR Doc. 04-23680 Filed 10-19-04; 11:34 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50525; File No. SR-Amex-2004-77]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the American Stock Exchange LLC Relating to the Trading of Ratio Orders

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 September 23, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I and II below, which items have been prepared by the Amex. The Amex filed the proposal pursuant to section 19(b)(3)(A) under the Act,³ and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 950, "Rules of General Applicability," and Amex Rule 950-ANTE, "Rules of General Applicability" to allow ratio orders with certain permissible ratio limits, as defined below, to be executed through the Amex. In addition, the Amex proposes to amend Commentary .01 to Amex Rule 950(d) and Commentary .01 to Amex Rule 950-ANTE(d) to include these types of permissible ratio orders in the same exception to the priority rules that Amex Rule 950(d), Commentary .01, and Amex Rule 950-ANTE(d), Commentary .01, currently provide for spread, straddle, and combination orders.

The text of the proposed rule change appears below. Additions are *italicized*.

Rule 950 "Rules of General Applicability"

(a)-(d) No Change

Commentary to (d)

.01 When a member holding a spread order, a straddle order, *ratio order*, or a combination order and bidding or offering on the basis of a total credit or debit for the order has determined that the order may not be executed by a combination of transactions with or within the bids and offers established in the marketplace, then the order may be executed as a spread, straddle, or combination at the total credit or debit with one other member without giving priority to either bids or offers established in the marketplace that are not better than the bids or offers comprising such total credit or debit, provided that, (i) in executing a spread order, the member does not buy at the established bid for the option contract to be bought and sell at the established offer for the option contract to be sold or, (ii) in executing a straddle or combination order, the member does not either buy both sides of the order at the established bids or sell both sides of the order at the established offers.

Commentary .02-.07 No Change

(e)-(e)(iv) No Change

(e)(v) *Ratio Order—A Ratio Order is a spread, straddle, or combination*

⁴ 17 CFR 240.19b-4(f)(6).

order in which the stated number of option contracts to buy (sell) is not equal to the stated number of option contracts to sell (buy), provided that the number of contracts differ by a permissible ratio. For purposes of this section, a permissible ratio is any ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00). For example, a one-to-two (.5) ratio, a two-to-three (.667) ratio, or a two-to-one (2.00) ratio is permissible, whereas a one-to-four (.25) ratio or a four-to-one (4.0) ratio is not.

(f)–(n) No Change

Rule 950–ANTE “Rules of General Applicability”

(a)–(d) No Change

Commentary to (d)

.01 When a member holding a spread order, a straddle order, *ratio order*, or a combination order and bidding or offering on the basis of a total credit or debit for the order has determined that the order may not be executed by a combination of transactions with or within the bids and offers established in the marketplace, then the order may be executed as a spread, straddle, or combination at the total credit or debit with one other member without giving priority to either bids or offers established in the marketplace that are not better than the bids or offers comprising such total credit or debit, provided that, (i) in executing a spread order, the member does not buy at the established bid for the option contract to be bought and sell at the established offer for the option contract to be sold or, (ii) in executing a straddle or combination order, the member does not either buy both sides of the order at the established bids or sell both sides of the order at the established offers.

Commentary .02–.07 No Change

(e)–(e)(iv) No Change

(e)(v) *Ratio Order*—A *Ratio Order* is a spread, straddle, or combination order in which the stated number of option contracts to buy (sell) is not equal to the stated number of option contracts to sell (buy), provided that the number of contracts differ by a permissible ratio. For purposes of this section, a permissible ratio is any ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00). For example, a one-to-two (.5) ratio, a two-to-three (.667) ratio, or a two-to-one (2.00) ratio is permissible, whereas a one-to-four (.25) ratio or a four-to-one (4.0) ratio is not.

(f)–(n) No Change

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Amex Rules 950(e) and 950–ANTE(e) list and define several types of orders that are executed through the Amex including, among others, three types of complex orders: Spread orders, combination orders, and straddle orders. The Amex proposes to add certain ratio orders within permissible established limits to the list of orders included in Amex Rules 950(e) and 950–ANTE(e). Proposed Amex Rules 950(e)(v) and 950–ANTE(e)(v) would define a ratio order as either a spread, straddle, or combination order in which the stated number of option contracts to buy (sell) is not equal to the stated number of option contracts to sell (buy), provided that the number of contracts differs by a permissible ratio. Under Amex Rules 950(e)(v) and 950–ANTE(e)(v), a permissible ratio would be any ratio that is equal to or greater than one-to-three (.333) or less than or equal to three-to-one (3.0).

Additionally, the Amex proposes to revise paragraph .01 of the Commentary to both Amex Rules 950(d) and 950–ANTE(d) to include these types of permissible ratio orders so that they may be afforded the same exception to the priority rules that Amex Rules 950(d), Commentary .01, and 950–ANTE(d), Commentary .01, currently provide for spread, straddle, and combination orders.⁵ The Amex believes that because ratio orders are slight variations on the types of complex orders currently permitted on the Amex,

⁵ This proposed rule is based on Chicago Board Options Exchange, Inc. (“CBOE”) Rule 6.45(e). See Securities Exchange Act Release No. 48858 (December 1, 2003), 68 FR 68128 (December 5, 2003) (order approving File No. SR–CBOE–2003–07) (“CBOE Order”).

it is appropriate to treat ratio orders like spread, straddle, and combination orders for purposes of Amex Rules 950(d), Commentary .01, and 950–ANTE(d), Commentary .01.

Furthermore, the Amex believes that ratio orders within certain permissible ratios may provide market participants with greater flexibility and precision in effectuating trading and hedging strategies. According to the Amex, including ratio orders in the exception to the priority rules provided in Amex Rules 950(d), Commentary .01, and 950–ANTE(d), Commentary .01, serves to reduce the risk of incomplete or inadequate executions while increasing efficiency and competitive pricing by requiring price improvement before an order can receive priority over other orders.

The Amex believes it is important to include the definition of ratio orders within the ANTE rules because, while spreads cannot currently be executed through the ANTE system, the Amex anticipates that such transactions will be executed through the ANTE system in the future. The ANTE rules currently include definitions of spread, straddle, and combination orders and provide for the priority of these orders in certain circumstances. As discussed above, ratio orders are a form of a spread, straddle or combination order, and the Amex believes that in the interest of consistency it is important to update all of the effected rules, which encompass the ANTE rules. The Amex notes that the Commission recently has approved similar rule amendments and revisions for other options exchanges, including permitting ratio orders to have ratios equal to or greater than one-to-three (.333) or less than or equal to three-to-one (3.0).⁶

2. Statutory Basis

The Amex believes that the proposed rule change is consistent with section 6(b) of the Act,⁷ in general, and furthers the objectives of section 6(b)(5) of the Act,⁸ in particular, in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanisms of a free and open market.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any

⁶ See CBOE Order, *supra*, note 5. See also Securities Exchange Act Release No. 50184 (August 12, 2004), 69 FR 51498 (August 19, 2004) (notice of filing and immediate effectiveness of File No. SR–ISE–2004–20).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Amex has filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act⁹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁰ Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder. As required under Rule 19b-4(f)(6)(iii), the Amex provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to filing the proposal with the Commission or such shorter period 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File

Number SR-Amex-2004-77 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-Amex-2004-77. 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 this filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2004-77 and should be submitted on or before November 12, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4-2733 Filed 10-20-04; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50540; File No. SR-CBOE-2004-57]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Incorporated Relating to the Permanent Approval of Autobook

October 14, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 17, 2004, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I and II below, which items have been prepared by the CBOE. The Exchange filed Amendment No. 1 to the proposed rule change on October 8, 2004.³ The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to adopt the Exchange's automated limit order display facility ("Autobook") on a permanent basis. The text of the proposed rule change is set forth below. Deletions are in brackets.

Rule 8.85 DPM Obligations

- (a) No change
- (b)(i)-(vi) No Change.
- (vii) *Autobook Pilot*. Maintain and keep active on the DPM's PAR workstation at all times the automated limit order display facility ("Autobook") provided by the Exchange. The appropriate Exchange Floor Procedure Committee will determine the Autobook timer in all classes under that Committee's jurisdiction. A DPM may deactivate Autobook as to a class or classes provided that Floor Official

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Patrick Sexton, Assistant General Counsel, CBOE, to Deborah Flynn, Assistant Director, Division of Market Regulation, Commission, dated October 8, 2004 ("Amendment No. 1"). Amendment No. 1 amends the proposed rule change by deleting the word "all" in the second sentence of the seventh paragraph in Item 3.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 200.30-3(a)(12).

approval is obtained. The DPM must obtain such approval no later than three minutes after deactivation. [The Autobook Pilot expires on October 19, 2004, or such earlier time as the Commission has approved Autobook on a permanent basis.]

To the extent that there is any inconsistency between the specific obligations of a DPM set forth in subparagraph (b)(i) through (b)(vii) of this Rule and the general obligations of a Floor Broker or of an Order Book Official under the Rules, subparagraph (b)(i) through (b)(vii) of this Rule shall govern.

(c)-(e) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Autobook is an enhancement to the Designated Primary Market-Maker's ("DPM's") PAR workstation that automatically facilitates the entry of eligible customer limit orders into the limit order book at the end of a configurable period of time provided such limit orders have not previously been addressed manually by the DPM. As such, CBOE believes that Autobook assists and facilitates DPMs' compliance with their regulatory obligation relating to the display of eligible customer limit orders that improve the price or increase the size of the best disseminated CBOE quote as required by CBOE Rule 8.85(b).

On April 18, 2003, the Commission approved the implementation of Autobook on a one-year pilot basis.⁴ Subsequently, on April 20, 2004, the Commission extended the Autobook pilot until October 19, 2004 or such earlier time as the Commission has

approved Autobook on a permanent basis.⁵

The Exchange believes that Autobook has been an effective tool for DPMs in that it has assisted DPMs to comply with their regulatory obligations relating to the display of eligible customer limit orders as required by CBOE rules. Accordingly, CBOE seeks permanent approval of Autobook.

As was previously described in CBOE's rule filing that initiated the Autobook pilot, Autobook does not relieve DPMs of their obligations to book eligible customer limit orders on their PAR workstations immediately per CBOE Rule 8.85.⁶ To the extent a DPM excessively relies on Autobook to display eligible limit orders without attempting to address these orders immediately, it could violate its due diligence obligation. Brief or intermittent periods of reliance on Autobook out of necessity, however, would not violate the obligation.⁷ The Exchange periodically issues regulatory circulars discussing the issue of excessive reliance upon Autobook.⁸

Autobook is an exchange-mandated facility that operates only on DPM PAR workstations. The appropriate Exchange Committee is responsible for establishing the Autobook timer in all classes under that Committee's jurisdiction, and the timer may not exceed the customer limit order display requirement then in effect on the Exchange. The appropriate Exchange Committee also has the authority to determine whether to utilize Autobook to automatically display any other types of orders that are not subject to CBOE's limit order display requirements.

A DPM may deactivate Autobook as to a class or classes only upon approval by a floor official. The DPM must obtain

⁵ See Securities Exchange Act Release No. 49584, 69 FR 22893 (April 27, 2004) (granting accelerated approval to SR-CBOE-2004-22).

⁶ In its Adopting Release for the Display Rule in the equities markets, the Commission stated that to comply with the requirement that display take place "immediately," specialists must display (or execute or re-route) eligible customer limit orders "as soon as practicable after receipt which under normal market conditions would require display no later than 30 seconds after receipt." Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996).

⁷ For example, a DPM for a class that experiences an unexpected surge in trading activity would not violate its obligations if, because the DPM is not physically able to address eligible limit orders within 30 seconds, Autobook displays such orders at the end of the time period.

⁸ The Exchange has provided statistics to Commission staff that demonstrate that DPMs have not excessively relied upon Autobook to display eligible limit orders without attempting to address these orders immediately. The Exchange will continue to surveil DPMs for excessive reliance on Autobook.

floor official approval as soon as practicable but in no event later than three minutes from the time of deactivation. If the DPM does not receive approval within three minutes after deactivation, the Exchange will review the matter as a regulatory issue.⁹ Floor officials would grant approval only in instances when there is an unusual influx of orders or movement of the underlying that would result in gap pricing or other unusual circumstances.¹⁰ The Exchange would document all instances where a floor official grants approval.

The Exchange would continue to conduct surveillance to ensure that DPMs comply with their obligation to execute or book all eligible limit orders as required by CBOE rules. CBOE also commits to conducting surveillance designed to detect whether DPMs as a matter of course rely on Autobook to display eligible limit orders. A practice of excessive reliance upon Autobook would be reviewed by CBOE's Regulatory Division as a possible due diligence violation.

2. Statutory Basis

Because Autobook assists and facilitates DPMs' compliance with their regulatory obligations concerning the display of eligible customer limit orders as required by CBOE rules, the Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act¹¹ in general and furthers the objectives of section 6(b)(5)¹² in particular in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest. Furthermore, the Exchange believes that the proposed changes are consistent with the requirement that an exchange's rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change, as amended, will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

⁹ The Exchange believes that this is consistent with NYSE treatment. See Securities Exchange Act Release No. 41386 (May 10, 1999), 64 FR 26809 (May 17, 1999).

¹⁰ The Exchange believes that this is consistent with Amex Rule 170, Commentary .10. See Securities Exchange Act Release No. 42952 (June 16, 2000), 65 FR 39210 (June 23, 2000).

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

⁴ See Securities Exchange Act Release No. 47701, 68 FR 22426 (April 28, 2003) (approving SR-CBOE-2003-16.)

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments on the proposal.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal, 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-CBOE-2004-57 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-CBOE-2004-57. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal offices of the CBOE. 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-CBOE-2004-57 and should be submitted on or before November 12, 2004.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes that the proposed rule change is consistent with the requirements of sections 6(b)(5) of the Act¹³ and the objectives of section 11A(a)(1)(c) of the Act.¹⁴ Section 6(b)(5) requires, among other things, that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.¹⁵ With respect to section 11A, Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities, and to assure the practicability of brokers investing investors' orders in the best market.

Specifically, the Commission believes that the proposed rule change should help to ensure the availability of information with respect to quotations by assisting DPMs in displaying limit orders in a timely fashion. The Commission notes that Autobook is a tool designed to ensure that all customer limit orders are displayed no later than 30 seconds after receipt. Nonetheless, the Commission emphasizes that its approval of Autobook on a permanent basis does not relieve DPMs of their obligations to immediately display customer limit orders. To that end, the Commission expects the Exchange to actively surveil and appropriately discipline its members for excessive reliance on this tool.

The Commission finds good cause for accelerating approval of the proposed rule change, as amended, prior to the thirtieth day after publication in the **Federal Register**. The Commission notes the substance of the proposed rule change has previously been published for public comment and no comments were received. The Commission also notes that the proposal is substantially

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78k-1(a)(1)(C).

¹⁵ 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).

similar to the rules of another self-regulatory organization. In addition, the Commission notes that accelerated approval of the proposed rule change will permit the continued use, without interruption, of Autobook, the pilot for which is scheduled to expire on October 19, 2004. Accordingly, the Commission finds good cause, consistent with section 19(b)(2) of the Act,¹⁶ to approve the proposed rule change, as amended, prior to the thirtieth day after publication of the notice of filing.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁷ that the proposed rule change (File No. SR-CBOE-2004-57), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. E4-2735 Filed 10-20-04; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50542; File No. SR-CBOE-2004-50]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. To Amend Its Rules Regarding Limitations on Designated Primary Market-Makers Putting Into Effect Stop and Stop-Limit Orders

October 14, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 29, 2004, the Chicago Board Options Exchange, Inc. ("CBOE" 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 CBOE. CBOE amended the proposal on October 8, 2004.³ The Commission is publishing

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Angelo Evangelou, Managing Senior Attorney, Legal Division, CBOE, to John Roeser, Senior Special Counsel, Division of Market Regulation, Commission, dated October 6, 2004 ("Amendment No. 1"). In Amendment No. 1, CBOE amended the text of CBOE Rule 8.85(a)(viii) to

Continued

this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its rules regarding limitations on Designated Primary Market-Makers ("DPMs") putting into effect stop and stop-limit orders. New text is in italics.

* * * * *

Chicago Board Options Exchange, Incorporated

Rules

* * * * *

8.85 DPM Obligations

(a) Dealer Transactions. Each DPM shall fulfill all of the obligations of a Market-Maker under the Rules, and shall satisfy each of the following requirements in respect of each of the securities allocated to the DPM. To the extent that there is any inconsistency between the specific obligations of a DPM set forth in subparagraphs (a)(i) through (a)(x) of this Rule and the general obligations of a Market Maker under the Rules, subparagraphs (a)(i) through (a)(x) of this Rule shall govern. Each DPM shall:

(i)-(vii) No change.

(viii) Not initiate a transaction for the DPM's own account that would result in putting into effect any stop or stop limit order which may be in the book or which the DPM represents as Floor Broker except with the approval of a Floor Official and when the DPM guarantees that the stop or stop limit order will be executed at the same price as the electing transaction. *The restrictions set forth in this paragraph do not apply to stop or stop limit orders received through the Hybrid System unless the terms of such orders are visible to the DPM, or unless such orders are handled by the DPM;*

(ix)-(xi) No change.

(b)-(e) No change.

* * * Interpretations and Policies:

.01-.04 No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed

clarify its proposed scope and application. Amendment No. 1 is incorporated in this notice.

rule change. The text of these statements may be examined at the places specified in item IV below. CBOE 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

CBOE Rule 6.53 defines a stop order as a contingency order to buy (sell) that becomes a market order to buy (sell) when the option contract trades or is bid (offered) at or above (below) the stop price on CBOE. The sender of the stop order determines the stop price. Similarly, a stop-limit order becomes a limit order when the stop price is triggered.

CBOE Rule 8.85(a)(viii) currently prohibits DPMs from initiating a transaction for the DPM's own account that would result in putting into effect any stop or stop-limit order which may be in the book or which the DPM represents as Floor Broker except with the approval of a Floor Official and when the DPM guarantees that the stop or stop-limit will be executed at the same price as the electing transaction.

Currently, stop and stop-limit orders route to PAR terminals in the trading station for representation by the DPM as Floor Broker. This is the case for classes on CBOE's Hybrid trading system and for classes that are not on Hybrid. Thus, DPMs need to monitor for quotes and/or trades at the stop price to ensure that stop orders are properly elected when the stop price is triggered.

CBOE proposes to automate the handling of stop and stop-limit orders as an enhancement to CBOE's Hybrid trading system. According to CBOE, this will involve routing any electronic (non-paper) stop order to the Hybrid system (not to a PAR terminal) which will, in turn, elect the stop or stop-limit order when the stop price is triggered and automatically convert the order to a market order or limit order, as applicable. CBOE states that the purpose of this filing is to provide that the stop and stop-limit order DPM restrictions in CBOE Rule 8.85(a)(viii) should not apply to orders in classes that are on the Hybrid system that are routed to CBOE electronically, and not visible to or handled by the DPM.

CBOE, in general, believes that the restrictions in CBOE Rule 8.85(a)(viii) are overly cumbersome and unnecessary. CBOE believes that the proposed Hybrid stop and stop-limit order handling enhancement will

obviate the need for the restrictions in Hybrid classes. The stop and stop-limit orders will reside on the Hybrid system invisibly so that no DPM would know that it is triggering a stop or stop-limit order when with a trade or quote. Since according to the CBOE, the handling of the stop and stop-limit orders will be entirely automated, the DPM will no longer handle the stop order at any point or have any influence to purposefully affect triggering the stop or the ultimate execution price of the order.

2. Statutory Basis

CBOE believes that the proposed rule change is consistent with section 6(b) of the Act,⁴ in general, and furthers the objectives of section 6(b)(5) of the Act,⁵ in particular, in that it is designed to promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

⁴ 15 U.S.C. 78(b).

⁵ 15 U.S.C. 78(b)(5).

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-CBOE-2004-50 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-CBOE-2004-50. 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 CBOE. 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-CBOE-2004-50 and should be submitted on or before November 12, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4-2736 Filed 10-20-04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50548; File No. SR-CBOE-2004-25]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Incorporated Relating to Designated Primary Market-Makers Obligations

October 15, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 23, 2004, the Chicago Board Options Exchange, Incorporated ("CBOE" 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 CBOE. On September 30, 2004, the CBOE filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rules to clarify that CBOE Designated Primary Market-Makers ("DPMs") are required to make competitive markets on the Exchange and to otherwise promote the Exchange in a manner that is likely to enhance the ability of the Exchange to compete successfully for order flow in the classes they trade.⁴

Below is the text of the proposed rule change, as amended. Proposed new language is *italicized*; proposed deletions are in [brackets].

* * * * *

Chapter VIII

Market-Makers, Trading Crowds and Modified Trading Systems (Rules 8.1-8.95)

Rule 8.85—DPM Obligations

Rule 8.85 (a)-(b) No Change.
(c) Other Obligations. In addition to the obligations described in paragraphs (a) and (b) of this Rule, a DPM shall fulfill each of the following obligations:

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaces and supercedes the CBOE's original 19b-4 filing in its entirety.

⁴ Telephone conversation between James M. Flynn, Attorney, CBOE, and Sapna C. Patel, Special Counsel, and Angela Muehr, Attorney, Division of Market Regulation, Commission, on October 14, 2004.

(i) Resolve disputes relating to transactions in the securities allocated to the DPM, subject to Floor Official review, upon the request of any party to the dispute;

(ii) *Make competitive markets on the Exchange and otherwise promote the Exchange in a manner that is likely to enhance the ability of the Exchange to compete successfully for order flow in the classes it trades* [provide high quality markets and services and promote the Exchange as a marketplace to customers and other market participants];

(iii) Promptly inform the MTS Committee of any desired change in the DPM Designees who represent the DPM in its capacity as a DPM and of any material change in the financial or operational condition of the DPM;

(iv) Supervise all persons associated with the DPM to assure compliance with the Rules;

(v) Segregate in a manner prescribed by the MTS Committee the DPM's business and activities as a DPM from the DPM's other businesses and activities; and

(vi) Continue to act as a DPM and to fulfill all of the DPM's obligations as a DPM or the MTS Committee terminates the DPM's approval to act as a DPM pursuant to Rule 8.90.

(d)-(e) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE 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 CBOE 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 amend its rules governing DPMs in order to create an obligation that would require a DPM to make competitive markets on the Exchange and otherwise to promote the Exchange in a manner that is likely to enhance the ability of the Exchange to compete successfully for order flow in the classes it trades. This is identical to an obligation that is currently imposed

⁶ 17 CFR 200.30-3(a)(12).

on CBOE electronic DPMs ("e-DPMs") under CBOE Rule 8.93(vi).⁵

This proposed rule language would replace an existing DPM obligation under CBOE Rule 8.85(c)(ii), that is more of a generalized statement of the e-DPM obligation. CBOE Rule 8.85(c)(ii) currently requires a DPM to commit to "provid[ing] high quality markets and services and promot[ing] the Exchange as a marketplace to customers and other market participants * * *." The Exchange believes that the proposed new language would provide a more specific statement of what is currently expected of a DPM.

Additionally, the CBOE represents that this proposed new language is consistent with the standards of measurement used by the Exchange in determining whether a DPM is meeting its overall market performance standards. CBOE Rule 8.88 (Review of DPM Operations and Performance) requires the Exchange's Modified Trading System Appointments Committee ("MTS Committee") to conduct an annual review of a DPM's operations and performance. Under CBOE Rule 8.88, the review shall include an evaluation of how a DPM has acted to make the Exchange competitive with other markets trading the same securities as those allocated to the DPM, taking into account the Exchange's market share in those allocated securities. In addition to making the DPM and e-DPM obligations more uniform, this proposal amends CBOE Rule 8.85(c) (Other Obligations) to expressly state that a DPM has the obligation to act to meet the levels of market performance that are currently expected of a DPM and that the MTS Committee currently considers when reviewing a DPM's market performance.

2. Statutory Basis

By clarifying a DPM's obligations and making them more consistent with the obligations required of e-DPMs, the Exchange believes that this proposed rule change, as amended, is consistent with section 6(b) of the Act,⁶ in general, and further the objectives of section 6(b)(5) of the Act,⁷ in particular, in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

⁵ See Securities Exchange Act Release No. 50003 (July 12, 2004), 69 FR 43208 (July 19, 2004) (order approving e-DPMs on the Exchange).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, 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-CBOE-2004-25 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-CBOE-2004-25. 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 CBOE. 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-CBOE-2004-25 and should be submitted on or before November 12, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4-2785 Filed 10-20-04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50528; File No. SR-CHX-2004-33]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Floor Broker Network and Connectivity Charges

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 September 28, 2004, the Chicago Stock Exchange, Incorporated ("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 Exchange. Pursuant to section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ the Exchange has designated this proposal as establishing

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. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

or changing a due, fee, or other charge, which renders the proposed rule change effective immediately upon filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its membership dues and fees schedule (the "Fee Schedule"), to bill its floor brokers for certain network and connectivity charges.

The text of the proposed rule change is available upon request at the CHX or 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CHX floor brokers and their institutional customers use the NYFIX networks to route orders and process trade-related data. These types of networks are becoming an increasingly important tool for floor brokers as the institutional brokerage community continues to increase its use of technology.

Although the Exchange currently pays the network and connectivity charges associated with NYFIX, the Exchange believes that it is appropriate for its floor brokers who use these services to begin paying for a significant percentage of these costs.⁵ Accordingly, the Exchange is proposing to rebill all but a small portion of these network and connectivity charges to the floor brokers who use this technology, based on the

⁵ The Exchange currently rebills its on-floor member firms for other technology-related costs. See e.g., CHX Fee Schedule, Section H (Equipment, Information Services and Technology Charges) (rebilling for telephone charges, access and connection to financial information services or research and analytics providers and execution quality reports prepared by third parties).

proportion of each firm's use of the networks during each month.

At the same time, the Exchange would establish a separate connectivity charge credit, which would provide each floor broker firm that uses the networks with a credit of the firm's share of \$15,000.⁶ This credit allows the Exchange to pay \$15,000 of the floor broker network and connectivity charges each month and to rebill its floor broker firms for the remaining charges.⁷

These fee changes are designed to take effect on October 1, 2004.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act⁸ in general and furthers the objectives of section 6(b)(4) of the Act⁹ in particular in that it provides for the 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 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

The Exchange neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange asserts that the foregoing proposed rule change has become effective upon filing pursuant to section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(2)¹¹ thereunder because it establishes or changes a due, fee or other charge imposed by the Exchange.

⁶ Each firm's share of the total \$15,000 credit would be based on its percentage of the total monthly earned credits generated by that firm. Earned credits are generated by floor broker firms based, in general terms, on the number of billable shares executed by that floor broker in a given month. See CHX Fee Schedule, Section M(2)(a). The Exchange believes that it is appropriate to calculate the connectivity charge credit in this manner to reward firms that efficiently and effectively use technology to execute trades on the Exchange.

⁷ The Exchange also is proposing to delete an obsolete provision relating to credits for E-Session trading activity. The Exchange ended its E-Session in 2001. See Release No. 34-44705 (August 15, 2001); 66 FR 43939 (August 21, 2001).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

At any time within 60 days of the filing of such 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 purpose 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-2004-33 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-2004-33. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the 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-

2004-33 and should be submitted on or before November 12, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4-2739 Filed 10-20-04; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50539; File No. SR-NASD-2004-153]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to a Conditional Exemption From Stock Option Position Limits for OTC Derivatives Dealers

October 14, 2004.

Pursuant to section 19(b)(1) of the Securities Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 12, 2004, the National Association of Securities Dealers, Inc. ("NASD") 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 NASD. 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

NASD is proposed to amend NASD Rule 2860 to provide an exemption from stock options position limits for OTC Derivatives Dealers provided that certain conditions have been satisfied. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in brackets.

* * * * *

2800. SPECIAL PRODUCTS

* * * * *

2860. Options

(a) No Change.

(b) Requirements

(1) No Change.

(2) Definitions

(A) through (Q) No Change.

(R) *Delta Neutral*—The term "delta neutral" described a stock options position that has been hedged, in accordance with an SEC-approved

pricing model, with a portfolio of instruments relating to the same underlying stock to offset the risk that the value of the options position will change with changes in the price of the stock underlying the options position.

Current (R) through (FF) Renumbered as (S) through (GG).

(HH) *Net Delta*—The term "net delta" means the number of shares that must be maintained (either long or short) to offset the risk that the value of a stock options position will change with changes in the price of the stock underlying the options position.

Current (GG) through (BBB) Renumbered as (II) through (DDD).

(3) Position Limits

(A) *Stock Options*—Except in highly unusual circumstances, and with the prior written approval of NASD pursuant to the Rule 9600 Series for good cause shown in each instance, no member shall effect for any account in which such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, non-member broker, or non-member dealer, an opening transaction through Nasdaq, the over-the-counter market or on any exchange in a stock option contract of any class of stock options if the member has reason to believe that as a result of such transaction the member or partner, officer, director or employee thereof, or customer, non-member broker, or non-member dealer, would, acting along or in concert with others, directly or indirectly, hold or control or be obligated in respect of an aggregate equity options position in excess of:

(i) through (vi) No Change.

(vii) *Equity Options Hedge*

Exemptions

a. No Change.

b. *Delta Hedging Exemption for OTC Derivatives Dealer* A stock options position of an OTC Derivatives Dealer (as that term is defined in Rule 3b-12 under the Act) affiliated with a member, in standardized or conventional options that is delta neutral, shall be exempt from position limits under this rule if the following conditions are satisfied:

1. *The member has obtained a written representation from its affiliated OTC Derivatives Dealer that such entity is hedging its stock options positions in accordance with its internal risk management control systems and pricing models approved by the SEC pursuant to Rules 15c3-1(a)(5) and 15c3-1f under the Act and that if it ceases to hedge stock options positions in accordance with such systems and models, that it will provide immediate written notice to the member.*

2. *The member must report in accordance with the paragraph (b)(5), all stock options positions (including those that are delta neutral) of 200 or more contracts (whether long or short) on the same side of the market covering the same underlying stock that are effected by the member.*

3. *Any stock options position of an OTC Derivatives Dealer that is not delta neutral shall be subject to position limits in accordance with this section (subject, however, to the availability of other exemptions). For these purpose, only the option contract equivalent of the net delta of such positions is subject to position limits. The options contract equivalent of the net delta is the net delta divided by 100.*

(viii) No change.³

(B) through (D) No Change.

(4) through (24) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD 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

Over the past several years, NASD has increased in absolute terms the size of the options position and exercise limits as well as the size and scope of available exemptions for "hedged" positions.⁴ These increases, however, have generally required a one-to-one hedge (e.g., one stock option contract must be

³ Reference to subparagraph (b)(3)(viii) as unchanged was added pursuant to telephone conversation between Gary Goldsholle, Office of General Counsel, Regulatory Policy and Oversight, NASD, and Ira Brandriss, Division of Market Regulation, Commission, on October 14, 2004.

⁴ See Securities Exchange Act Release No. 47307 (February 3, 2003), 68 FR 6977 (February 11, 2003) (SR-NASD-2002-134); Securities Exchange Act Release No. 40932 (Jan 11, 1999), 64 FR 2930 (January 19, 1999) (SR-NASD-98-92); Securities Exchange Act Release No. 40087 (June 12, 1998), 63 FR 33746 (June 19, 1998), (SR-NASD-98-23); Securities Exchange Act Release No. 39771 (March 19, 1998), 63 FR 14743 (March 26, 1998) (SR-NASD-98-15).

¹² 17 CFR 200.30-3(a)(12).

¹⁵ U.S.C. 78s(b)(1).

¹⁷ 17 CFR 240.19b-4.

hedged by one-hundred shares of stock). In practice, however, many firms and customers do not hedge their options positions in this way. Rather, these firms engage in what is known as "delta hedging," which varies the number of shares of stock used to hedge an options position based upon the relative sensitivity of the value of the option contract to a change in the price of the underlying stock.⁵ Delta hedging is a widely accepted risk management tool.

In 1998, the Commission approved rules allowing U.S. securities firms to establish a separately capitalized entity to engage in dealer activities in eligible over-the-counter ("OTC") derivative instruments.⁶ This separately capitalized entity, known as an OTC Derivatives Dealer, receives preferential capital treatment and is exempt from self-regulatory organization ("SRO") membership. In general, however, most transactions of an OTC Derivatives Dealer (including stock options transactions) must be effected through its fully regulated broker-dealer affiliate, except to the extent otherwise permitted by Rule 15a-1 under the Act.⁷ Thus, SRO rules, including stock, options position and exercise limits, continue to apply to transactions where a member must effect the transaction between the OTC Derivatives Dealer and the counterparty. As a consequence, the application of these position and exercise limits often deters parties from entering into transactions they otherwise would seek to conduct with an OTC Derivatives Dealer in the absence of such limits. Indeed, the Commission recognized this issue at the time it approved rules applicable to OTC Derivatives Dealers.⁸ Specifically, the Commission encouraged NASD to revise its rules to recognize as "hedged" those option positions of an OTC Derivatives Dealer that are hedged on a "delta neutral basis" (*i.e.*, the position is delta neutral or fully hedged with regard to the risk that the price of the stock underlying the options position might change).⁹

In June 2003, NASD received a request on behalf of several member firms affiliated with OTC Derivatives Dealers to amend its rule imposing stock options position and exercise limits so

that it applied only to a stock options position's net delta.¹⁰

NASD believes that the rigor of the OTC Derivatives Dealer approval process and the ongoing oversight by the Commission staff provides an appropriate basis for exempting delta neutral positions in stock options at such entities from position limits. The proposed rule change would exempt from NASD Rule 2860 delta neutral stock options positions of an OTC Derivatives Dealer and would provide that only the option contract equivalent of the net delta of a stock options position is subject to position limits provided that the member satisfies three conditions.

The first condition would require a member to receive a written representation from its affiliated OTC Derivatives Dealer stating that the OTC Derivatives Dealer is hedging its stock options positions in accordance with risk management and pricing models approved by the Commission. This written representation would enable NASD to identify those firms that will be relying on the delta hedging exemption on behalf of their OTC Derivatives Dealer affiliates and would be required to be maintained in accordance with the recordkeeping provisions of NASD Rule 3110.

The second condition would require that the member must report stock options positions of the OTC Derivatives Dealer, including those that are delta neutral, in accordance with NASD Rule 2860(b)(5). These reports would inform NASD of the OTC Derivatives Dealer's aggregate stock options positions and permit NASD to conduct surveillance for market manipulation, insider trading, and other trading abuses.

The third condition would provide that any stock options position that is not delta neutral must remain subject to position and, by extension, exercise limits (subject, however, to the availability of other exemptions). An OTC Derivatives Dealer generally

employs delta hedging as part of its risk management program, but it is nevertheless possible that an OTC Derivatives Dealer may maintain some positions that are not fully hedged, so long as the entity as a whole meets the conditions imposed by the Commission. In such cases, only the option contract equivalent of the "net delta" of any such stock options positions, which is the net delta divided by 100, would be subject to position limits. This calculation of an option contract equivalent conforms to existing NASD Rule 2860(b)(2)(JJ), which provides that, for purposes of subparagraphs (3) through (12) of NASD Rule 2860(b), a stock option overlying more or less than 100 shares "shall be deemed to constitute as many option contracts as that other number of shares divided by 100 (*e.g.*, an option to buy or sell five hundred shares of common stocks shall be considered as five option contracts)."

It is important to note that, for purposes of the proposed rule change, only financial instruments relating to the stock underlying a stock options position could be included in any determination of a stock options position's net delta or whether the stock options position is delta neutral. For example, warrants granting the right to purchase Microsoft stock might be used to offset the risk associated with a position in Microsoft puts granting the holder the right to sell Microsoft stock. However, for purposes of the proposed rule change, a position in Microsoft calls granting the holder the right to purchase Microsoft stock may not be hedged by puts (or any other financial instrument) overlying any security other than Microsoft stock.

NASD will announce the effective date of the proposed rule change in a *Notice to Members* to be published no later than 60 days following Commission approval. The effective date will be no later than 30 days following publication of the *Notice to Members* announcing Commission approval.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,¹¹ which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that it is appropriate, subject to certain conditions, to exempt stock options positions of OTC

⁵ For example, an option with a delta of .5 will move \$0.50 for every \$1.00 move in the underlying stock.

⁶ Securities Exchange Act Release No. 40594 (Oct. 23, 1998), 63 FR 59362 (Nov. 3, 1998) (SEC File No. S7-30-97) ("OTC Derivatives Dealer release").

⁷ 17 CFR 240.15a-1.

⁸ OTC Derivatives Dealer release, *supra* note 6, at 63 FR 59380.

⁹ *Id.*

¹⁰ The proposed rule change does not expressly amend NASD's options exercise limits in NASD Rule 2860(b)(4) because such exercise limits apply only to the extent NASD Rule 2860(b)(3) imposes position limits. Thus, as delta neutral positions of an OTC Derivatives Dealer would be exempt from position limits under the proposed rule change, such positions also would be exempt from exercise limits. See NASD *Notice to Members* 94-46 at 2 ("* * * exercise limits correspond to position limits, such that investors in options classes on the same side of the market are allowed to exercise * * * only the number of options contracts set forth as the applicable position limit for those options classes."). Similarly, for positions held by an OTC Derivatives Dealer that are not delta neutral, only the option contract equivalent of the net delta of such positions would be subject to exercise limits.

¹¹ 15 U.S.C. 78o-3(b)(6).

Derivatives Dealers from position limits and require that only the option contract equivalent of the net delta of a stock options position be subject to position limits. Moreover, NASD's proposed rule change would implement an approach that the Commission encouraged NASD to adopt at the time the Commission approved the regulatory model for OTC Derivatives Dealers.¹²

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change could result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which NASD consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2004-153 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-2004-153. 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 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 publicly available. All submissions should refer to File Number SR-NASD-2004-153 and should be submitted on or before November 12, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50537; File No. SR-NASD-2004-143]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, and Amendment No. 1 thereto, by National Association of Securities Dealers, Inc. Relating to Attributable Summary Orders in the Nasdaq Market Center

October 14, 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 24, 2004, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by Nasdaq. On October 4, 2004, Nasdaq filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq is filing a proposed rule change with the Commission to provide Order Delivery electronic communication networks ("ECNs") in the Nasdaq Market Center the ability to enter attributable Summary Orders—an order type that rejects back to the entering party if the order would lock or cross the best bid or best offer displayed in the Nasdaq Market Center.⁴ The text of the proposed rule change is below. Proposed deletions are in brackets.⁵

* * * * *

4700. Nasdaq Market Center—Execution Services

4701. Definitions

Unless stated otherwise, the terms described below shall have the following meaning:

(a)—(nn) No Change.

(oo) The term "Summary" shall mean, for priced limit orders so designated, that if an order is marketable upon receipt by the Nasdaq Market Center, it shall be rejected and returned to the entering party. Summary Orders may only be entered by Order-Delivery ECNs. [Summary Orders may only be designated as Non-Attributable Orders.]

(pp)—(uu) No Change.

* * * * *

³ See letter from Edward Knight, Executive Vice President, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated September 29, 2004 ("Amendment No. 1"). In Amendment No. 1, Nasdaq clarified the description of the proposed rule change and provided rationale for its request to waive the 30-day operative delay for the proposed rule change.

⁴ See Amendment No. 1, note 3 *supra*.

⁵ The proposed rule change is marked to show changes from the rule as it appears in the electronic NASD Manual available at <http://www.nasdr.com> as well as SR-NASD-2004-76 filed on an immediately effective basis on May 5, 2004. See Securities Exchange Act Release No. 50074 (July 23, 2004), 69 FR 45866 (July 30, 2004).

¹² OTC Derivatives Dealer release, *supra* note 6, at 63 FR 59380.

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

4706. Order Entry Parameters

(a) Non-Directed Orders—

(1) General. The following requirements shall apply to Non-Directed Orders Entered by Nasdaq Market Center Participants:⁶

(A) No Change.

(B) A Non-Directed Order must be a market or limit order, must indicate whether it is a buy, short sale, short-sale exempt, or long sale, and may be designated as “Immediate or Cancel,” “Day,” “Good-till-Cancelled,” “Auto-Ex,” “Fill or Return,” “Pegged,” “Discretionary,” “Sweep,” “Total Day,” “Total Good till Cancelled,” “Total Immediate or Cancel,” or “Summary.”

(i) through (xii) No Change.

(xiii) An order may be designated as “Summary,” in which case the order shall be designated either as Day or GTC. A Summary Order that is marketable upon receipt by the Nasdaq Market Center shall be rejected and returned to the entering party. If not marketable upon receipt by the Nasdaq Market Center, it will be retained by the system. Summary Day and GTC orders shall be executed prior to the market open if required under Rule 4710(b)(3)(B). Summary Orders may only be entered by Order-Delivery ECNs. [Summary Orders may only be designated as Non-Attributable Orders.]

(C)–(F) No Change.

(2) No Change.

(A) through (B) No Change.

(b)–(e) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to allow Order Delivery ECNs participating in the

Nasdaq Market Center to enter attributable Summary Orders. Summary Orders, in essence, provide a warning that the price of the order would lock or cross the best prices then displayed in the Nasdaq Market Center by rejecting such an order back to the entering party. If the Summary Order does not lock or cross the best price, it is retained by the system for normal processing. Today, the use of Summary Orders is restricted to Nasdaq Order Delivery ECNs and such orders may only be used to enter Non-Attributable Orders into SIZE.⁷ This proposal will give Nasdaq Order Delivery ECNs the choice to enter such orders as either attributable or non-attributable.

Under current Nasdaq Market Center processing, quotes already provide the lock/cross warning via rejection attributes of the Summary Order. Orders that are not designated as Summary, however, do not provide similar lock/cross warning capabilities and are considered immediately executable indications of trading interest that would be executed by the system if they locked or crossed the Nasdaq inside market. As such, Order Delivery ECNs generally refrain from using orders when displaying trading interest in the Nasdaq Market Center and instead aggregate multiple orders at their best price level and submit them to Nasdaq using a single aggregated quote. In turn, this aggregation increases internal processing complexity for ECNs that must convert and combine individual orders residing in their systems into a single quote and then appropriately parcel out subsequent order deliveries against that quote back to individual subscribers.

The ability to receive a warning via order rejection when entering a locking or crossing order is an important component in providing Nasdaq Order Delivery ECNs control over how their orders are processed in the Nasdaq Market Center so as to manage executions taking place in their own systems as well in the Nasdaq Market Center. This control is particularly important to ECNs that act exclusively as agents and seek to avoid dual liability for multiple executions against the same single share amount displayed simultaneously, and potentially accessible, in the Nasdaq Market Center as well as the ECNs own internal book. As noted above, lock or cross warnings are available today to ECNs when they represent trading interest in Nasdaq

using quotes. Nasdaq believes that the current limitation on using Summary Orders only to place Non-Attributable Orders in SIZE restricts the ability of Nasdaq Order Delivery ECNs that, in lieu of quotes, may desire to provide multiple orders at the same price level to Nasdaq and have such orders attributed to them through a displayed MPID. Expansion of the Summary Order to allow the entry of attributable orders by ECNs that desire to enter multiple orders at multiple price levels into the Nasdaq Market Center ensures that such orders behave in a manner similar to quotes by providing for the rejection of locking or crossing trading interest as well as having that trading interest associated with the identity of the entering ECN via an attributable MPID. For ECNs that currently aggregate their customers' trading interest and submit it combined in a single quote, Summary Orders can provide a simplified, and less technologically burdensome, method to pass such orders individually to the Nasdaq Market Center and thereafter track and reconcile any resulting transactions with their own internal execution and order management systems while continuing to have such orders publicly associated with the entering ECN via attribution similar to quotes.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,⁸ in general, and with section 15A(b)(6) of the Act,⁹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, Nasdaq believes that the increased control given to all market participants through the use of Summary Orders will assist in improving execution quality for themselves and their customers. In addition, to the extent that expansion of the Summary Order to attributable orders encourages the submission of greater amounts of trading interest in the form of such orders into the Nasdaq Market Center all market participants can be expected to benefit from such increased system liquidity.

⁶ Pursuant to a telephone conversation on October 14, 2004, between Thomas Moran, Office of General Counsel, Nasdaq, and Marc McKayle, Special Counsel, Division, Commission, the Commission corrected the proposed rule text by replacing the term “NNMS” with “National Market Center.”

⁷ SIZE is the anonymous Market Participant Identifier (“MPID”) used to display Non-Attributable Quotes/Orders in the Nasdaq Market Center. See NASD Rule 4707(b)(2).

⁸ 15 U.S.C. 78o-3.

⁹ 15 U.S.C. 78o-3(b)(6).

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been designated by Nasdaq as a "non-controversial" rule change pursuant to section 19(b)(3)(A) of the Act¹⁰ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹¹

The foregoing rule change: (1) Does not significantly affect the protection of investors and the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, and the NASD gave the Commission written 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. Consequently, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act,¹² and Rule 19b-4(f)(6) thereunder.¹³

Pursuant to Rule 19b-4(f)(6)(iii),¹⁴ a proposed "non-controversial" rule change does not become operative for 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. Nasdaq has requested that the Commission waive the 30-day operative delay. Nasdaq believes that adoption of this proposal will encourage the submission of greater liquidity in the form of multiple attributable orders at multiple price levels. Nasdaq believes that the benefits of this liquidity should be made available to all market participants as soon as practicable, and respectfully requests that the

Commission waive the 30-day pre-operative period contained in Rule 19b-4(f)(6)(iii) of the Act.¹⁵ Nasdaq notes that the functionality proposed here is already available to Order-Delivery ECNs using Non-Attributable Orders. The Commission believes that this proposal may encourage greater liquidity and transparency and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest.¹⁶ Accordingly, the Commission has determined to waive the operative delay.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form Please include File Numb (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. er SR-NASD-2004-143 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 No. SR-NASD-2004-143. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NASD-2004-143 and should be submitted on or before November 12, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4-2734 Filed 10-20-04; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50541; File No. SR-NASD-2004-147]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change To Bid Price Compliance Periods and Market Value of Publicly Held Shares Requirements

October 14, 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 National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify the bid price compliance periods on the Nasdaq

¹⁰ 15 U.S.C. 78s(b)(1).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 15 U.S.C. 78s(b)(1).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ See Amendment No. 1, note 3 *supra*.

¹⁶ For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

National Market and the Nasdaq SmallCap Market and to require non-Canadian foreign issuers to satisfy the minimum bid price and market value of publicly held shares requirements applicable to domestic issuers for continued listing on the Nasdaq SmallCap Market.

Nasdaq will implement the proposed rule change relating to compliance periods effective January 1, 2005, upon expiration of the existing pilot rules. Nasdaq will implement the proposed rule change relating to continued listing requirements for bid price and market value of listed securities for non-U.S. issuers effective 18 months after approval by the Commission.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.³

* * * * *

4310. Qualification Requirements for Domestic and Canadian Securities

To qualify for inclusion in Nasdaq, a security of a domestic or Canadian issuer will satisfy all applicable requirements contained in paragraphs (a) or (b), and (c) hereof.

(a) No change.

(b) No change.

(c) In addition to the requirements contained in paragraph (a) or (b) above, and unless otherwise indicated, a security will satisfy the following criteria for inclusion in Nasdaq:

(1)–(7) No change.

(8)(A)–(C) No change.

(D) A failure to meet the continued inclusion requirement for minimum bid price on The Nasdaq SmallCap Market shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 180 calendar days from such notification to achieve compliance. If the issuer has not been deemed in compliance prior to the expiration of the 180 day compliance period, it shall be afforded an additional 180 day compliance period, provided that on the 180th day of the first compliance period, the issuer demonstrates that it meets the criteria for initial inclusion set forth in Rule 4310(c) (except for the bid price requirement set forth in Rule 4310(c)(4)) based on the issuer's most recent public filings and market information. If the

issuer has publicly announced information (e.g., in an earnings release) indicating that it no longer satisfies the applicable initial inclusion criteria, it shall not be eligible for the additional compliance period under this rule.

[If on the 180th day of the second compliance period, the issuer has not been deemed in compliance during such compliance period but it satisfies the criteria for initial inclusion set forth in Rule 4310(c) (except for the bid price requirement set forth in Rule 4310(c)(4)), the issuer shall be provided with an additional compliance period up to its next shareholder meeting scheduled to occur no later than two years from the original notification of the bid price deficiency, provided the issuer commits to seek shareholder approval at that meeting for a reverse stock split to address the bid price deficiency. If the issuer fails to timely propose, or obtain approval for, or promptly execute the reverse stock split, Nasdaq shall immediately institute delisting proceedings upon such failure. Compliance can be achieved during any compliance period by meeting the applicable standard for a minimum of 10 consecutive business days.] Compliance can be achieved during any compliance period by meeting the applicable standard for a minimum of 10 consecutive business days.

(E) No change.

(9)–(29) No change.

(d) No change.

4320. Qualification Requirements for Non-Canadian Foreign Securities and American Depositary Receipts

To qualify for inclusion in Nasdaq, a security of a non-Canadian foreign issuer, an American Depositary Receipt (ADR) or similar security issued in respect of a security of a foreign issuer shall satisfy the requirements of paragraphs (a), (b) or (c), and (d) and (e) of this Rule.

(a)–(d) No change.

(e) In addition to the requirements contained in paragraphs (a), (b) or (c), and (d), the security shall satisfy the criteria set out in this subsection for inclusion in Nasdaq. In the case of ADRs, the underlying security will be considered when determining the ADR's qualification for initial or continued inclusion on Nasdaq.

(1) No change.

(2)(A) For initial inclusion, [the issue shall have a minimum bid price of \$4 and]the issuer shall have:

(i)–(iii) No change.

(B)–(D) No change.

(E) (i) For initial inclusion, common stock, preferred stock and secondary classes of common stock, or their

equivalents, shall have a minimum bid price of \$4 per share. For continued inclusion, the minimum bid price per share shall be \$1.

(ii) A failure to meet the continued inclusion requirement for minimum bid price on The Nasdaq SmallCap Market shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 180 calendar days from such notification to achieve compliance. If the issuer has not been deemed in compliance prior to the expiration of the 180 day compliance period, it shall be afforded an additional 180 day compliance period, provided, that on the 180th day of the first compliance period, the issuer demonstrates that it meets the criteria for initial inclusion set forth in Rule 4320(e) (except for the bid price requirement set forth in Rule 4320(e)(2)(E)(i)) based on the issuer's most recent public filings and market information. If the issuer has publicly announced information (e.g., in an earnings release) indicating that it no longer satisfies the applicable initial inclusion criteria, it shall not be eligible for the additional compliance period under this rule. Compliance can be achieved during any compliance period by meeting the applicable standard for a minimum of 10 consecutive business days.

(iii) Nasdaq may, in its discretion, require an issuer to maintain a bid price of at least \$1.00 per share for a period in excess of ten consecutive business days, but generally no more than 20 consecutive business days, before determining that the issuer has demonstrated an ability to maintain long-term compliance. In determining whether to monitor bid price beyond ten business days, Nasdaq will consider the following four factors: (i) margin of compliance (the amount by which the price is above the \$1.00 minimum standard); (ii) trading volume (a lack of trading volume may indicate a lack of bona fide market interest in the security at the posted bid price); (iii) the market maker montage (the number of market makers quoting at or above \$1.00 and the size of their quotes); and, (iv) the trend of the stock price (is it up or down).

(3)–(4) No change.

(5) There shall be at least 1,000,000 publicly held shares for initial inclusion and 500,000 publicly held shares for continued inclusion. For initial inclusion, such shares shall have a market value of at least \$5 million. For continued inclusion, such shares shall have a market value of at least \$1

³ Pending filing SR–NASD–2004–125 would renumber and modify the text of NASD Rule 4820. Nasdaq has represented that it would make a technical correction to this filing if and when the Commission approves SR–NASD–2004–125. No other pending rule filings would affect the portions of the rules amended herein.

million. In the case of preferred stock and secondary classes of common stock, there shall be at least 200,000 publicly held shares *having a market value of at least \$2 million* for initial inclusion and 100,000 publicly held shares *having a market value of \$500,000* for continued inclusion. In addition, the issuer's common stock or common stock equivalent security must be traded on either Nasdaq or a national securities exchange. In the event the issuer's common stock or common stock equivalent security is not traded on either Nasdaq or a national securities exchange, the preferred stock and/or secondary class of common stock may be included in Nasdaq so long as the security satisfies the listing criteria for common stock. Shares held directly or indirectly by any officer or director of the issuer and by any person who is the beneficial owner of more than 10 percent of the total shares outstanding are not considered to be publicly held.

(6)–(25) No change.

(f) No change.

4450. Quantitative Maintenance Criteria

After designation as a Nasdaq National Market security, a security must substantially meet the criteria set forth in paragraphs (a) or (b), and (c), (d), (e), (f), (g), (h) or (i) below to continue to be designated as a national market system security. A security maintaining its designation under paragraph (b) need not also be in compliance with the quantitative maintenance criteria in the Rule 4300 series.

(a)–(d) No change.

(e) Compliance Periods

(1) No change.

(2) A failure to meet the continued inclusion requirement for minimum bid price shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 180 calendar days from such notification to achieve compliance. [If the issuer has not been deemed in compliance prior to the expiration of the 180 day compliance period, it shall be afforded an additional 180 day compliance period, provided, that on the 180th day following the notification of the deficiency, the issuer demonstrates that it meets the criteria for initial inclusion set forth in Rule 4420 (except for the bid price requirement set forth in Rule 4420(a)(4), (b)(4) or (c)(3)) based on the issuer's most recent public filings and market information. If the issuer has publicly announced information (e.g., in an earnings release) indicating that it no

longer satisfies the applicable initial inclusion criteria, it shall not be eligible for the additional compliance period under this rule.

If the issuer has not been deemed in compliance 45 calendar days before the expiration of the second 180 day compliance period, the Listing Qualifications Department shall issue a letter (the "Staff Warning Letter"), notifying the issuer of its non-compliance, the pending expiration of the compliance period, and its right to request a hearing. The issuer must request a hearing within seven calendar days of the date of the Staff Warning Letter in order to preserve its right to review pursuant to Rule 4820. If the issuer requests a hearing, the hearing shall be scheduled for a date promptly following the expiration of the compliance period. If the issuer fails to request a hearing and does not regain compliance prior to the expiration of the compliance period, it shall be delisted immediately following the compliance period with no further opportunity for a hearing.] Compliance can be achieved during any compliance period by meeting the applicable standard for a minimum of 10 consecutive business days [during the applicable compliance period].

Nasdaq may, in its discretion, require an issuer to maintain a bid price of at least \$1.00 per share for a period in excess of ten consecutive business days, but generally no more than 20 consecutive business days, before determining that the issuer has demonstrated an ability to maintain long-term compliance. In determining whether to monitor bid price beyond ten business days, Nasdaq shall consider the following four factors: (i) Margin of compliance (the amount by which the price is above the \$1.00 minimum standard); (ii) trading volume (a lack of trading volume may indicate a lack of bona fide market interest in the security at the posted bid price); (iii) the market maker montage (the number of market makers quoting at or above \$1.00 and the size of their quotes); and, (iv) the trend of the stock price (is it up or down).

(3)–(4) No change.

(f)–(h) No change.

(i) Transfers between The Nasdaq National and SmallCap Markets For Bid Price Deficient Issuers

(1) If a National Market issuer has not been deemed in compliance prior to the expiration of [a] *the compliance period for bid price provided in Rule 4450(e)(2)*, it may transfer to The Nasdaq SmallCap Market, provided that it meets all applicable requirements for continued inclusion on the SmallCap

Market set forth in Rule 4310(c) [(other than the minimum bid price requirement of Rule 4310(c)(4))] or Rule 4320(e), as applicable, *other than the minimum bid price requirement*. A Nasdaq National Market issuer transferring to The Nasdaq SmallCap Market must pay the entry fee set forth in Rule 4520(a). The issuer may also request a hearing to remain on The Nasdaq National Market pursuant to the Rule 4800 Series.

(2) Following a transfer to The Nasdaq SmallCap Market pursuant to paragraph (1), a [domestic or Canadian] Nasdaq National Market issuer will be afforded the remainder of any compliance period set forth in Rule 4310(c)(8)(D) *or Rule 4320(e)(2)(E)(ii)* as if the issuer had been listed on The Nasdaq SmallCap Market. The compliance periods afforded by this rule and any time spent in the hearing process will be deducted in determining the length of the remaining applicable compliance periods on The Nasdaq SmallCap Market.

4820. Request for Hearing

(a) An issuer may, within seven calendar days of [the earlier of] the date of the Staff Determination [or the Staff Warning Letter referenced in Rule 4450(e)], request either a written or oral hearing to review the Staff Determination. Requests for hearings should be filed with The Nasdaq Office of Listing Qualifications Hearings (the "Hearings Department"). A request for a hearing shall stay the delisting action pending the issuance of a written determination by a Listing Qualifications Panel. If no hearing is requested within the seven calendar day period, the right to request review is waived, and the Staff Determination shall take immediate effect. All hearings shall be held before a Listing Qualifications Panel as described in Rule 4830. All hearings shall be scheduled, to the extent practicable, within 45 days of the date that the request for hearing is filed, at a location determined by the Hearings Department. The Hearings Department shall make an acknowledgment of the issuer's hearing request stating the date, time and location of the hearing, and the deadline for written submissions to the Listing Qualifications Panel. The issuer shall be provided at least 10 calendar days notice of the hearing unless the issuer waives such notice.

(b)–(c) No change.

IM-4350-1. Interpretive Material Regarding Future Priced Securities Summary

No change.

How the Rules Apply*Shareholder Approval*

No change.

Voting Rights

No change.

The Bid Price Requirement

The bid price requirement establishes a minimum bid price for issues trading on Nasdaq. NASD Rules 4310(c)(4), [and] 4320(e)(2)(E), 4450(a)(5) and 4450(b)(4) provide that, for an issue to be eligible for continued inclusion on The Nasdaq Stock Market, the minimum bid price per share shall be \$1. An issue is subject to delisting from Nasdaq if its bid price falls below \$1.

[In addition, Rule 4450(b)(4), which applies only to issues qualifying for the Nasdaq National Market under maintenance standard 2, provides that for an issue to remain eligible for continued inclusion in the Nasdaq National Market, the minimum bid price shall be \$5.]

[The bid price requirement establishes a minimum bid price for issues trading on Nasdaq. An issue is subject to delisting from Nasdaq if its bid price falls below \$1. In addition, certain issues are subject to delisting from the Nasdaq National Market if their bid price falls below \$5.]

The bid price rules must be thoroughly considered because the characteristics of Future Priced Securities often exert downward pressure on the bid price of the issuer's common stock. Specifically, dilution from the discounted conversion of the Future Priced Security may result in a significant decline in the price of the common stock. Furthermore, there appear to be instances where short selling has contributed to a substantial price decline, which, in turn, could lead to a failure to comply with the bid price requirement. * * *

Listing of Additional Shares

No change.

Public Interest Concerns

No change.

Reverse Merger

No change.

Footnote to IM-4350-1: * * * If used to manipulate the price of the stock, short selling by the holders of the Future Priced Security is prohibited by

the antifraud provisions of the securities laws and by NASD Rules and may be prohibited by the terms of the placement.

* * * * *

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 IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq rules relating to the minimum bid price requirement were approved on a pilot basis by the Commission in February 2002 and modified in March and December 2003.⁴ These rules, which expire on December 31, 2004, provide 180 calendar days for a National Market issuer to regain compliance. Upon the expiration of the first 180 calendar days, an issuer able to satisfy all initial listing criteria is eligible for an additional grace period, also on the National Market, of another 180 calendar days. Thereafter, a National Market issuer is also eligible to phase-down to the SmallCap Market to take advantage of the extended bid price grace period on that market if it meets all SmallCap initial listing criteria except for bid price. If a National Market issuer is not in compliance 45 days prior to the expiration of its second grace period, Nasdaq sends a warning letter to the issuer and the issuer must request a hearing at that time, if one is desired.

Similarly, the current pilot provides 180 calendar days for a SmallCap Market issuer to regain compliance. Upon the expiration of the first 180-day grace period, an issuer satisfying all initial listing criteria is eligible for an additional grace period of 180 days. Thereafter, an issuer can receive a third

grace period, up to the time of its next shareholders meeting (but not more than two years from the original notice of deficiency), if the issuer agrees to seek shareholder approval for a reverse stock split at that meeting and to implement the reverse stock split promptly afterward.

Having reviewed its experiences under the pilot program, Nasdaq now proposes to modify the pilot rules and seek permanent approval of the revised rules. Nasdaq believes the time frames contained in the proposed rule, while shorter than those of the pilot rule, would allow sufficient time for issuers to execute a plan to regain compliance with the bid price rules. Nasdaq further believes that the proposed rule will simplify the administration of bid price deficiencies.

The proposed rules would provide a SmallCap Market issuer with an initial 180-calendar-day period to regain compliance. Thereafter, the issuer could receive an additional 180-day grace period if it complied with all initial inclusion requirements except bid price. A National Market issuer would be provided 180 days to regain compliance on the National Market, after which it could transfer to the SmallCap Market if it complied with all SmallCap initial inclusion requirements except for bid price.

An issuer in a compliance period under the pilot rules at the time the proposed rules are effective would get to finish that period, but must thereafter satisfy the proposed rules. Thus, for example, on January 1, 2005, when the proposed rules would be effective, a Nasdaq National Market issuer that is on day 120 of its second 180-day compliance period under the pilot program would be entitled to remain on the National Market for an additional 60 days to complete that compliance period; however, at the end of that period, the issuer would not be entitled to any additional time to regain compliance, nor would it be eligible to transfer to the Nasdaq SmallCap Market because the issuer would have been below the bid price requirement for a longer period than permitted under the proposed rules. The following chart provides further examples of what would happen to issuers in compliance periods under the pilot rules on January 1, 2005:

⁴ See Securities Exchange Act Release No. 45387 (February 4, 2002), 67 FR 6306 (February 11, 2002) (SR-NASD-2002-13); Securities Exchange Act Release No. 47482 (March 11, 2003), 68 FR 12729

(March 17, 2003) (SR-NASD-2003-34); and Securities Exchange Act Release No. 48991 (December 23, 2003), 68 FR 75677 (December 31, 2003) (SR-NASD-2003-44), amended by Securities

Exchange Act Release No. 48991A (February 5, 2004), 69 FR 6707 (February 11, 2004) (SR-NASD-2003-44).

Market as of January 1, 2005	Status as of January 1, 2005	Action at end of compliance period, if still below \$1.00
National Market	In 1st 180-day compliance period	Transfer to SmallCap Market pursuant to proposed rules, if eligible, or subject to delisting if not eligible for transfer.
National Market	In 2nd 180-day compliance period	Subject to delisting at end of period. ⁵
SmallCap Market	In 1st 180-day compliance period	Eligible for 2nd 180-day compliance period pursuant to proposed rules.
SmallCap Market	In 2nd 180-day compliance period	Subject to delisting at end of period. ⁶
SmallCap Market	In 3rd compliance period (until next shareholder meeting or two years from deficiency notification).	Subject to delisting at end of period.

Finally, Nasdaq proposes to amend NASD Rule 4320 to require non-Canadian foreign issuers to satisfy the minimum bid price and market value of publicly held shares requirements applicable to domestic issuers for continued listing on the Nasdaq SmallCap Market.⁷ Currently no such requirements apply to SmallCap Market issuers. In order to allow these issuers sufficient time to take appropriate action to achieve compliance, if necessary, Nasdaq proposes that this requirement be effective 18 months after approval by the Commission.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act⁸ in general and with section 15A(b)(6) of the Act⁹ 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 to protect investors and the public interest. Specifically, the proposed

change to the bid price compliance periods would simplify the application of Nasdaq's rules and enhance transparency as to the application of those rules. Further, Nasdaq believes that the proposal to adopt continued listing requirements for bid price and market value of publicly held shares for non-Canadian foreign issuers listed on the SmallCap Market will protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve such proposed rule change; or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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-2004-147 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-2004-147. 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-2004-147 and should be submitted on or before November 12, 2004.

⁵ A Nasdaq National Market issuer that would be subject to delisting at the end of its current compliance period would be permitted to request a hearing to review that delisting decision even if it did not request such a hearing 45-days prior to the end of its compliance period as required by current NASD Rule 4450(e)(2). Nasdaq believes that this is appropriate as such an issuer may have failed to request a hearing because it believed it would be entitled to transfer to the SmallCap Market to obtain additional time under the pilot rules.

⁶ Pursuant to the proposed NASD Rule 4820, upon the Staff Determination of the delisting, any issuer may request either a written or oral hearing to review the Staff Determination. Telephone discussion between Arnold Golub, Office of General Counsel, Nasdaq, and Geoffrey Pemble, Special Counsel, Division of Market Regulation ("Division"), Commission, and Natasha Cowen, Attorney, Division, Commission (October 7, 2004).

⁷ A rule change to impose these requirements for initial listing by non-U.S. issuers was approved in September 2004. See Securities Exchange Act Release No. 50458 (September 28, 2004), 69 FR 59286 (October 4, 2004). Under this change, all non-U.S. issuers are required to meet the same initial inclusion bid price and market value of publicly held shares requirements as domestic and Canadian issuers. Nasdaq believes that these requirements provide important protections to investors, regardless of where the issuer is located.

⁸ 15 U.S.C. 78o-3.

⁹ 15 U.S.C. 78o-3(b)(6).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4-2784 Filed 10-20-04; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF STATE

[Public Notice 4875]

Culturally Significant Objects Imported for Exhibition Determinations: "Bacchus"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999 (64 FR 56014), Delegation of Authority No. 236 of October 19, 1999 (64 FR 57920), as amended, and Delegation of Authority No. 257 of April 15, 2003 (68 FR 19875), I hereby determine that the object to be included in the exhibition, "Bacchus," imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the exhibit object at the Metropolitan Museum of Art, New York, New York, from on or about October 28, 2004, to on or about January 24, 2005, and at possible additional venues yet to be determined, is in the national interest. Public notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, (202) 619-5997, and the address is United States Department of State, SA-44, Room 700, 301 4th Street, SW., Washington, DC 20547-0001.

Dated: October 13, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04-23590 Filed 10-20-04; 8:45 am]

BILLING CODE 4710-08-P

DEPARTMENT OF STATE

[Public Notice 4874]

Culturally Significant Objects Imported for Exhibition Determinations: "Iraq and China: Ceramics and Innovation"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 (68 FR 19875), I hereby determine that the objects to be included in the exhibition "Iraq and China: Ceramics and Innovation," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Arthur M. Sackler Gallery, Smithsonian Institution, Washington, DC, from on or about December 4, 2004, to on or about April 24, 2005, and at possible additional venues yet to be determined, is in the national interest. Public notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, Department of State (telephone: (202) 619-6981). The address is Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: October 12, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04-23589 Filed 10-20-04; 8:45 am]

BILLING CODE 4710-08-P

DEPARTMENT OF STATE

[Public Notice 4876]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Study of the United States Institute for Foreign Secondary Educators

Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: ECA/A/E/USS-05-02-SE2.

Catalog of Federal Domestic Assistance Number: 19.418.

Dates: Application Deadline: December 13, 2004.

Executive Summary: The Branch for the Study of the U.S., Office of Academic Exchange Programs, Bureau of Educational and Cultural Affairs, announces an open competition for public and private non-profit organizations to develop and implement the Study of the United States Institute for Foreign Secondary Educators. This Institute, for a multinational group of 30 experienced foreign secondary educators (including teacher trainers, curriculum developers and education ministry officials), is intended to provide participants with a deeper understanding of American life and institutions, past and present, in order to strengthen curricula and to improve the quality of teaching about the United States at secondary schools and teacher trainer institutions abroad. The institute should be organized around a central theme or themes in U.S. civilization and should have a strong contemporary component.

The program, which should be six weeks in length, will be conducted during the Summer of 2005 and must include an academic residency segment of at least four weeks duration at a U.S. college or university campus (or other appropriate location) and a study tour segment of not more than two weeks that should not only directly complement but also extend the learning process undertaken during the academic residency segment.

I. Funding Opportunity Description

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87-256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Purpose: The Bureau is seeking detailed proposals for a Study of the

¹⁰ 17 CFR 200.30-3(a)(12).

United States (U.S.) Institute for Foreign Secondary Educators from colleges, universities, consortia of colleges and universities, and other not-for-profit academic organizations that have an established reputation in one or more of the following fields: political science, international relations, law, history, sociology, literature, American studies, and/or other disciplines or sub-disciplines related to the program themes.

This Study of the U.S. Institute should provide a multinational group of up to 30 experienced foreign secondary school educators (including teacher trainers, curriculum developers and education ministry officials) with a deeper understanding of U.S. society and culture, past and present. The institute should be organized around a central theme or themes in U.S. civilization and should have a strong contemporary component. Through a combination of traditional, multi-disciplinary and interdisciplinary approaches, program content should be imaginatively integrated in order to elucidate the history and evolution of U.S. institutions and values, broadly defined. The program should also serve to illuminate contemporary political, social, and economic debates in American society.

Institutes are intended to offer foreign scholars, ministry officials, curricula designers and teachers whose professional work focuses in whole or in substantial part on the United States the opportunity to deepen their understanding of American society, culture and institutions. Their ultimate goal is to strengthen curricula and to improve the quality of teaching about the U.S. in institutions of higher learning and secondary school systems abroad.

Programs should be six weeks in length and must include an academic residency segment of at least four weeks duration at a U.S. college or university campus (or other appropriate location). A study tour segment of not more than two weeks should also be planned and should not only directly complement but should also extend the learning gained during the academic residency segment; the study tour should include visits to one or two additional regions of the United States.

The project director or one of the key program staff responsible for the academic program must have an advanced degree in one of the fields listed above. Staff escorts traveling under the cooperative agreement must have demonstrated qualifications for this service. Programs must conform with Bureau requirements and

guidelines outlined in the Solicitation Package. Bureau programs are subject to the availability of funds.

All institutes should be designed as intensive, academically rigorous seminars intended for an experienced group of fellow scholars from outside the United States. The institutes should be organized through an integrated series of lectures, readings, seminar discussions, regional travel and site visits, and they should also include some opportunity for limited but well-directed independent research. Applicants are encouraged to design thematically coherent programs in ways that draw upon the particular strengths, faculty and resources of their institutions as well as upon the nationally recognized expertise of scholars and other experts throughout the United States. All Study of the United States Institute programs, regardless of their particular thematic focus, should seek to:

1. Bring an interdisciplinary or multi-disciplinary focus to bear on the program content;

2. Provide participants with a variety of scholarly viewpoints on any given topic or focus. This includes providing participants with an understanding of how prevailing academic practice in the various disciplines used in the institute represent both a continuation of and a departure from past scholarly trends and practices. It is expected that presenters from other institutions will be brought in, as appropriate. Please note that the ways these alternative schools of thought will be presented should be clearly described in the proposal;

3. Give participants a multi-dimensional examination of U.S. society and institutions that reflects a broad and balanced range of perspectives and responsible views. Programs should include the views not only of scholars, cultural critics and public intellectuals, but also those of other professionals such as government officials, journalists and others who can substantively contribute to the topics at issue; and,

4. Ensure access to library and material resources that will enable grantees to continue their research, study and curriculum development upon returning to their home institutions.

Participants: As specified in the Project Objectives, Goals and Implementation (POGI) guidelines in the solicitation package, programs should be designed for highly-motivated and experienced multinational groups of 30 secondary educators, including teachers, teacher trainers, curriculum developers and education ministry

officials. Participants will be interested in taking part in an intensive seminar on aspects of U.S. civilization as a means to develop or improve courses and teaching about the United States at their home institutions and school systems.

Participants will be diverse in terms of age, professional position, and travel experience abroad. Participants can be expected to come from educational institutions where the study of the U.S. is relatively well-developed as well as from institutions that are just beginning to introduce courses and programs focusing on the United States. While participants may not have in-depth knowledge of the particular institute program theme, they will likely have had exposure to the relevant discipline and some experience teaching about the United States.

Participants will be drawn from all regions of the world and will be fluent in the English language.

Participants will be nominated by Fulbright Commissions and by U.S. Embassies abroad. A final list of participants will be sent to the host institution. Host institutions do not participate in the selection of participants.

Program Dates: Ideally, the program should be approximately 44 days in length (including participant arrival and departure days) and should begin in late June or early July, 2004.

Program Guidelines: It is critically important that proposals provide a full, detailed and comprehensive narrative describing the objectives of the institute; the title, scope and content of each session; and, how each session relates to the overall institute theme. A detailed syllabus must be provided that indicates the subject matter for each lecture or panel discussion, confirm or provisionally identify proposed lecturers and discussants, and clearly show how assigned readings will support each session. A calendar of all activities for the program must also be included. Overall, proposals will be reviewed on the basis of their fullness, coherence, clarity, and attention to detail.

Note: In a cooperative agreement, ECA/A/E/USS is substantially involved in program activities above and beyond routine grant monitoring. ECA/A/E/USS activities and responsibilities for this program are as follows: ECA/A/E/USS will participate in the selection of participants, will exercise oversight through one or more site visits and will debrief participants. ECA/A/E/USS may also require changes in the content of the program as well as the activities proposed either before or after the grant is awarded.

II. Award Information

Type of Award: Cooperative Agreement. ECA's level of involvement in this program is listed under number I above.

Fiscal Year Funds: FY-2005.

Approximate Total Funding: \$325,000.

Approximate Number of Awards: 1.

Approximate Average Award: \$300,000.

Floor of Award Range: \$275,000.

Ceiling of Award Range: \$325,000.

Anticipated Award Date: Pending availability of funds, March 1, 2005.

Anticipated Project Completion Date: (September 30, 2005).

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this grant for two additional fiscal years, before openly competing it again.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A-110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3 Other Eligibility Requirements

(a) Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to

\$60,000 in Bureau funding. ECA anticipates awarding one grant, in an amount up to \$325,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

(b) Technical Eligibility: All proposals must comply with the following: The project director or one of the key program staff responsible for the academic program must have an advanced degree in one of the following fields: political science, international relations, law, history, sociology, literature, American studies, and/or other disciplines or sub-disciplines related to the program themes.

IV. Application and Submission Information

Note: Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1 Contact Information To Request an Application Package

Please contact the Branch for the Study of the U.S., ECA/A/E/USS, Room Number 252, U.S. Department of State, SA-44, 301 4th Street, SW., Washington, DC 20547, telephone number (202) 619-4557 and fax number (202) 619-6790, e-mail Meyersn1@state.gov to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A/E/USS-05-02-SE2 located at the top of this announcement when making your request.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Program Officer Nancy L. Meyers and refer to the Funding Opportunity Number ECA/A/E/USS-05-02-SE2 located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at <http://exchanges.state.gov/education/rfgps/menu.htm>. Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The original and thirteen (13) copies of the application should be sent per the instructions under IV.3e. "Submission Dates and Times section" below.

IV.3a.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access <http://www.dunandbradstreet.com> or call 1-866-705-5711. Please ensure that your DUNS number is included in the appropriate box of the SF-424 which is part of the formal application package.

IV.3b.

All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c.

You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d.

Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1. Adherence to all Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs is placing renewed

emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR part 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. ECA will be responsible for issuing DS-2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at <http://exchanges.state.gov> or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA—44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401-9810, Fax: (202) 401-9809.

Please refer to Solicitation Package for further information.

IV.3d.2 Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104-319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106-113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of

these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are "smart" (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes*. *Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes*, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. *Participant satisfaction* with the program and exchange experience.

2. *Participant learning*, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. *Participant behavior*, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. *Institutional changes*, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups).

Please note: Because the cooperative agreement prospectively to be awarded under the terms of the present RFGP is likely to be of less than one year's duration, host institutions will not be expected to be able to demonstrate significant specific results in terms of participant behavior or institutional changes during the agreement period. Applicant institutions' monitoring and evaluation plans should, therefore, focus primarily on the first and more particularly the second level of outcomes (learning). ECA/A/E/USS will assume principal responsibility for developing performance indicators and conducting post-institute evaluations to measure changes in participant behavior as a result of the program(s), and effect of the program(s) on institutions, over time.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3d.4. Describe Your Plans for Overall Program Management, Staffing, and Coordination With ECA/A/E/USS

ECA/A/E/USS considers program management, staffing and coordination

with the Department of State essential elements of your program. Please be sure to give sufficient attention to these elements in your proposal. Please refer to the Technical Eligibility Requirements and the POGI in the Solicitation package for specific guidelines.

IV.3e. Please Take the Following Information Into Consideration When Preparing your Budget

IV.3e.1.

Applicants must submit a comprehensive budget for the entire program. Awards may not exceed \$325,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Based on a group of 30 participants, the total Bureau-funded budget (program and administrative) for this program should be up to approximately \$325,000, and Bureau-funded administrative costs as defined in the budget details section of the solicitation package should be up to approximately \$100,000.

Justifications for any costs above these amounts must be clearly indicated in the proposal submission. Proposals should try to maximize cost-sharing in all facets of the program and to stimulate U.S. private sector, including foundation and corporate, support. Applicants must submit a comprehensive budget for the entire program. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program, and availability of U.S. government funding.

Please refer to the "POGI" in the Solicitation Package for complete institute budget guidelines and formatting instructions.

IV.3e.2. Allowable Costs for the Program Include the Following

- (1) Institute staff salary and benefits.
- (2) Honoraria for Guest speakers.
- (3) Participant per diem.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Submission Dates and Times

Application Deadline Date: Monday, December 13, 2004.

Explanation of Deadlines: In light of recent events and heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express,

or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. ECA will *not* notify you upon receipt of application. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered. Applications may not be submitted electronically at this time.

Applicants must follow all instructions in the Solicitation Package.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF-424 form and place it in an envelope addressed to "ECA/EX/PM".

The original and thirteen(13) copies of the application should be sent to: U.S. Department of State, SA-44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/E/USS-05-02-SE2, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF-424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3g. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

Applicants are also requested to submit the "Executive Summary" and "Proposal Narrative" sections of the proposal in text (.txt) format on a PC-formatted disk.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein

and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (cooperative agreements) resides with the Bureau's Grants Officer.

1. Quality of Program Idea/Plan

The proposal narrative and appendices should demonstrate the complete integration of the two program modules (academic and experiential) into a single program. Applicants should clearly explain how/why site visits, consultations, reading lists etc. were chosen and how they compliment the academic module and the program as a whole. The program should offer a balanced presentation of the subjects/issues covered, reflecting both the continuity of the American experience as well its diversity and dynamism inherent in it.

2. Academic Residency Program Planning and Administration

As a general proposition, proposals should demonstrate careful planning. The organization and structure of the academic residency component should be clearly delineated. A program syllabus, noting specific sessions and topical readings supporting each academic unit, should be included. The expectation is that these institutes be conducted as intensive graduate-level seminars. Plans for the academic residency segment should, therefore, avoid undue reliance on the "lecture followed by question-and-answer session" format, and incorporate panel presentations, working group assignments, group debates and other modalities designed to foster and encourage active learning and participation by all institute participants.

3. Study Tour Planning and Administration

The study tour travel component should not simply be a tour, but rather an integral and substantive part of the program, reinforcing and complementing the academic component. The proposal should explain how the site visits and

presentations included in the study tour program relate to the Institute's learning objectives. Consideration should be given to assigning lighter readings during the study tour (e.g., short articles, newspaper selections, etc.) related to planned study tour travel sessions. While visits to cultural institutions may certainly be included, the emphasis should be on meetings with scholars and other relevant professionals such as (e.g.) government officials, journalists, and literary critics who can substantively contribute to deepening the participants' understanding of issues and topics pertinent to the Institute's theme(s).

4. Ability To Achieve Overall Program Objectives

Due to the academic nature of this program, overall objectives can only be met if proposals exhibit originality and substance consonant with the highest standards of American teaching and scholarship. Program design should reflect the main currents as well as the debates within the subject disciplines of each institute. A variety of presenters reflecting diverse backgrounds and viewpoints should be invited to discuss their specific areas of expertise with the participants. Assigned readings likewise should provide opportunities for participants to be exposed to diverse responsible perspectives on the topics and issues to be explored.

5. Support for Diversity

Proposals should demonstrate substantive support of the Bureau's policy on diversity. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Applicant should highlight instances of diversity in their proposal.

6. Evaluation and Follow-Up

Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Proposals should discuss provisions made for follow-up with returned grantees as a means of establishing longer-term individual and institutional linkages.

7. Cost-Effectiveness/Cost Sharing

The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

8. Institutional Capacity

Proposals should provide evidence of continuous administrative and managerial capacity as well as the means by which program activities and logistical matters will be implemented. Proposed personnel, including faculty and administrative staff as well as outside presenters, should be fully qualified to achieve the project's goals. Library and meeting facilities, housing, meals, transportation and other logistical arrangements should fully meet the needs of participants.

9. Institutional Track Record/Ability

Proposals should demonstrate an institutional record of successful exchange program activities, indicating the experience that the organization and its professional staff have had working with foreign educators. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

VI. Award Administration Information

VI.1. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2 Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A-122, "Cost Principles for Nonprofit Organizations."

Office of Management and Budget Circular A-21, "Cost Principles for Educational Institutions."

OMB Circular A-87, "Cost Principles for State, Local and Indian Governments."

OMB Circular No. A-110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A-102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A-133, Audits of States, Local Government, and Non-profit Organizations

Please reference the following Web sites for additional information: <http://www.whitehouse.gov/omb/grants> and <http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI>.

VI.3. Reporting Requirements

You must provide ECA with a hard copy original plus two copies of the following reports:

Mandatory:

(1) A final program and financial report no more than 90 days after the expiration of the award.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.)

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VII. Agency Contacts

For questions about this announcement, contact: Branch for the Study of the U.S., ECA/A/E/USS, Room Number 252, ECA/A/E/USS-05-02-SE2, U.S. Department of State, SA-44, 301 4th Street, SW., Washington, DC 20547, telephone number (202) 619-4557 and fax number (202) 619-6790, MeyersNL@state.gov.

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/E/USS-05-02-SE2.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information*Notice*

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: October 13, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 04-23591 Filed 10-20-04; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF TRANSPORTATION**Office of the Secretary****Aviation Proceedings, Agreements Filed the Week Ending October 8, 2004**

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST-04-19302.

Date Filed: October 4, 2004.

Parties: Members of the International Air Transport Association.

Subject: PTC COMP 1191 dated 5 October 2004, Mail Vote 414 Resolution 010z, Special Passenger Amending Resolution from Indonesia, Sri Lanka, Intended effective date: 1 November 2004.

Docket Number: OST-2004-19335.

Date Filed: October 6, 2004.

Parties: Members of the International Air Transport Association.

Subject: PTC23 EUR-SASC 0132 dated 5 October 2004, Mail Vote 408 Europe-South Asian Subcontinent r1-r11, Minutes: PTC23 EUR-SASC 0131 dated 24 September 2004, Tables: PTC23 EUR-SASC Fares 0060 dated 5 October 2004, Intended effective date: 1 April 2005.

Docket Number: OST-2004-19356.

Date Filed: October 8, 2004.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 410, PTC23 ME-TC3 0215 dated 8 October 2004, Middle

East-South West Pacific Resolutions r1-r12, Minutes: PTC23 ME-TC3 0214 dated 5 October 2004, Tables: PTC23 ME-TC3 Fares 0097 dated 8 October 2004, Intended effective dates: 15 January 2005, 1 April 2005.

Docket Number: OST-2004-19364.

Date Filed: October 8, 2004.

Parties: Members of the International Air Transport Association.

Subject: PTC23 ME-TC3 0212 dated 21 September 2004, Middle East-South Asian Subcontinent Resolutions r1-r11, PTC23 ME-TC3 0213 dated 21 September 2004, Middle East-Japan/Korea Resolutions r12-r33, Minutes: PTC23 ME-TC3 0214 dated 5 October 2004, Tables: PTC23 ME-TC3 Fares 0092/0093 dated 24 September 2004, Intended effective date: 1 April 2005.

Docket Number: OST-2004-19365.

Date Filed: October 8, 2004.

Parties: Members of the International Air Transport Association.

Subject: PTC23-TC3 0242 dated 21 September 2004, Africa-South Asian Subcontinent Resolutions, r1-r9, PTC23 AFR-TC3 0243 dated 21 September 2004, Africa-South West Pacific Resolutions, r10-r21, Minutes: PTC23 AFR-TC3 0248 dated 5 October 2004, Tables: PTC23 AFR-TC3 Fares 0113, PTC23 AFR-TC3 Fares 0114 dated 24 September 2004, Intended effective date: 1 April 2005.

Docket Number: OST-2004-19366.

Date Filed: October 8, 2004.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 411, PTC23 AFR-TC3 0249 dated 8 October 2004, Africa-South East Asia Resolutions r1-r15, Mail Vote 412, PTC23 AFR-TC3 0250 dated 8 October 2004, Africa-South West Pacific Resolutions r16-r36, Minutes: PTC23 AFR-TC3, 0248 dated 5 October 2004, Tables: PTC23 AFR-TC3, Fares 0120, PTC23 AFR TC3, Fares 0123 dated 8 October 2004, Intended effective dates: 31 October 2004, 1 November 2004, 15 January 2005, 1 April 2005.

Renee V. Wright,

Supervisory Docket Officer, Alternate Federal Register Liaison.

[FR Doc. 04-23564 Filed 10-20-04; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION**Office of the Secretary**

[Dockets OST-2004-17311 and OST-2004-17312]

Application of Omega Air Holdings, LLC, d/b/a Focus Air for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause (2004-10-6).

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Omega Air Holdings, LLC d/b/a Focus Air fit, willing, and able, and awarding it certificates of public convenience and necessity authorizing it to engage in interstate and foreign charter air transportation of property and mail.

DATES: Persons wishing to file objections should do so no later than October 28, 2004.

ADDRESSES: Objections and answers to objections should be filed in Dockets OST-2004-17311 and OST-2004-17312 and addressed to Docket Operations (M-30, Room PL-401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mr. William M. Bertram, Air Carrier Fitness Division (X-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-1062.

Dated: October 14, 2004.

Karan K. Bhatia,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 04-23543 Filed 10-20-04; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****Advisory Circular (AC) 23-21, Airworthiness Compliance Checklists Used to Substantiate Major Alterations for Small Airplanes**

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 23-21. This advisory circular provides guidance material for the creation and use of airworthiness compliance checklists that can be used when making major alteration to small airplanes. These checklists may be used by Airframe and Powerplant (A&P) mechanics with Inspection Authorization (IA) and by Federal Aviation Administration (FAA) Airworthiness Safety Inspectors (ASIs). The checklists identify the data requirements and their approval methods for several common major

alterations and identify the supporting documentation that may be used to support approval for return to service after aircraft alteration. Use of these airworthiness compliance checklists should be limited to alterations that have been determined to be "major" alterations, as defined in 14 CFR, part 1. They should not be used for complex alterations that require a Supplemental Type Certificate (STC), per FAA Order 8300.10. This advisory circular is intended to work in conjunction with and complement AC 43-210, Standardized Procedures for Requesting Field Approval of Data, Major Alterations, and Repairs. This advisory circular does not change any previously released FAA guidance material such as FAA Orders and AC's listed in section 4 of this advisory circular. The intent of this advisory circular is to provide a tool to work within existing approval processes. Material in this advisory circular is neither mandatory nor regulatory in nature and does not constitute a regulation. The use of these checklists during the return to service of a major alteration is not mandatory nor does it alter any previously acceptable method. The draft advisory circular was issued for Public Comment on May 28, 2004 (69 FR 30738). There were no comments received for the draft advisory circular.

DATES: Advisory Circular (AC) 23-21 was issued by the Manager, Small Airplane Directorate on September 30, 2004.

How to Obtain Copies: A paper copy of AC 23-21 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 Avenue, Landover, MD 20785, telephone 301-322-5377, or by faxing your request to the warehouse at 301-386-5394. The policy will also be available on the Internet at <http://www.airweb.faa.gov/AC>.

Issued in Kansas City, Missouri on September 30, 2004.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04-23547 Filed 10-20-04; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-2004-79]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 10, 2004.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FAA-2004-18751 by any of the following methods:

- Web site: <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax: 1-202-493-2251.

• Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.

• Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Linsenmeyer (202) 267-5174 or Susan Lender (202) 267-8029, Office of

Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

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

Anthony F. Fazio,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA-2004-18751.

Petitioner: Vaughn College of Aeronautics & Technology.

Sections of 14 CFR Affected: 14 CFR part 147, Appendix C.

Description of Relief Sought: To allow the petitioner to teach certain welding, soldering, and brazing curriculum in the Airframe Structures section of Appendix C to Teaching level 1 instead of Teaching level 2.

[FR Doc. 04-23546 Filed 10-20-04; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA-2004-18982]

Agency Information Collection Activities; Request for Comments; Clearance of a New Information Collection; Identify and Evaluate Barriers to Right-of-Way Training Needs

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval of a new information collection, which is summarized below under Supplementary Information. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Comments must be submitted on or before December 20, 2004.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FHWA-2004-18982 by any of the following methods:

- Web Site: <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax: 1-202-493-2251.

• Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590.

• Hand Delivery: Room PL-401 on the plaza level of the Nassif Building,

400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Docket: For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mamie Smith, (202) 366-2529, Office of Real Estate Services, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Identify and Evaluate Barriers to Right-of-Way Training Needs.

Abstract: More training for individuals handling right-of-way activities for Federal and State transportation agencies is needed. The State right-of way managers and the Federal Highway Administration (FHWA) divisions' realty offices frequently express concern to the FHWA's Office of Real Estate Services (HEPR) about the lack of training for current and new employees. Yet, it appears that these groups may underutilize existing training resources, such as courses offered through the National Highway Institute (NHI), the International Right-of-Way Association (IRWA), and the Appraisal Institute (AI). The goal of this research project is to determine whether HEPR's State and Federal customers are taking full advantage of existing training opportunities. This proposed information collection would involve responses to a questionnaire and a follow-up survey to identify and evaluate barriers to existing right-of-way training courses.

Respondents: The respondents to the survey will be the state right-of-way managers and the FHWA division realty officers in all 50 states, the District of Columbia and Puerto Rico, as well as the selected training providers at NHI, IRWA, and AI.

Frequency: This is a one-time survey.
Estimated Average Burden per Response: The estimated average burden per response is 30 minutes. This includes the time needed to complete the questionnaire and the follow-up survey.

Estimated Total Annual Burden Hours: The estimated total annual burden for all respondents is 45 hours.

Public Comments Invited: Interested parties are invited to send comments regarding any aspect of this information collection, including but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the FHWA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden, including the use of electronic technology without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB's clearance of this information collection.

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

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. 04-23549 Filed 10-20-04; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA-2004-18785]

Agency Information Collection Activities; Request for Comments; Clearance of a New Information Collection; Evaluate the Effects of Appraisal Waivers

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under Supplementary Information. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by December 20, 2004.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FHWA-2004-18785 by any of the following methods:

- Web Site: <http://dms.dot.gov>. Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax: 1-202-493-2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590.

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Docket: For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Reginald Bessmer, 202-366-2037, Office of Real Estate Services, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Evaluate the Effects of Appraisal Waivers.

Abstract: The Uniform Relocation Assistance and Real Property Acquisition Properties Act of 1970, as amended, provides that "Real property shall be appraised before the initiation of negotiations, and that the owner, or the owner's designated representative shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property, except that the head of the lead agency may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value." The appraisal waiver policy is based on the premise that administrative costs, particularly appraisal costs, should not be a high proportion, or even exceed the value of the actual real property to be acquired. The procedure to waive the appraisal is specified in 49 CFR 24.102(c) and allows agencies acquiring real property to " * * * determine that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at \$2,500 or less, based on a review of available data." The Federal Highway

Administration (FHWA) has expanded this policy through 49 CFR 24.7, Federal agency waiver of regulations, to allow the State Departments of Transportation, at their request, to raise the appraisal waiver threshold to a maximum of \$10,000 and more recently, to a maximum of \$25,000. This information collection involves a survey to determine the impact of FHWA's appraisal waiver policy on the acquisition of real property by agreements with owners, subsequent litigation (eminent domain), consistent treatment for owners, and public confidence in Federal land acquisition practices. Also, the FHWA seeks to determine the impacts that the FHWA's appraisal waiver procedures may have on the State DOTs' operations. The information to be collected will be used to determine whether the appraisal waiver policy, as implemented by the FHWA through its State Department of Transportation partners, is accomplishing its intended goals. This includes, minimizing administrative costs, expediting the acquisition of real property, avoiding litigation, and maintaining consistent treatment for owners. The information will also help identify and analyze the impact of unknown and unintended consequences of the appraisal waiver program, as implemented by the FHWA.

Respondents: 50 State Departments of Transportation, the District of Columbia and Puerto Rico (Right-of-Way Department).

Frequency: This is a one-time survey.

Estimated Average Burden per

Response: 3 hours.

Estimated Total Annual Burden

Hours: 156 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act

Statement in the **Federal Register** published on April 11, 2000 (volume 65, number 70; pages 19477-78), or you may visit <http://dms.dot.gov>.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: October 7, 2004.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. 04-23550 Filed 10-20-04; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA-98-4470]

Pipeline Safety: Meetings of the Pipeline Safety Advisory Committees

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration, DOT.

ACTION: Notice; Meetings of the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee.

SUMMARY: Meetings of the Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) will be held on December 14 and 15, 2004, at the Marriott Washington, 1221 22nd Street, NW., Washington, DC. The Office of Pipeline Safety (OPS) will provide briefings on pending rulemakings and regulatory initiatives. The advisory committees will discuss and vote on proposed rulemakings.

ADDRESSES: Members of the public may attend the meetings at the Marriott Washington, 1221 22nd Street, NW., Washington, DC. The phone number for Marriott reservations is 1-800-228-9290. Reservations by attendees must be received on or before November 22. Priority is given to advisory committee members and State pipeline safety representatives for a limited block of rooms. Any additional information or changes will be posted on the OPS Web page approximately 15 days before the meeting date at <http://ops.dot.gov>.

An opportunity will be provided for the public to make short statements on the topics under discussion. Anyone wishing to make an oral statement should notify Jean Milam, (202) 493-0967, not later than November 16, 2004, on the topic of the statement and the length of the presentation. The

presiding officer at each meeting may deny any request to present an oral statement and may limit the time of any presentation.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Jean Milam at (202) 493-0967.

Comments: You may submit written comments on the subject matter of the advisory committee meetings by mail or deliver to the Dockets Facility, U.S. Department of Transportation, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. It is open from 10 a.m. to 5 p.m., Monday through Friday, except Federal holidays. You also may submit written comments to the docket electronically. To do so, log onto the following Internet Web address: <http://dms.dot.gov>. Click on "Help & Information" for instructions on how to file a document electronically. All written comments should reference docket number RSPA-98-4470. Anyone who would like confirmation of mailed comments must include a self-addressed stamped postcard.

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

FOR FURTHER INFORMATION CONTACT: Cheryl Whetsel, OPS, (202) 366-4431 or Richard Huriaux, OPS, (202) 366-4565, regarding the subject matter of this notice.

SUPPLEMENTARY INFORMATION: The TPSSC and THLPSSC are statutorily mandated advisory committees that advise OPS on proposed safety standards for gas and hazardous liquid pipelines. These advisory committees are constituted in accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. app. 1). The committees consist of 15 members—five each representing government, industry, and the public. The TPSSC and THLPSSC are tasked with determining reasonableness, cost-effectiveness, and practicability of proposed pipeline regulations.

Federal law requires that OPS submit cost-benefit analyses and risk

assessment information on each proposed safety standard to the advisory committees. The TPSSC and/or THLPSSC evaluate the merits of the data and the methods used in these analyses and, when appropriate, provide recommendations on the adequacy of the cost-benefit analyses.

In addition to the advisory committee meetings, OPS will soon publish a separate notice to announce four public meetings to be held during the week of December 13–17, 2004. These public meetings will include sessions on gas distribution system integrity management, the pipeline operator drug and alcohol program, updates to the operator personnel qualification program, and pipeline safety communications. These public meetings are being scheduled during the same week as the advisory committee meetings to afford members of the advisory committees, state pipeline safety representatives, and the general public the maximum opportunity to attend both the advisory committee meetings and the issue-specific public meetings.

Preliminary Meeting Schedule

On Tuesday, December 14, 2004, from 8:30 a.m. to 12 p.m. e.s.t., a meeting of the THLPSSC will be held. The agenda includes briefings on the following:

1. American Petroleum Institute (API) Petition—Changes to Liquid Integrity Management Program (IMP).
2. Response Plans for Onshore Oil Pipelines.

3. Direct Assessment for Hazardous Liquid Pipelines (scheduled for VOTE).

On Wednesday, December 15, 2004, from 8:30 p.m. to 12 p.m. e.s.t., the THLPSSC and the TPSSC will meet in joint session. OPS will provide the committees with briefings on the following:

1. Common Ground Alliance.
2. Community and Technical Assistance State Damage Prevention Assessment Briefing.

3. Pipeline Industry Implementation of Public Awareness Programs (scheduled for VOTE).

4. Annual Update of Standards Incorporated by Reference (scheduled for VOTE).

5. Transportation Research Board Report.

6. Passage of Internal Inspection Devices.

On Wednesday, December 15, from 1 p.m. to 5 p.m. e.s.t., a meeting of the TPSSC will be held. The following topics will be discussed:

1. Gas Gathering Line Definition.
2. Direct Assessment for Gas Pipelines.

3. Protocols for Gas Integrity Management Program.

4. Technical Studies by Federal Energy Regulatory Commission and Department of Energy.

Authority: 49 U.S.C. 60102, 60115.

Issued in Washington, DC on October 18, 2004.

Richard D. Hurioux,

Director, Technical Standards, Office of Pipeline Safety.

[FR Doc. 04–23588 Filed 10–20–04; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34562]

Norfolk Southern Railway Company—Trackage Rights Exemption—Delaware and Hudson Railway Company, Inc.

Pursuant to a trackage rights agreement dated September 30, 2004, between Norfolk Southern Railway Company (NSR) and Delaware and Hudson Railway Company, Inc. (D&H),¹ D&H has agreed to grant NSR approximately 155.24 miles of overhead trackage rights over the following lines:

- (1) Between milepost 37.10± of D&H's Canadian Main Line in Saratoga Springs, NY, and the point of connection between D&H's Canadian Main Line and D&H's Freight Main Line at CPF 480, located at milepost 21.70± of D&H's Canadian Main Line, a total distance of approximately 15.4 miles;
- (2) between milepost 480.36± and milepost 611.15± of D&H's Freight Main Line in Binghamton, NY, a distance of approximately 130.79 miles; and
- (3) between milepost 611.15± and milepost 620.20± of D&H's Freight Main Line (including tracks into and within D&H's East Binghamton Yard) in Binghamton, NY, a distance of approximately 9.05 miles.

The transaction was scheduled to be consummated on or after the anticipated October 8, 2004, effective date of this exemption.²

The purpose of the trackage rights is to allow for: (1) The overhead

¹ A redacted version of the trackage rights agreement between NSR and D&H was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. A protective order was served on October 8, 2004.

² By decision served on October 7, 2004, the effective date of the exemption was stayed until October 27, 2004, to allow for review of certain documents, filing of a petition to revoke, and the Board's consideration of the stay request filed in this proceeding. Accordingly, consummation of the transaction cannot occur until October 27, 2004.

movement between Saratoga Springs and Binghamton of trains by NSR, which are currently handled by D&H for NSR's account between Saratoga Springs and Rouses Point, NY, pursuant to a haulage agreement between NSR and D&H, and (2) movements over D&H's terminal trackage, including within D&H's East Binghamton Yard. Additionally, traffic moved by the trackage rights will be blocked and switched in D&H's East Binghamton Yard pursuant to a switching agreement between NSR and D&H.

As a condition of this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it 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. 34562, 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 Richard A. Allen, Zuckert, Scoutt & Rasenberger LLP, 888 Seventeenth Street, Suite 600, Washington, DC 20006–3939.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: October 13, 2004.

By the Board, David M. Konschnik,
Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–23450 Filed 10–20–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34561]

Canadian Pacific Railway Company—Trackage Rights Exemption—Norfolk Southern Railway Company

Pursuant to a trackage rights agreement dated September 30, 2004, between Canadian Pacific Railway Company (CPRC) and Norfolk Southern

Railway Company (NSR),¹ NSR has agreed to grant CPRC approximately 12.5 miles of overhead trackage rights in the vicinity of Buffalo, NY, over: (a) NSR's Southern Tier Line between milepost 413.0± and the western end of the Southern Tier Line at milepost 419.8± (including tracks into NSR's Bison Yard), a distance of approximately 6.8 miles; (b) NSR's Bison Running Track between the point of connection with the Southern Tier Line at milepost 419.8± and the point of connection with the lines of CSX Transportation, Inc. (CSXT) at milepost 423.3±, a distance of approximately 3.5 miles; and (c) NSR's Howard Street Running Track between the point of connection with the Bison Running Track at milepost 420.15± and the point of connection with the lines of CSXT at milepost 422.3±, a distance of approximately 2.15 miles.²

The transaction will be consummated on a date mutually agreed in writing between CPRC and NSR, which shall not occur until the effective date of any required Board approval of the petition for exemption filed by D&H in *Delaware and Hudson Railway Company—Discontinuance of Trackage Rights—in Susquehanna County, PA and Broome, Tioga, Chemung, Steuben, Allegany, Livingston, Wyoming, Erie and Genesee Counties, NY*, STB Docket No. AB-156 (Sub-No. 25X) (including compliance with any conditions imposed by the Board in connection with such approval or exemption).³

The purpose of the trackage rights is to allow CPRC to access customers via switching in the Buffalo terminal area, and to interchange traffic with other rail carriers along the Southern Tier Line and in the Buffalo Terminal Area.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in

¹ A redacted version of the trackage rights agreement between CPRC and NSR was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. A protective order was served on October 8, 2004.

² CPRC will acquire the trackage rights by assignment from its affiliate, Delaware and Hudson Railway Company, Inc. (D&H).

³ By decision served on October 7, 2004, the effective date of this trackage rights exemption was stayed until October 27, 2004, to allow for review of certain documents, filing of a petition to revoke, and the Board's consideration of the stay request filed in this proceeding. Accordingly, consummation of the transaction cannot occur until October 27, 2004, at the earliest, but, as noted, the parties anticipate consummation at some time after the Board acts on the petition for exemption in STB Docket No. AB-156 (Sub-No. 25X).

Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it 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. 34561, 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 Terence M. Hynes, Sidley Austin Brown & Wood LLP, 1501 K Street, NW., Washington, DC 20005.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: October 13, 2004.

By the Board, David M. Konschnick, Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 04-23449 Filed 10-20-04; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-156 (Sub No. 25X)]

Delaware and Hudson Railway Company—Discontinuance of Trackage Rights—in Susquehanna County, PA and Broome, Tioga, Chemung, Steuben, Allegany, Livingston, Wyoming, Erie, and Genesee Counties, NY

On October 1, 2004, Delaware and Hudson Railway Company, Inc. (D&H) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 for D&H to discontinue overhead trackage rights over approximately 229.55 miles of railroad line owned and operated by Norfolk Southern Railway Company (NSR) between Lanesboro, PA, and Buffalo, NY. The specific lines proposed for discontinuance by D&H include: (1) NSR's line between milepost 189.8± in Lanesboro, PA, and CP Coles at milepost 210.9± in Binghamton, NY; (2) NSR's Southern Tier Line between milepost 217.0± in Binghamton, NY, and milepost 419.8± in Buffalo, NY; (3) NSR's Bison Running Track between the point of connection with the Southern Tier Line at milepost 419.8± and the point of connection with the lines of

CSX Transportation, Inc. (CSXT) at milepost 423.3± in Buffalo, NY (including NSR's SK Yard, which D&H currently operates under an agreement between D&H and Consolidated Rail Corporation dated as of February 1, 1984), a distance of approximately 3.5 miles; and (4) NSR's Howard Street Running Track between the point of connection with the Bison Running Track at milepost 420.15± and the point of connection with the lines of CSXT at milepost 422.3±, a distance of approximately 2.15 miles. D&H will retain trackage rights over NSR's line between milepost 210.9± and milepost 217.0± in Binghamton, NY, because D&H requires the use of that segment for ongoing operations in the Binghamton terminal area.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by January 19, 2005.

This proceeding is exempt from environmental reporting requirements under 49 CFR 1105.6(c) and from historic reporting requirements under 1105.8(b).

All filings in response to this notice must refer to STB Docket No. AB-156 (Sub-No. 25X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001; and (2) Terence M. Hynes, Sidley Austin Brown & Wood LLP, 1501 K Street, NW., Washington, DC 20005. Replies to the petition are due on or before November 10, 2004.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Services at (202) 565-1592 or refer to the full discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565-1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: October 13, 2004.

By the Board, David M. Konschnick, Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 04-23368 Filed 10-20-04; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Proposed Collection; Comment Request for Form 6406**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 6406, Short Form Application for Determination for Minor Amendment of Employee Benefit Plan.

DATES: Written comments should be received on or before December 20, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Paul Finger Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622-3179, or through the Internet at Larnice.Mack@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Short Form Application for Determination for Minor Amendment of Employee Benefit Plan.

OMB Number: 1545-0229.

Form Number: 6406.

Abstract: Form 6406 is used to apply for a determination for a minor amendment for an employee benefit plan if that plan has already received a favorable determination letter that takes into account the requirements of the Tax Reform Act of 1986. The information gathered will be used to decide whether the plan is qualified under Internal Revenue Code section 401(a).

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 25,000.

Estimated Time Per Respondent: 21 hrs., 32 minutes.

Estimated Total Annual Burden Hours: 538,250.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 12, 2004.

Paul Finger,

IRS Reports Clearance Officer.

[FR Doc. 04-23601 Filed 10-20-04; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service**

[REG-106177-98]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information

collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG-106177-98 (TD 8845), Adequate Disclosure of Gifts (§ 301.6501(c)-1).

DATES: Written comments should be received on or before December 20, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Paul Finger, Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622-3179, or through the Internet at Larnice.Mack@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Adequate Disclosure of Gifts.

OMB Number: 1545-1637.

Regulation Project Number: REG-106177-98.

Abstract: Section 301.6501(c)-1(f) requires that, in order to commence the running of the gift tax statute of limitations, the donor must file a Form 709 and submit sufficient information about the transaction that will give the Service a complete and accurate description of the transfer. Such information includes a description of the transferred property, the identity and relationship of the parties to the transfer and any entities involved, a description of the methods used to value the transferred property, a description of any restrictions on the transferred property, and a statement of any potential controversy or legal issue involved.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Individuals or households.

The reporting burden contained in § 301.6501(c)-1(f) is reflected in the burden for Form 709, U.S. Gift (and Generation-Skipping Transfer) Tax Return.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long

as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 12, 2004.

Paul Finger,

IRS Reports Clearance Officer.

[FR Doc. 04-23602 Filed 10-20-04; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG-209626-93]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking and temporary regulation, REG-209626-93 (TD 8620), Notice, Consent, and Election Requirements Under Sections 411(a)(11) and 417 (§§ 1.411(a)-11T and 1.417(e)-1T).

DATES: Written comments should be received on or before December 20, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Paul Finger, Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622-3179, or through the Internet at Larnice.Mack@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Notice, Consent, and Election Requirements Under Sections 411(a)(11) and 417.

OMB Number: 1545-1471.

Regulation Project Number: REG-209626-93.

Abstract: These regulations provide guidance concerning the notice consent requirements under Code section 411(a)(11) and the notice and election requirements of Code section 417, Regulation section 1.411(a)-11(c) provides that a participant's consent to a distribution under code section 411(a)(11) is not valid unless the participant receives a notice of his or her rights under the plan no more than 90 and no less than 30 days prior to the annuity starting date. Regulation section 1.417(e)-1 sets forth the same 90/30-day time period for providing the notice explaining the qualified joint and survivor annuity and waiver rights under Code section 417(a)(3).

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, not-for-profit institutions and Federal, state, local or tribal governments.

Estimated Number of Respondents: 750,000.

Estimated Time Per Respondent: .011 hr.

Estimated Total Annual Burden Hours: 8,333.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and

tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 12, 2004.

Paul Finger,

IRS Reports Clearance Officer.

[FR Doc. 04-23603 Filed 10-20-04; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G, as amended, by the Health Insurance Portability and Accountability Act (HIPAA) of 1996. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a)) with respect to whom the Secretary received information during the quarter ending September 30, 2003. Names follow in order of: first name, middle name or initial (if applicable), and last name.

Eli Richard Selinkoff
 Esther Codina
 James Fowler Gossage
 Catherine Donna Gossage
 Megan Sara Colley
 Alix DeBeistegui
 Joseph Arthur Dlutowski
 Sher May Lee
 Audley Maduro
 Jakob Miling
 William E Peterson

Kenneth Andre Price
In Sik Kim
Jane Susan Reece
Yukio Nakajima
Kim Olivia Simmons
Clarence Rodney Tackett
Thomas Lawrence Thompson
Robert Leonard Towner
Derek Emory Ting Lap Yeung
Georges De La Haye Jousselin
Grace Junko Ehara
Carole Ann Rowland
Hamidullah Khan Burki
Gregory James Ryan
Jerry Jaroslav Krumlik
Patricia Barker
Margarete Gertude Raisch
Jeffrey Charles Friedman
Richard Ira Krasnoff
Cheryl Wei-Li Ma
Robert B Posey
Wayne Perry Siegel
Doris Verena Studer-Jeker
Misha Francine Voinov
Joseph Walter Burt
Janet Young Chang
Gabriele Ilse Hollmann
Giorgio Antonio Mannara
Martina Eleonore Willoughby
Sara Crisler Ahlefeldt-Laurvig
Deborah Elizabeth Zulliger
Verena Marie Butt
Jack Hentz Poppell
Hisahiko Hiroi
Nak Hee Laura Hyun
David Gerald Forbes-Jaeger
Otis Paul Johnson
Elise Susan Kaufman
Dong J Kim
Young Houn Kim
Sherry A Kreiger
Gail Ann Butterworth
Santiago De Escoriaza
Kyu Taek Lee
Frank William Burton
Selma Boeckle
Man Kay Wong
Peter G Barker
Wolfgang Bruno Kamecke
Arthur Soo Whan Lim
Elisabeth Margrethe Sirnes Lyngstad
Terri Lee Martin
Kyoung-Won Moon
Esmond Dale Muncrief
Hannah Paik
Seung-Hyun Daniela Paik
Hans Edward Prager
Brian David Rogers
Carole Anne Stewart
Frank Tanke-Hansen
James Chen Tsao
Suna Chung Han
Maud M Ljung-Lapychak
Maurice Bembridge
Pascal C Dornier
Michiko Ogawa Crounk
Mitsu Mullins
James Andrew Sands
Rashid Alexander Delgado

Helen Sueng Hyo Hong
Kaung Me Nielsen
Lutz Steinberg
James Patrick Flanagan
Jessica Railey
Mona Catherine Dailey Strand
Carrie Ruth Pretorius
Chingakham Prasanna Singh
Andrew Keith Warltier
Peter Ernest Becker
Barry Eyre
Charles Orin Berry
Thomas Keith Rowland
David Robert Bruns
Maureen Lisa Cronin
Gordon Alfred Geist
Marc James Giegerich
Xiao-Hui Hui
Joseph Anthony Imperato
Elfriede Marie Kamecke
Johnney Larry McKinney
Isolde Laukien
Ingvar Strom
Alfred Ernst Weber
Lonita Lenaire Wilson
John Robert Wurtz
Laurence Steven Buzer
Shivonne Baek
Susan Elizabeth Mary Baker
Terence Arnold Baker
Kim Anita Dailey Christoffersen
Carmen Dittrich
Deon Almeda Djoharian
Armin Wilbert Geertz
Momoyo Kuwahara

Dated: October 4, 2004.

Tracy Harmon,

*Examination Operation, Philadelphia
Compliance Services.*

[FR Doc. 04-23596 Filed 10-20-04; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS),
Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G, as amended, by the Health Insurance Portability and Accountability Act (HIPPA) of 1996. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a)) with respect to whom the Secretary received information during the quarter ending March 31, 2004. Names follow in order of: last name, first name, and middle name or initial (if applicable).

Tomassi, Antonio

Hansen, Ellen Gerd
Liguori, Thomas P
Lester, Arthur Geraint
Kuo, Juinn Yen
Koutsouvilis, Apostolos Paul
Juptner, Heino Gerd
Hsia, Chuan Yeu
Henry, Michael Robert
Harrison, Dhani (aka Olivia)
Han, Gye Sook
Gruenwald, Lisa Therese
Goedkoop, Pieter Daniel
Gibbs, Andrew Lionel John
Gersten, Joseph Morris
Bahremand, Shirin
Alden, Inna
Hawkings, Marilyn Ann
Askvik, Linda Elise
Furulund, Shirley Jane
Benthall, Zamira Menuhin
Blain, Jerome Michel
Boos, Gabriele Elisabeth
Cook, Karin Alexandra
Dodds-Parker, Aileen Coster
Dorn, Susan Therese
Egeland, Kirsten Hansine
Evans, Dona Leslie
Chandris, Dimitri John
Alioth-Streichenberg, Catherine
Madeline
Luckyn-Malone, Richard George
Sebastian
Rains, Dana Marie
Progin, Karin Charlotte Baker
Poletti, Paul John
Pezier, Emmanuel Richard Jacques
Ono, Yukiko
Muller, Lester Charles
Merker, Robert Charles
Martin, Stephen Richard
Maitland, Marilyn Heriot
Riggs, Brian Craig
Mattsson, Kjell Valentin
Schmitz, Walter
Ryde, Antoinette
Reifert, Thomas Arnold
Loredo, Angel William
Sparks, Peter Colin James
Woodell, Rebecca Glass
Waller, Margaret Patricia
Sheibani, Kaveh
Scarboro, David Dewey
Sager, Christopher Czaja
Morken, Teresa
Giardina, Wendy Suzanne
Wright, Janet Irene
De Haan-Santo, Dorothy
Spiegel, Barbara Maria
Ciufu, Francesco
Welling, Helen Gertruide
Grant, Lewis Russell Horace
Wang, Lee Ying
Snyder, Mary Yvonne
Woods, Francis Xavier
Bard, Erika Isakson
Ahn, Dong Il
Medina, Nathan Robert
Gillery, Gerald David
Warner, Chauncey Ford

Maynard, Lars Olaf
 Werner, Sarah Rose
 Antonition, Barbara Ann
 Greenberg, Alexander Gregory
 Tsavliris, Maria Despoina
 Chia-Yi Chen, Lorene
 Reitsma, Patricia Kay
 Braas, Delphine Audrey
 Daya, Sheraz Mansoor
 Gillery, Margaret Rose
 Syrdahl, Henry Tom
 Char, Kaye Jin Mae
 Campbell Lewis, Jean Martha
 Murray, Benjamin Clair
 Klausner, Brigitte Elisabeth
 Boehm, Jennifer Louise
 Jen, Myra May
 de Limburg Stirum, Eloise Joy
 Heilmann, Falk
 Dupin, Antoine Jean Mosneron
 Andersen, Marian Else
 Repnow, Sylvia
 Burnett-Herkes III, James Neville
 Delgado, Zaki K Antoni
 Marchandise, Rachel
 Wollmann, Paul Carl
 Prager, Nancy Lee
 Alexander, Michelle Doris Astrid
 Scarboro, Norman Dale
 Brenninkmeyer-Voss, Angela Maria
 Carlsson, Courtney Victoria Manuella
 Cooper, Katrina Melissa
 Cooper, Danny D
 Friberg, Christel
 Hallgrimson, Markus Paul
 Lecocq, Kevin Louis
 Morrow, Karen Virginia
 Raskin, Richard R
 Raskin, Marilyn Shepherd
 Wu, Thomas

Dated: October 4, 2004.

Tracy Harmon,

*Examination Operation, Philadelphia
 Compliance Services.*

[FR Doc. 04-23597 Filed 10-20-04; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

**Quarterly Publication of Individuals,
 Who Have Chosen To Expatriate, as
 Required by Section 6039G**

AGENCY: Internal Revenue Service (IRS),
 Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G, as amended, by the Health Insurance Portability and Accountability Act (HIPPA) of 1996. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a)) with respect to whom the Secretary received

information during the quarter ending June 30, 2004. Names follow in order of: last name, first name, and middle name (or initial) if applicable.

MacKenzie, Karen Anne
 Thiel, Ljijana
 Zhang, Yichen
 Ho, Hue Shine
 Gevas, George Thomas James
 Brodtkorb, Brit
 Hellman, Patrick Wayne
 Nordstrom (born Daugherity), Howard
 Reed
 Lai, Cho Yin
 Jen, Winston Denis
 Murphy-Ashwal Eshel, Colleen Ann
 Hammonds, Eleonora Teresa
 Reilly, Brian Francis
 Agusta, Giovanni Mario
 Sullivan-Delcroix, Mary Lou
 Thorsen, Even
 Borggraeve, Hark
 Waldmann, Frederick Joachim
 Sunnenberg, Bernard Charles
 Benham, Daniel Doyle
 Vryenhoek, Leslie Ellen
 Legro, Peter J
 Rawlinson, Anthony Richard
 Szasz, John Edward
 Pense, Evelyn M
 Tharp, David Russell
 Eagbson, Clifford Hodge
 Simms, Clifford D
 Grim, Paul Andrew
 Johnson, Roger Carlton
 Yoshida, Ken
 Gale, Jeffrey Dermot
 Chow, Mo Ching
 Yeung, Wyn Chan Andrew
 Kieser, Nancy Marie
 Jolly, Linda Sue
 Partenheimer, Susanne Caroline
 Pfeiffer, Heidi Kathrin
 Matsunaga, Shin
 Furulund, John Erik
 Hui, Harry Chi
 Hull, Elizabeth Ann
 Lang, Larry Hsien Ping
 Wang, Linjia
 Lepome, Charles John
 Dunkum, Marisa Hildegard
 Maraman, Bessie Margarete
 Meenken, Karen Ann
 Alcocer, Armando
 Wallace, Earl Byron
 Wilson, Richard Laird
 Nyhus, Betty Lou
 Nyhus, Wilson Selmer
 Sculati, Robert David
 Yin (a.k.a. John Yin), Yuan Shi
 Ripley, Margaret Louise
 Mentzoni, Tor Erik
 Graham, Gregory Peter
 Mueller, Elsie
 Hoppe, Denise Michelle
 Nielsen, Keith Franklin
 Jenkins, Melinda June
 Frank, Elaine Irene

Williams, Kristinia Louise
 Pempek, Michael Joseph
 Bradshaw, Lee H
 D'Estmael, Alexandra DeWilde
 Wiese, Ann Elise
 Lee, Sher May
 Sheng Ho, Jonathan Rui
 Spitzl, Johannes Franciskus
 De Oca, Orlando Montes
 Citron, Peter Adrian
 Cazier, Chae Nam
 De Champlain, Michel
 Kim, Eun Ae
 McCarty, Hyon Chu
 Kundig, Thomas Martin
 Gonzalez, Eric Elias Engen
 Mitchell, Patricia Madeleine
 Minehan, Kathleen
 Karpathy, David Walter
 Stoa, Ellen Christine
 Fleming, Christian Peter
 Stephens, Erik Bruce
 Gedde-Dahl, Sally Ann
 Geno, Barbara Jean
 Sibley, Judith Steel O'Henev
 Geno, Larry Malvin
 Schaefer, Hans Jurgen
 Jastrey, John Thomas
 Redelfs, Karin Ingrid
 Rothbarth, Nicola Eve
 Rothbarth, Katherine Anne
 Roland, Renee Cindy
 Narvestad, Tove Tornoe
 Powers Freeling, Laurel Claire
 Prebensen, Anne Sword
 Havermann, Ingrid Brigitte
 Bateman, David James
 Anderson, Alec Ralph
 Aiken, Jeffrey Michael
 Aboukhater, Mona Bass
 Aboukhater, Bass
 Gunn, Elisabeth Ann
 Creeden, Patricia Marie
 Willner, Olga
 Pfau, Ellen Alice
 Bartos O Neill, Gerald Weymeth
 Zubick, Adolph John
 Butterfield, Laura Strong
 Tanner, Louis Allan
 Tanner, Linda P
 White, Sandy Kay
 Petit, Alexandra Andree
 Wold, Kristine Ann
 Woods, Gregory Glen
 Treco (nee Goddard), Jeanne Anya
 Naslas, Costas
 Barretto, Camilla Brand de Mattos
 Leigh, James Anthony
 MacIntyre, Craig William
 Nelson, James William
 Baltiskonis, Robert Steve
 Wagen, Monika Maria
 Tallon, Suavaec
 Sullivan, Charles Robert
 Stevens, Raneer Erna
 Lederer, Cristian Cedric
 Sola, Nils Olaf
 Oltman, Thomas Frederick
 Biktjorn, Tommy Sigbjorn

Delphine Francois, Juliette Marie
Gebauer, Stefan Johannes
Goulandris, Nicholas Leonidas
Henner, Bryan Austin
Johnson, Sigrid Anna
Staalroed, Shirley Jean

Dated: October 4, 2004.

Tracy Harmon,

*Examination Operation, Philadelphia
Compliance Services.*

[FR Doc. 04-23598 Filed 10-20-04; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

**Quarterly Publication of Individuals,
Who Have Chosen To Expatriate, as
Required by Section 6039G**

AGENCY: Internal Revenue Service (IRS),
Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G, as amended, by the Health Insurance Portability and Accountability Act (HIPPA) of 1996. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a)) with respect to whom the Secretary received information during the quarter ending September 30, 2004. Names follow in order of: last name, first name, and middle name or initial (if applicable).

Singh, Chingakham Prasanna
Gossage, James Fowler
Gossage, Catherine Donna
Colley, Megan Sara
De Beistegui, Alix
Dlutowski, Joseph Arthur
Lee, Sher May
Maduro, Audley
Miling, Jakob
Peterson, William E
Price, Kenneth Andre
Raisch, Margarete Gertude
Reece, Jane Susan
Becker, Peter Ernest
Tackett, Clarence Rodney
Poppell, Jack Hentz
Towner, Robert Leonard
Yeung, Derek Emory Ting Lap
Jousselin, Georges De La Haye
Ehara, Grace Junko
Rowland, Carole Ann
Burki, Hamidullah Khan
Ryan, Gregory James
Krumlik, Jerry Jaroslav
Barker, Patricia
Barker, Peter G
Laukien, Isolde
Burton, Frank William
Warltier, Andrew Keith
Selinkoff, Eli Richard

Friedman, Jeffrey Charles
Kim, In Sik
Krasnoff, Richard Ira
Ma, Cheryl Wei-Li
Posey, Robert B
Siegel, Wayne Perry
Studer-Jeker, Doris Verena
Voinov, Misha Francine
Burt, Joseph Walter
Chang, Janet Young
Hollmann, Gabriele Ilse
Mannara, Giorgio Antonio
Willoughby, Martina Eleonore
Ahlefeldt-Laurvig, Sara Crisler
Codina, Esther
Kim, Dong J
Thompson, Thomas Lawrence
Nakajima, Yukio
Lee, Kyu Taek
De Escoriaza, Santiago
Butterworth, Gail Ann
Boeckle, Selma
Kim, Young Houn
Butt, Verena Marie
Kaufman, Elise Susan
Johnson, Otis Paul
Forbes-Jaeger, David Gerald
Hyun, Nak Hee Laura
Hiroi, Hisahiko
Zulliger, Deborah Elizabeth
Kreiger, Sherry A
Wilson, Lonita Lenaire
Bruns, David Robert
Tanke-Hansen, Frank
Han, Suna Chung
Geertz, Armin Wilbert
Djoharian, Deon Almeda
Dittrich, Carmen
Christoffersen, Kim Anita Dailey
Baker, Terence Arnold
Baker, Susan Elizabeth Mary
Baek, Shivonne
Kamecke, Wolfgang Bruno
Wurtz, John Robert
Lim, Arthur Soo Whan
Weber, Alfred Ernst
Strom, Ingvar
Pretorius, Carrie Ruth
McKinney, Johnney Larry
Kuwahara, Momoyo
Imparato, Joseph Anthony
Hui, Xiao-Hui
Giegerich, Marc James
Geist, Gordon Alfred
Cronin, Maureen Lisa
Buzer, Laurence Steven
Wong, Man Kay
Railey, Jessica
Flanagan, James Patrick
Steinberg, Lutz
Nielsen, Kaung Me
Hong, Helen Sueng Hyo
Delgado, Rashid Alexander
Sands, James Andrew
Mullins, Mitsuo
Crounk, Michiko Ogawa
Dornier, Pascal C
Kamecke, Elfriede Marie
Ljung-Lapychak, Maud M

Stewart, Carole Anne
Simmons, Kim Olivia
Dailey Strand, Mona Catherine
Rogers, Brian David
Prager, Hans Edward
Paik, Seung-Hyun Daniela
Paik, Hannah
Muncrief, Esmond Dale
Moon, Kyoung-Won
Martin, Terri Lee
Sirnes Lyngstad, Elisabeth Margrethe
Bembridge, Maurice
Eyre, Barry
Berry, Charles Orin
Rowland, Thomas Keith
Tsao, James Chen
Wili, Audrey Phyllis
Pirkelbauer, Patricia
Reussler, Bernice
Salles, Joao Moreira
Schwaninger, Peter Steven
Serrano, Melanie Laura Bonita
Thompson, Lynette Sabrina
McVeigh, Pamela Osborn
Wigand, Barbara Maria
Snyder, Michael Bernhard
Winkler, Robin Jamison
Woessner, Allison Earl
Wong, Amabel May Bo
Walsh, Steven Robert
Crouch, Kenneth L
Acker, William Lewis
Walsh, Gerta
McNeil, Nina Diana
Barberi, Carol Judd
Brendel, Gabriela Ann
Achtman, Jane Valesca
Craig, William Berry
Ahn, Philip Young-Joon
Davies, Michele Clarke
Fester, Evelyn Corina
Hirst, Diane Finiello Zervas
Jawad, Said T
Kiiveri, Pertti Juhani
Loechel, Steven Charles
MacLeod, Marcia Renee Kalb
Chipman, Daniel David
Fabian, Ursula
Taylor, Paul Guillaume
Faiveley, Terry
Mintz, Helen Harriet
Miller, Robin Frances
Hall, Thomas Lee
Hillyer, John Kenneth
Smootz, Mary Elanne
Thomson, Neal Joshua
Neubronner-Barnes, Dorothea Louise
Burd, Donald Charles
Plewa, Hildegard Marie Theresa
Beldi, Ivan
Von Goertz, Hans-Georg
Marsella, Roberto
Klein, Christine Petra
Stone, Bettie Graves
Hudson, Brigitte Regine
Katz, Jana Chiara
Sacre, James Jean
Fisher (Fischer), Michael D.
Pierre-Traves, Alexandre Gregory

Pardo, Joan Elaine
 Steinmetz Jr, George Evans
 Krahm, Agnes Terese
 Stewart, Samuel Jarrett
 Mc Cann, Raymond Edward
 Chan Sonny Yat-Fai
 Cheong, Ivy Cheng-Moey
 Weil, David Frederick
 Corman, Valerie Ann
 Hsu, Hubert Kaishun
 Coates, Stephen Gregory
 Kendall-Tobias, Michael
 Hung, Sylvia Sau Wah Wong
 Weldon (a.k.a. Flash Qfiasco), Mark
 Steven
 Wetzler, Thomas Christian
 Chen, Pao-Yin
 Lee, Hyun Sook
 Brown, George Albert
 Loverde, Elizabeth Rosaria
 White, Karen Smith
 Wolfston, Patricia Siegbert
 Ting, Carter Richard
 Frosini, Linda Fischer
 Kang, Sam Ye
 Wong, Minnie Shun-Kwai
 Coghill, Jeremy Calvert
 Chou, Hui Ying Kao
 Relecom, Thibault Marie Mendel
 Santiago, Oscar
 Leung, Wing Cheong
 Sylvester, Richard Walter
 Grant, Mary Elizabeth
 Raghupathy, Radha Velamur
 Kendall-Tobias, Chantal
 Bianco, Michaela Bettina
 Dykan, Swiatoslaw Gregory
 Wong, Wilson Po Hang
 Frische, Barbara
 Eisenberg, Pamela
 Sasayama (nee Hanakata), Anne Mariko
 Park, Jon
 Leung, Kwong Wai
 Warlick, Thomas Patrick
 Gales, Amanda Elaine
 Gibbs, Elizabeth Church
 Boehm, Andreas Gottfried
 Motz, Petra Suzanne
 Guntner, Luciane
 Stearns, Thomas Appleby
 Ng, Ellen Wing Hang
 Holm, Wendy Rosemary
 Bahoshy, Philip Yousif
 Marquis, Claire
 Gales, Jennifer Elizabeth
 O'Flaherty, April Lynne
 Kuehn, Benjamin Bruce
 Katz, Michael Simon
 Wright, Melissa D
 Scherer, Adolph
 Wright, Nicholas John
 Ko, Richard
 Rogers, Stanford M
 Deorio, David James
 Eronat, Friedhelm
 Hamsley, Nicole
 Erwin, Dennis Jack
 Bianco, Deborah Ann
 Hull, Orris Michael

Ojje, Lana
 Chow, Alison Chun Cheong
 Heaslip, Michael Thomas
 Guerlain, Ariane Duplaix
 Bell, Catherine Anne
 Drace Jr, Charles Albert
 Zekkariyas

Dated: October 4, 2004.

Tracy Harmon,

*Examination Operation, Philadelphia
 Compliance Services.*

[FR Doc. 04-23599 Filed 10-20-04; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS),
 Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G, as amended, by the Health Insurance Portability and Accountability Act (HIPPA) of 1996. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a)) with respect to whom the Secretary received information during the quarter ending December 31, 2003.

Names are set in the following order: First name, middle name or initial (if applicable), and last name.

Michael Bernhard Snyder
 Nina Diana McNeil
 Pamela Osborn McVeigh
 Patricia Pirkelbauer
 Bernice Reussler
 Joao Moreira Salles
 Marcia Renee Kalb MacLeod
 Melanie Laura Bonita Serrano
 Robin Jamison Winkler
 Lynette Sabrina Thompson
 Gerta Walsh
 Steven Robert Walsh
 Barbara Maria Wigand
 Audrey Phyllis Wili
 Allison Earl Woessner
 Peter Steven Schwaninger
 Carol Judd Barberi
 Amabel May Bo Wong
 William Lewis Acker
 Steven Charles Loechel
 Philip Young-Joon Ahn
 Gabriela Ann Brendel
 Daniel David Chipman
 William Berry Craig
 Kenneth L. Crouch
 Michele Clarke Davies
 Evelyn Corina Fester
 Diane Finiello Zervas Hirst

Said T. Jawad
 Pertti Juhani Kiiveri
 Jane Valesca Achtman
 Christine Petra Klein
 Samuel Jarrett Stewart
 Hans-Georg Von Goertz
 Ursula Fabian
 Terry Faiveley
 Helen Harriet Mintz
 Robin Frances Miller
 Thomas Lee Hall
 John Kenneth Hillyer
 Mary Elnne Smootz
 Neal Joshua Thomson
 Dorothea Louise Neubronner-Barnes
 Hubert Kaishun Hsu
 Hildegard Marie Theresa Plewa
 Joan Elaine Pardo
 Paul Guillaume Taylor
 Donald Charles Burd
 Alexandre Gregory Pierre-Traves
 Brigitte Regine Hudson
 Jeremy Calvert Coghill
 Pamela Eisenberg
 Mary Elizabeth Grant
 Roberto Marsella
 James Jean Sacre
 Agnes Terese Krahm
 Michael D. Fisher (Fischer)
 Valerie Ann Corman
 Stephen Gregory Coates
 Bettie Graves Stone
 Raymond Edward McCann
 Sonny Yat-Fai Chan
 Ivy Cheng-Moey Cheong
 David Frederick Weil
 George Evans Steinmetz, Jr.
 Swiatoslaw Gregory Dykan
 Deborah Ann Bianco
 Zekkariyas
 Nicole Hamsley
 Friedhelm Eronat
 David James Deorio
 Orris Michael Hull
 Richard Ko
 Ariane Duplaix Guerlain
 Sylvia Sau Wah Wong Hung
 Elizabeth Church Gibbs
 Sam Ye Kang
 Linda Fischer Frosini
 Ivan Beldi
 Michael Kendall-Tobias
 Stanford M. Rogers
 Petra Suzanne Motz
 Richard Walter Sylvester
 Chantal Kendall-Tobias
 Carter Richard Ting
 Minnie Shun-Kwai Wong
 Lana Ojje
 Catherine Anne Bell
 Alison Chun Cheong Chow
 Luciane Guntner
 Michael Thomas Heaslip
 Andreas Gottfried Boehm
 Dennis Jack Erwin
 Ellen Wing Hang Ng
 Philip Yousif Bahoshy
 Charles Albert Drace, Jr.
 Elizabeth Rosaria Loverde

Nicholas John Wright
 Melissa D. Wright
 Jana Chiara Katz
 Michael Simon Katz
 Benjamin Bruce Kuehn
 April Lynne O'Flaherty
 Jennifer Elizabeth Gales
 Claire Marquis
 Amanda Elaine Gales
 Wendy Rosemary Holm
 Adolph Scherer
 Thomas Appleby Stearns
 Patricia Siegbert Wolfston
 Oscar Santiago
 Hui Ying Kao Chou
 Radha Velamur Raghupathy
 Kwong Wai Leung
 Hyun Sook Lee
 Pao-Yin Chen
 Thomas Christian Wetzler
 Mark Steven Weldon (a.k.a. Flash Qfiasco)
 Wing Cheong Leung
 Karen Smith White
 Thomas Patrick Warlick
 Jon Park
 Anne Mariko Sasayama (nee Hanakata)
 Barbara Frische
 Wilson Po Hang Wong
 Thibault Marie Mendel Relecom
 Michaela Bettina Bianco
 George Albert Brown
 Melody Fong
 James Donald Sinclair Callbeck
 Raphael Ben-Yosefaka (Ralph Charles Finkel)
 John Joseph Johnson
 Sang Hee Kim

Dated: October 4, 2004.

Tracy Harmon,

Examination Operation, Philadelphia Compliance Services.

[FR Doc. 04-23600 Filed 10-20-04; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0111]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the

nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 22, 2004.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., or e-mail *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900-0111." Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395-7316. Please refer to "OMB Control No. 2900-0111" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Statement of Purchaser or Owner Assuming Seller's Loans, VA Form 26-6382.

OMB Control Number: 2900-0111.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26-6382 is completed by purchasers who are assuming veterans' guaranteed, insured, and direct home loans. The information collected is essential to make a determination for release of liability as well as for credit underwriting determinations for substitution of entitlement. If a veteran chooses to sell his or her VA guaranteed home, VA will allow a qualified purchaser to assume the veteran's loan and all the responsibility under the guaranty or insurance. In regard to substitution of entitlement cases, eligible veteran purchasers must meet all requirements of liability in addition to having available loan guaranty entitlement.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on July 16, 2004, at pages 42809-48210.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,875 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 7,500.

Dated: October 12, 2004.

By direction of the Secretary:

Loise Russell,

Director, Records Management Service.

[FR Doc. 04-23489 Filed 10-20-04; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0583]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-21), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 22, 2004.

FOR FURTHER INFORMATION CONTACT:

Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-8030, FAX (202) 273-5981 or e-mail to: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900-0583."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395-7316. Please refer to "OMB Control No. 2900-0583" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Regulation for Informed Consent for Patient Care (Title 38 CFR 17.32).

OMB Control Number: 2900-0583.

Type of Review: Extension of a currently approved collection.

Abstract: VA informed consent regulation describes patient rights and responsibilities and the process for obtaining informed consent. It contains procedures that providers (including non-VA physicians who contract to perform services for VA on a fee-basis) must follow when seeking informed consent from a VA beneficiary (e.g., discussion of the benefits, risk and

alternatives for the recommended treatment or procedure and documentation of the patient's decision). The information provided is designed to ensure that the patients (or, when appropriate, the patient's representative or surrogate) have sufficient information to provide informed consent.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on July 16, 2004, at pages 42808–428096.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 94,000 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.
Estimated Number of Respondents: 376,000.

Dated: October 12, 2004.

By direction of the Secretary:

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–23490 Filed 10–20–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0180]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 22, 2004.

FOR FURTHER INFORMATION CONTACT:

Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., or e-mail denise.mclamb@mail.va.gov.

Please refer to “OMB Control No. 2900–0180.” Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to “OMB Control No. 2900–0180” in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Compliance Report of Proprietary Institutions, VA Form 20–4274.

OMB Control Number: 2900–0180.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 20–4274 is used to determine whether proprietary educational institutions receiving Federal financial assistance comply with applicable civil rights statute and regulations. The data is used to identify areas that may indicate, statistically, disparate treatment of minority group members.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on July 16, 2004, at page 42810.

Affected Public: Business or other for-profit, Federal Government.

Estimated Annual Burden: 155 hours.

Estimated Average Burden Per Respondent: 75 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 124.

Dated: October 12, 2004.

By direction of the Secretary:

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–23491 Filed 10–20–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the

proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to apply for a state home construction grant program.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 20, 2004.

ADDRESSES: Submit written comments on the collection of information to Ann W. Bickoff, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail ann.bickoff@mail.va.gov. Please refer to “OMB Control No. 2900–NEW” in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann W. Bickoff (202) 273–8310 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Forms and Regulations for Grants to States for Construction and Acquisition of State Home Facilities, VA Form 10–0388.

OMB Control Number: 2900–NEW.

Type of Review: New collection.

Abstract: State government use VA Form 10–0388 to apply for State Home Construction Grant Program and to certify compliance with VA requirements. VA uses this information, along with other documents submitted

by the States to determine the feasibility of the projects for VA participation, to meet VA requirements for a grant award and to rank the projects in establishing the annual fiscal year priority list. The list is the basis for committing to State Home construction projects during the various fiscal years.

Affected Public: State, Local or Tribal Government.

Estimated Annual Burden: 360.

Estimated Average Burden Per

Respondent: 6 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 60.

Dated: October 12, 2004.

By direction of the Secretary:

Loise Russell,

Director, Records Management Service.

[FR Doc. 04-23492 Filed 10-20-04; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Report of Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs (VA) intends to continue a recurring computer program matching Social Security Administration (SSA) records with VA pension and parents' dependency and indemnity compensation (DIC) records.

The goal of this match is to compare income and employment status as reported to VA with wage records maintained by SSA.

VA plans to match records of veterans, surviving spouses and children who receive pension, and parents who receive DIC, with SSA income tax return information as it relates to earned income. VA will also match records of veterans receiving disability compensation at the 100 percent rate based on unemployability with SSA income tax return information as it relates to earned income.

VA will use this information to adjust VA benefit payments as prescribed by law. The proposed matching program will enable VA to ensure accurate reporting of income and employment status.

The authority for this matching program is 38 U.S.C. 5106, which requires Federal agencies to furnish VA with information necessary to determine eligibility for or amount of benefits. In addition, 26 U.S.C. 6103(l)(7) authorizes the disclosure of tax return information to VA.

Records to be Matched: VA records involved in the match are the VA system of records, Compensation, Pension, Education and Rehabilitation Records—VA (58 VA 21/22). The SSA records will come from the Earnings Recording and Self-Employment Income System, SSA/OSR, 60-0059. In accordance with Title 5 U.S.C. subsection 552a(o)(2) and (r), copies of the agreement are being sent to both Houses of Congress and to the Office of Management and Budget (OMB).

This notice is provided in accordance with the provisions of the Privacy Act of 1974 as amended by Public Law 100-503.

DATES: The match will start no sooner than 30 days after publication of this Notice in the **Federal Register**, or 40

days after copies of this Notice and the agreement of the parties are submitted to Congress and OMB, whichever is later, and end not more than 18 months after the agreement is properly implemented by the parties. The involved agencies' Data Integrity Boards (DIB) may extend this match for 12 months provided the agencies certify to their DIBs within three months of the ending date of the original match that the matching program will be conducted without change and that the matching program has been conducted in compliance with the original matching program.

ADDRESSES: Written comments may be submitted by: mail or hand-delivery to Director, Regulations Management (OOREG1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; fax to (202) 273-9026; or e-mail to VAregulations@mail.va.gov. All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273-9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge (212B), (202) 273-7218.

SUPPLEMENTARY INFORMATION: This information is required by Title 5 U.S.C. subsection 552a(e)(12), the Privacy Act of 1974. A copy of this notice has been provided to both Houses of Congress and OMB.

Approved: October 4, 2004.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 04-23493 Filed 10-20-04; 8:45 am]

BILLING CODE 8320-01-P

Corrections

Federal Register

Vol. 69, No. 203

Thursday, October 21, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 5

RIN 2900-AL71

Accrued Benefits, Death Compensation, and Special Rules Applicable Upon Death of a Beneficiary

Correction

In proposed rule document 04-21541 beginning on page 59072 in the issue of

Friday, October 1, 2004, make the following correction:

§ 5.570 [Corrected]

On page 59091, in § 5.570, in the first column, in the section heading, ““surviving spouses” should read “— surviving spouses”.

[FR Doc. C4-21541 Filed 10-20-04; 8:45 am]

BILLING CODE 1505-01-D



Federal Register

**Thursday,
October 21, 2004**

Part II

Department of Energy

**Office of Energy Efficiency and
Renewable Energy**

**10 CFR Part 431
Energy Efficiency Program for Certain
Commercial and Industrial Equipment:
Test Procedures and Efficiency Standards;
Final Rules**

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 431

[Docket No. EE-RM/TP-99-450]

RIN 1904-AA96

Energy Efficiency Program for Certain Commercial and Industrial Equipment: Test Procedures and Efficiency Standards for Commercial Warm Air Furnaces; General Provisions for Commercial Heating, Air Conditioning and Water Heating Equipment; Energy Efficiency Provisions for Electric Motors

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: Pursuant to Part C of Title III of the Energy Policy and Conservation Act (EPCA), the Department of Energy (DOE or the Department) promulgates a rule prescribing test procedures to rate the energy efficiency of commercial warm air furnaces. The rule also recodifies existing commercial warm air furnace energy conservation standards so that they are located contiguous with the test procedures that DOE promulgates today. For commercial heating, air conditioning and water heating products generally, the rule prescribes definitions and procedural provisions, and incorporates from EPCA general enforcement and administrative provisions. Finally, we are placing the new requirements for this equipment in the part of our regulations that already contains existing efficiency requirements for electric motors, and we are reorganizing and republishing, without substantive change, the existing requirements for motors.

DATES: This rule is effective November 22, 2004. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of November 22, 2004.

FOR FURTHER INFORMATION CONTACT:

Mohammed Khan, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Forrestal Building, EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121, (202) 586-7892, fax (202) 586-4617, e-mail:

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Independence Avenue, SW., Washington, DC 20585, (202) 586-9507, e-mail: *Francine.Pinto@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: This final rule incorporates, by reference, into Subpart D of Part 431, two test procedures contained in industry testing standards referenced by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE) and the Illuminating Engineering Society of North America (IES) Standard 90.1 ("ASHRAE/IES Standard 90.1"), for commercial warm air furnaces. Those industry testing standards are: American National Standards Institute (ANSI) Standard Z21.47-1998, "Gas-Fired Central Furnaces," and Underwriters Laboratories (UL) Standard 727-1994, "Standard for Safety Oil-Fired Central Furnaces." This final rule also incorporates by reference into Subpart D of Part 431, (1) sections 8.2.2, 11.1.4, 11.1.5 and 11.1.6.2 of the Hydronics Institute Division of the Gas Appliance Manufacturers Association Boiler Testing Standard BTS-2000, "Method to Determine Efficiency of Commercial Space Heating Boilers," published January 2001 (HI BTS-2000) which specify a flue loss calculation procedure for oil-fired equipment, and (2) sections 7.2.2.4, 7.8, 9.2 and 11.3.7 of the ASHRAE Standard 103-1993, "Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers," which specify a test procedure for measuring the incremental efficiency of condensing furnaces under steady state operation.

You can view copies of these standards in the resource room of the Building Technologies Program, room 1J-018 at the U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards-Jones at (202) 586-2945, for additional information regarding visiting the resource room.

You can purchase copies of the ASHRAE Standard 103-1993 from the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., 1971 Tullie Circle, NE., Atlanta, GA 30329, <http://www.ashrae.org/book/bookshop.htm>; HI Standard BTS-2000 from Hydronics Institute Division of GAMA, P.O. Box 218, Berkeley Heights, NJ 07922, <http://www.gamanet.org/publist/hydroordr.htm>; and Standards ANSI Z21.47-1998 and UL 727-1994 from Global Engineering Documents, 15 Inverness Way East, Englewood, CO

80112, <http://global.ihs.com/> respectively.

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I. Introduction**A. Authority**

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions designed to improve energy efficiency. Part B of Title III (42 U.S.C. 6291-6309) provides for the "Energy Conservation Program for Consumer Products other than Automobiles." Part C of Title III (42 U.S.C. 6311-6317) provides for a program similar to Part B which is entitled "Certain Industrial Equipment," and which includes commercial air conditioning equipment, furnaces, and other types of equipment.

DOE publishes today's final rule pursuant to Part C which specifically provides for definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from

manufacturers. (42 U.S.C. 6311–6317) With regard to test procedures, Part C generally authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which reflect energy efficiency, energy use and estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6314)

With respect to some commercial equipment for which EPCA prescribes energy conservation standards, including commercial warm air furnaces, Section 343 (a)(4)(A) provides “the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute or by the American Society of Heating, Refrigerating and Air Conditioning Engineers, as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992.” (42 U.S.C. 6314(a)(4)(A)) Further, if such an industry testing or rating procedure is amended, DOE must revise the test procedure to be consistent with the amendment, unless the Secretary determines, based on clear and convincing evidence, that to do so would not meet certain general requirements spelled out in EPCA Section 343 for test procedures. (42 U.S.C. 6314(a)(4)(B)) Before prescribing any test procedures for such equipment, the Secretary must publish them in the **Federal Register** and afford interested persons at least 45 days to present data, views and arguments. (42 U.S.C. 6314(b)) Effective 360 days after a test procedure rule applicable to any covered commercial equipment, such as a commercial warm air furnace, is prescribed, no manufacturer, distributor, retailer or private labeler may make any representation in writing or in broadcast advertisement respecting the energy consumption or cost of energy consumed by such equipment, unless it has been tested in accordance with the prescribed procedure and such representation fairly discloses the results of the testing. (42 U.S.C. 6314(d)) Finally, under the terms of Part C of Title III of EPCA, the Secretary is authorized to require manufacturers of equipment covered by today’s rule to submit information and reports for a variety of purposes, including insuring compliance with requirements. (42 U.S.C. 6316(b)(1))

B. Background

DOE began implementation of Part C of Title III of EPCA by establishing 10 CFR Part 431. Part 431 is entitled “Energy Efficiency Program for Certain Commercial and Industrial Equipment.”

It consists of test procedures, Federal energy conservation standards, labeling, and certification and enforcement procedures. Today, DOE amends Part 431 in order further to implement Part C of Title III of EPCA.

As a first step in the process that led to today’s final rule, we convened public workshops on April 14 and 15, 1998, and on October 18, 1998, to solicit views and information from interested parties to aid in developing proposed rules that would address test procedures, certification and enforcement procedures, and EPCA’s coverage for this equipment. The workshop discussions and comments focused on the following issues for warm air furnaces specifically:

- (1) The efficiency descriptor;
- (2) Calculation of flue loss for oil fired furnaces; and
- (3) Adoption of a test procedure for condensing furnaces.

We also requested comment on several issues for all commercial heating, air conditioning and water heating products, relating primarily to the most cost effective and reliable methodology for sampling, certification and enforcement. Discussion and comments focused largely on the following:

- (1) Whether we should require sampling procedures for compliance certification and enforcement testing that are similar to those used for consumer products;
- (2) Adapting for commercial equipment other compliance and enforcement procedures that currently apply to consumer products; and
- (3) The use of voluntary industry programs to help assure compliance, and the content of such programs.

We published a Notice of Proposed Rulemaking and Public Hearing (“proposed rule” or “NOPR”) after considering statements made during the public workshops and written comments. (64 FR 69598, December 13, 1999). We proposed regulations to: (1) Implement the energy efficiency standards and test procedures mandated by EPCA for commercial warm air furnaces, and (2) set forth definitions, methods of determining efficiency, compliance certification procedures, prohibited actions, enforcement procedures, and general administrative and procedural provisions for all covered commercial heating, air conditioning and water heating products. The Department requested data, comments and information regarding the proposed regulations. We held a public hearing on January 27, 2000, (the January 2000 workshop) to receive oral comments, and we accepted

written comments until February 28, 2000.

In formulating today’s final rule, we considered the comments received, and have incorporated recommendations where appropriate. Section II below discusses comments that questioned or disagreed with the Department’s positions as presented in the NOPR.

Energy conservation standard levels are not at issue here. The NOPR merely proposed to incorporate into the Department’s regulations on efficiency requirements for commercial warm air furnaces the standard levels that had been established by law in Section 342(a) of EPCA.

Subsequent to issuance of the NOPR, in a separate proceeding, we promulgated a regulation (10 CFR Part 431, Subpart Q) to adopt as Federal standards some of the efficiency levels contained in amendments to ASHRAE/IES Standard 90.1. 66 FR 3336, 3354 (January 12, 2001). For furnaces, the levels contained in these amendments, and consequently in Subpart Q (10 CFR 431.702), are the same as the levels in Section 342(a) of EPCA.

C. Summary of the Final Rule

Today’s final rule incorporates the following for commercial warm air furnaces: (1) Definitions for the equipment and for its efficiency test procedures, (2) energy efficiency test procedures, and (3) energy conservation standards. Pursuant to the definition of “commercial warm air furnace” in today’s rule, the rule covers only those commercial furnaces for which EPCA specifies standard levels, *i.e.*, furnaces having a maximum rated input capacity of 225,000 Btu (British thermal unit) per hour or more. The rule also uses “thermal efficiency” as the efficiency descriptor, as specified in the statute, but defines the term as having the meaning conventionally given to “combustion efficiency,” as proposed in the NOPR. The rule adopts, as the test procedures under EPCA, ANSI Standard Z21.47–1998 for gas-fired furnaces and UL Standard 727–1994 for oil-fired furnaces (incorporated by reference, see § 431.75). We have incorporated provisions of the HI Standard BTS–2000 to calculate flue loss for oil-fired furnaces, and ASHRAE Standard 103–1993 (incorporated by reference, see § 431.75) to determine the incremental efficiency of condensing furnaces under steady state conditions. Finally, so that the efficiency test procedures and standards for commercial warm air furnaces will be in the same place in our regulations, this rule also recodifies elsewhere in Part 431 the minimum energy efficiency levels prescribed by

Section 342(a) of EPCA and 10 CFR 431.702. Consequently, we are deleting § 431.702 from the regulations.

Today's final rule also adopts certain general provisions to implement efficiency requirements for the commercial air conditioning, heating, and water heating products, as well as boilers and furnaces, for which EPCA provides energy conservation standards (which we refer to collectively as "commercial HVAC & WH products"). Specifically, as proposed in the NOPR, the rule contains provisions for these products that: (1) Allow manufacturers to obtain a waiver of an applicable test procedure, (2) require maintenance of records concerning compliance, (3) provide for subpoenas and confidential treatment of information, and (4) incorporate from EPCA a description of prohibited actions, general enforcement procedures, and provisions as to imported and exported equipment. At this time, however, the Department is not adopting for commercial HVAC & WH products methods and procedures for manufacturers to determine and certify compliance, or procedures (including testing regimens) that DOE will use in resolving any disputed performance claims and in deciding whether to pursue enforcement action. We proposed such methods and procedures in the NOPR, and are still considering what action to take with respect to these proposals.

Finally, today's final rule combines in 10 CFR Part 431 the existing requirements for electric motors and the new requirements for commercial HVAC & WH products. Because we are reorganizing and renumbering 10 CFR Part 431 in this rule, we are republishing today the text of these provisions. The text of these provisions is substantively the same as currently exists in DOE's regulations. We have also reorganized and renumbered the proposed regulations.

II. Discussion

A. General

Representatives from seven organizations representing stakeholders from trade associations (the Gas Appliance Manufacturers Association (GAMA) and the Air Conditioning and Refrigeration Institute (ARI)), manufacturers (A.O. Smith Water Products Co. (A.O. Smith), York International (York), and Bock Water Heaters (Bock)), and State government energy offices (the California Energy Commission (CEC) and the Oregon Office of Energy (OOE)) attended the January 2000 workshop. GAMA and ARI submitted written statements in advance

of the hearing. GAMA, ARI and CEC also submitted additional written comments afterward. We provided a call-in telephone number (notifying stakeholders by telephone and e-mail on the day before) for interested stakeholders who could not attend the workshop due to adverse weather conditions along the east coast prior to the day of the workshop.

In the next portion of this **SUPPLEMENTARY INFORMATION**, the Department addresses the points on which significant comments were made in response to the NOPR on issues concerning commercial warm air furnaces. Then, DOE addresses the NOPR's proposals as to certification, methods of determining compliance, and enforcement for commercial HVAC & WH products generally, and DOE's decision to adopt at this time only certain of these proposals.

B. Warm Air Furnaces

1. Definitions

a. "Commercial Warm Air Furnace"

In § 431.141 of the rule language in the NOPR, we proposed to define a commercial warm air furnace as "a warm air furnace that is a commercial HVAC & WH product," and to define "commercial HVAC & WH product" in part as a product "to which an energy conservation standard is applicable under Section 342(a)" of EPCA. 64 FR at 69610. Section 342(a) specifies standards for furnaces with capacities of 225,000 Btu per hour or more, but no standard has been adopted under that section for any smaller commercial furnace. Thus, "commercial warm air furnace" as defined in the NOPR would not include any such smaller furnace, and the proposed requirements in the NOPR would not apply to these products. Moreover, proposed §§ 431.162 and 431.171 in the NOPR explicitly state that the test procedures and efficiency standards, respectively, would apply to commercial warm air furnaces of 225,000 Btu per hour or more. 64 FR 69611–12.

At the January 2000 workshop, and in written comments following the workshop, the CEC asserted, that in the final rule, the Department should apply the efficiency standards for commercial furnaces to products less than 225,000 Btu per hour that are not consumer products, and that, in any event, it appeared from the NOPR that the certification, enforcement and compliance requirements in the proposed rule would apply to these

smaller commercial furnaces. (CEC, Tr.¹ 27–29, and No. 7 at 4²). The CEC referred to 10 CFR 430.2, which delineates the consumer products covered by EPCA efficiency requirements, and defines a "furnace" as one that (1) is an electric or fossil-fueled furnace that uses single-phase electric current, (2) is designed as the principal heating source for residential living space, (3) is not in a cabinet with a central air conditioner with a rated cooling capacity above 65,000 Btu per hour, and (4) has a heat input rate of less than 225,000 Btu per hour. Expressing particular concern about smaller equipment that uses three-phase electric current, CEC recommended that the final rule apply the efficiency standards for commercial furnaces to any warm air furnace with a capacity of less than 225,000 Btu per hour that does not meet this definition of a consumer product and, consequently, is not covered by the standards for such a product. CEC also stated that, regardless of what position we take on this point, we should make that position clear. The OOE concurred with the CEC's recommendation as to coverage of smaller three-phase equipment, with three-phase equipment with a capacity of 150,000 Btu per hour. (OOE, Tr. 29). CEC recognized, however, that EPCA does not explicitly provide efficiency standards for such smaller commercial furnaces, and GAMA stated that there is a gap in the statute with respect to these products. (GAMA, Tr. 30).

We have considered these comments, and have decided to adhere to the approach taken in the NOPR for the reasons set forth below. Thus, the efficiency requirements we are adopting at this point for commercial warm air furnaces will apply only to equipment with a capacity of 225,000 Btu per hour or greater.

Section 340 of EPCA, which contains definitions for certain types of commercial and industrial equipment covered by EPCA, defines a "warm air furnace" in terms of its features and its functions, specifically including or excluding certain equipment.³ Section

¹ "Tr." followed by a number or numbers, refers to a page or pages in the transcript of the January 2000 workshop.

² A notation in the form "CEC, No. 7 at 4" identifies a written comment DOE received in this rulemaking subsequent to issuance of the NOPR. This notation refers to a comment (1) by CEC, (2) in document number 7 in the docket in this matter, and (3) appearing at page 4 of document number 7.

³ The definition reads as follows:

"Warm air furnace" means a self-contained oil-fired or gas-fired furnace designed to supply heated air through ducts to spaces that require it and includes combination warm air furnace/electric air conditioning units but does not include unit heaters

342(a)(4), 42 U.S.C. 6313(a)(4), then specifies energy conservation standards for “warm air furnaces with capacity of 225,000 Btu per hour or more.” Section 342(a)(6) further mandates action by DOE should the conservation standards in ASHRAE/IES Standard 90.1 for warm air furnaces (and other specified equipment) be amended.

With regard to efficiency standards, the purpose of this rulemaking is to recodify standards already prescribed by statute or the Department’s regulations. The only such existing standards for commercial warm air furnaces, set forth in Section 342(a)(4)(A) and (B) of EPCA and 10 CFR 431.702 (66 FR 3354), are for units with a capacity of 225,000 Btu per hour or more. In the NOPR, the Department did not propose, or even discuss, the adoption of efficiency standards for smaller furnaces; we did not invite comment on the issue or give any indication such standards might be promulgated. Therefore, we decline to adopt any such standards at this time. Similarly, we proposed test procedures in the NOPR only for furnaces with a capacity of 225,000 Btu per hour or more, and did not discuss application of these procedures to smaller furnaces. As to the certification and enforcement provisions proposed in the NOPR, by their terms they address compliance with applicable efficiency standards and do not apply to equipment for which no standards have been prescribed. The compliance provisions—the methods (other than the test procedures) for determining efficiency—are also designed to assure compliance with existing standards, as illustrated by provisions such as proposed §§ 431.481(a) and 431.484(a)(10). For all of these reasons, and as proposed in the NOPR, the test procedures in today’s final rule apply only to commercial warm air furnaces of 225,000 Btu per hour or more.⁴

Accordingly, we have revised the definition of “commercial warm air furnace” in today’s final rule to make explicit that it includes only furnaces (1) with capacities of 225,000 Btu per hour or larger, *i.e.*, furnaces for which standards have been prescribed, and (2) that are “industrial equipment,” a term which EPCA defines and which we define in today’s rule by incorporating

and duct furnaces. EPCA Section 340(11)(A), 42 U.S.C. 6311(11)(A).

⁴ We are not adopting compliance, certification or, for the most part, enforcement provisions for commercial HVAC equipment in today’s final rule. But as with the enforcement procedures that are in the rule, we anticipate that when we adopt such provisions, the only commercial warm air furnaces to which they will apply will have capacities of 225,000 Btu per hour or more.

and paraphrasing language from the EPCA definition. These language changes will not in any way alter the coverage of warm air furnaces as proposed in the NOPR, or the substance of the regulation. But they should make the rule clearer.

Finally, EPCA and the NOPR refer to commercial furnaces with a “capacity” of 225,000 Btu per hour or more, but do not state whether “capacity” refers to an input or output value. Because any given Btu per hour level of input and output actually represents two different values and sizes of equipment, we believe we should clarify what “capacity” means so as to make clear what equipment is covered. We note first that ASHRAE/IES Standard 90.1–1989 delineated categories of furnaces by reference to the 225,000 Btu per hour value, without mentioning input or output, whereas Standard 90.1–1999 explicitly states that such size categories are based on “input.” We believe this change was designed to clarify rather than alter the scope of the applicable efficiency requirements. Because EPCA’s efficiency requirements for commercial furnaces are based on these same provisions in ASHRAE 90.1, and also use the 225,000 Btu/hr level as a cut-off for differentiating efficiency requirements, ASHRAE’s categorization of commercial furnace sizes by reference to input strongly suggests that furnace “capacity” in EPCA should be interpreted to mean input capacity. Second, the Department believes that, because EPCA provides efficiency standards for furnaces that are consumer (residential) products if they have an “input rate” of less than 225,000 Btu/hr, (42 U.S.C. 6291–6292), the “capacity” of commercial furnaces to which Section 342(a)(4)(A)–(B) of EPCA refers is also the input rate. The most reasonable construction of EPCA is that the capacities of residential and commercial furnaces must be measured in a uniform manner under the statute. If the term “capacity” in EPCA were construed as providing standards for commercial furnaces with an output rate of 225,000 BTU/hr or more, there would be a gap between the capacities of the largest consumer furnace and the smallest commercial furnace for which EPCA prescribes standards. We do not believe Congress intended such a result.

For these reasons, we construe the term “capacity,” as applied to commercial warm air furnaces in Section 342(a)(4)(A)–(B) of EPCA, to mean the rated input capacity and not the output capacity. To clarify this point, we are including in our definition of “commercial warm air furnace,” in 10 CFR 431.72, the parenthetical “(rated

maximum input)” to modify the term “capacity.”

b. “Thermal Efficiency” for Furnaces

EPCA specifies the energy efficiency standard levels for commercial warm air furnaces in terms of “thermal efficiency,” 42 U.S.C. 6313(a)(4)(A)–(B), but provides no definition for this term. For reasons discussed in detail in the NOPR, 64 FR 69601, we proposed to interpret this term, for purposes of commercial warm air furnaces as meaning what is commonly known as “combustion efficiency” in other contexts, *i.e.*, 100 percent minus percent flue loss.

No one opposed this proposal during the January 2000 workshop, although in its subsequent written comments CEC supported our approach but advocated use of the term “combustion efficiency” rather than “thermal efficiency.” (CEC, No. 7 at 3). Given use of the latter term in EPCA, and its continued use as the efficiency descriptor for furnaces in ANSI Standard Z21.47, which we reference in today’s rule, we believe it would be confusing to use the term “combustion efficiency” in the final rule. Accordingly, as proposed in the NOPR, we are defining the term “thermal efficiency” to mean 100 percent minus the percent flue loss.

2. ASHRAE/IES Standard 90.1 Referenced Furnace Test Standards

EPCA requires that the testing procedures for measuring the energy efficiency of commercial warm air furnaces must be those generally accepted industry testing procedures or rating procedures that were developed or are recognized by ASHRAE, as referenced in ASHRAE/IES Standard 90.1–1989 and in effect on June 30, 1992. EPCA also specifies that if such an industry test procedure or rating procedure for commercial warm air furnaces is amended, we must adopt the revisions unless we determine that they are not reasonably designed to produce test results which reflect energy efficiency, energy use, and estimated operating costs, or that the revised procedures would be unduly burdensome to conduct.

ASHRAE/IES Standard 90.1 as in effect on June 30, 1992 referenced two industry test standards: One for gas-fired furnaces, ANSI Standard Z21.47–1987, and the other for oil-fired furnaces, UL Standard 727–1986. Both standards were subsequently revised, resulting in ANSI Standard Z21.47–1993 and UL Standard 727–1994. We proposed in the NOPR to incorporate by reference as the applicable test

procedures under EPCA these revised versions of the two test procedures.

During the January 2000 workshop, all attendees supported the DOE proposal to incorporate by reference revised versions of the two industry test procedures. However, GAMA pointed out that ANSI Z21.47–1993 has been revised to ANSI Z21.47–1998. (GAMA, Tr. 32, No. 3, at 3.) GAMA stated that since there is no change in the energy efficiency test sections between these two versions of the test standard, DOE should reference the latest version of that standard. York supported GAMA's recommendation and pointed out that the only change between the two versions is the thermal efficiency test Section number (Section 2.37 in the 1993 version versus Section 2.38 in the 1998 version). (York, Tr. 32.) A.O. Smith questioned whether the designation ANSI Z21.47 is still appropriate since it is also a harmonized Canadian standard with a different designation. (A.O. Smith, Tr. 33.) CEC stated that the ANSI Z21.47 designation is still valid for use in the United States. (CEC, Tr. 34.) CEC also supported referencing the 1998 version.

We compared the 1993 and 1998 versions of ANSI Z21.47 with respect to the sections that involve thermal efficiency testing. Except for the difference in the designation of the section number for the thermal efficiency test, mentioned above, there is no change in the test procedure for the thermal efficiency test. Therefore, we agree with GAMA's recommendation, and are incorporating by reference in today's final rule the latest version of the ANSI test procedure, ANSI Z21.47–1998, (incorporated by reference, see § 431.75) for the energy efficiency test of gas-fired furnaces. Also, as proposed, we are incorporating by reference in today's final rule the energy efficiency test sections of UL 727–1994 for oil-fired furnaces (incorporated by reference, see § 431.75).

3. Procedures for Measuring the Flue Losses of Oil Furnaces and the Incremental Efficiency of Condensing Furnaces

a. Flue Loss Calculation for Oil-Fired Furnaces

The referenced test standard for oil-fired furnaces, UL Standard 727, does not provide a procedure for calculating the percent flue loss. Accordingly, in the NOPR we proposed that this calculation be made using the flue loss calculation specified for oil-fired boilers in the 1989 edition of the Hydronics Institute Testing and Rating Standard

for Heating Boilers (HI–1989). We received no comments opposing our proposal. Subsequent to the January 2000 workshop, however, in January 2001, a revised test standard, BTS–2000, “Method to Determine Efficiency of Commercial Space Heating Boilers,” replaced HI–1989. BTS–2000 contains provisions for calculating flue loss that are identical to the provisions of HI–1989 that we proposed in the NOPR to adopt for oil-fired furnaces. Therefore, in today's final rule, we are adopting these provisions of BTS–2000 as the calculation procedure for percent flue loss for oil-fired furnaces. (We note that the forms in BTS–2000 that have replaced Forms 715 and 721 of HI–1989, which are referenced in the NOPR, are no longer integral to the flue loss calculation. Therefore, we are not incorporating the BTS–2000 forms in today's rule.)

b. Condensing Furnaces

ASHRAE/IES Standard 90.1, and the two warm air furnace test standards referenced by it, do not specifically provide test conditions or procedures for testing a condensing furnace. In the NOPR, we stated that a test procedure should be in place to test these more efficient products in the future, and to enable evaluation of this design option during any consideration of possible revisions to the efficiency standard, even if no commercial condensing furnaces are currently available in the market as asserted by some participants in earlier workshops. Therefore we proposed to adopt for commercial warm air furnaces the test procedure specified in the steady state efficiency test sections of ASHRAE Standard 103–1993 (sections 7.2.2.4, 7.8, 9.2 and 11.3.7) (incorporated by reference, see § 431.75) for determining the increment in energy efficiency due to the condensing feature of a residential furnace. In proposing to adopt this test procedure, we applied a slight modification to the equation in Section 11.3.7.2 of ASHRAE Standard 103–1993 for steady-state heat loss due to hot condensate flowing down the drain. In the aforementioned section, the assumed indoor temperature is 70°F, and the average outside temperature is 42°F. The modification replaces both of these temperatures with the actual temperature of the test area during the steady-state thermal efficiency test, consistent with Section 2.2.8 of ANSI Standard Z21.47–1993 (now ANSI Standard Z21.47–1998).

At the January 2000 workshop, York International (York, Tr. 39–41) stated that the regulation should make clear that DOE is referencing the steady-state test in ASHRAE Standard 103, not its

annual fuel utilization efficiency test. CEC supported our proposal to incorporate Standard 103 as the test method for condensing furnaces. (CEC, Tr. 42, No. 7 at p. 3.)

With regard to the concern expressed by York, the specific sections of the ASHRAE Standard 103–1993 that we proposed to adopt for commercial condensing furnaces all deal with steady state testing only. The Department did not propose to adopt those sections of ASHRAE Standard 103–1993 dealing with cyclic tests and AFUE calculations.

For the reasons stated above and in the NOPR, we are incorporating by reference, in today's final rule, the test procedure specified in sections 7.2.2.4, 7.8, 9.2 and 11.3.7 of ASHRAE Standard 103–1993 (incorporated by reference, see § 431.75) for determining the increment in energy efficiency, under steady state conditions, of a condensing furnace, including modifications which replace the values of the indoor and outdoor temperatures with the actual measured test room temperature as described earlier in this section.

C. Procedural, Administrative, and Enforcement Provisions for Commercial Heating, Air Conditioning and Water Heating Products

The NOPR proposed detailed provisions designed to provide reasonable assurance that commercial HVAC & WH products would be appropriately tested and comply with applicable energy conservation standards. These included methods for applying the DOE test procedures, as well as calculation methods, to be used by manufacturers to determine the efficiency of this equipment. We also proposed procedures for manufacturers to certify that their equipment complies with our efficiency requirements, and proposed to allow manufacturer participation in DOE-approved Voluntary Industry Certification Programs (VICPs) as a means of helping to assure such compliance. The NOPR had detailed criteria for a VICP to obtain our approval. The proposed rule set forth, in addition, procedures for DOE to use to address allegations of non-compliance. These included detailed procedures for enforcement testing of allegedly noncompliant products, criteria for determining whether the test results warranted pursuit of enforcement action, and provisions for ceasing distribution of non-compliant products, as well as provisions that largely incorporated EPCA procedures for DOE to seek injunctive relief and civil penalties. Finally, we proposed other general provisions, similar to

those in 10 CFR Part 430 for consumer products, such as a restatement of EPCA's list of prohibited actions, procedures for waiving test procedures and records maintenance requirements.

During the January 2000 workshop, and in subsequent written statements, we received many comments concerning (1) methods for manufacturers to determine the efficiencies of their equipment, (2) certification of such efficiencies to DOE, (3) criteria for our approval of VICPs and (4) the procedures and criteria for DOE to pursue enforcement action. These comments, as well as the Department's further review of the proposed rule, raised significant issues, concerning these subjects, on which further comment appears to be warranted. Therefore, the Department has decided to continue its review of these subjects and it is not issuing final regulations at this time concerning methods for manufacturers to determine efficiency, certification of compliance, use of VICPs, and, for the most part, procedures and criteria for pursuing enforcement action. The Department intends to seek further comment on these issues.

However, DOE received no comments on the proposed provisions, adapted from EPCA, as to prohibited actions and remedies, or on proposed general provisions such as those concerning waiver of test procedures, records maintenance, treatment of exported and imported products, subpoenas, and confidentiality of information. As a result, DOE concludes that these provisions are noncontroversial and supported by all stakeholders. Therefore, in today's final rule the Department is adopting these provisions as proposed in the NOPR, without substantive change but with some renumbering, reorganization and editorial changes to reflect the combining of these provisions with existing requirements for electric motors in Part 431.

Subpart D of Part 431 currently contains procedures for a State to seek and obtain a rule from DOE to waive Federal preemption of a State energy conservation requirement for electric motors, and for a party to seek to have such a rule withdrawn. The NOPR did not propose such provisions for commercial HVAC & WH products. Their adoption is warranted, however, because waiver provisions are already prescribed by law, *i.e.*—Section 345(b)(2)(D) of EPCA (42 U.S.C. 6316(b)(2)(D)), which provides for waiver of preemption for this equipment under the same procedures as for electric motors. Since Subpart D is

purely procedural, and procedural rules can be adopted without notice and comment, 5 U.S.C. 553(b), today's final rule makes Subpart D applicable to commercial HVAC & WH products.

We note also that § 431.141 of the proposed rule contained definitions for furnaces and for commercial HVAC & WH products generally. Those definitions that would apply only to methods of determining efficiency, certification, or enforcement for these products are not included in today's final rule. The remainder of the definitions in proposed § 431.141 are divided among three different sections, one applying to the revised Part 431 generally, another to furnaces only, and the third to commercial HVAC and water heating products generally.

D. Effect of Amended Test Procedure on Measured Energy Efficiency

As to rulemakings to amend test procedures, section 323(e) of EPCA, 42 U.S.C. 6293(e), provides that DOE shall determine whether the amended test procedure would alter measured energy efficiency of any covered product. "If the amendment does alter measured efficiency, the Secretary must determine the average efficiency level under the new test procedure of products that minimally complied with the applicable energy conservation standard prior to the test procedure amendment, and must set the standard at that level. (42 U.S.C. 6293(e)(2)) In addition, any existing model of a product that complied with the previously applicable standard would be deemed to comply with the new standard. "(42 U.S.C. 6293(e)(3)) These provisions prevent changes in a test procedure from indirectly altering the applicable Federal energy conservation standard. "They also prevent products that complied with standards using the previous test procedure from being forced out of compliance by the new test procedure.

For commercial furnaces, this final rule is adopting later versions of two test procedures referenced in ASHRAE 90.1–1989 and in effect on June 30, 1992: ANSI Standard Z21.47–1998 for gas-fired equipment and UL Standard 727–1994 for oil-fired equipment. These later versions do not contain amendments to the efficiency test methods for this equipment. Accordingly, section 323(e) does not apply to their adoption by DOE.

In addition, this final rule adds two provisions, first a method for testing condensing furnaces, based upon ASHRAE Standard 103–1993, and second, a method for calculating the flue loss of oil-fired furnaces, a method

necessary for determining furnace efficiency that is missing from ANSI Standard Z21.47–1998 and its predecessor version. This latter requirement is in HI BTS–2000.

With respect to the first additional requirement, there is no existing DOE test procedure for condensing furnaces. Therefore, this added requirement does not represent an amended test procedure. Accordingly, section 323(e) does not apply.

With respect to the second additional requirement, in order to determine the efficiency of oil-fired furnaces, a value for the percent flue loss is needed. Today's rule adopts a method which DOE understands the industry has been using unofficially to test oil-fired furnaces. Therefore, requiring use of this method will not alter measured energy efficiency of oil-fired furnaces for purposes of section 323(e) of EPCA.

III. Procedural Requirements

A. Review Under Executive Order 12866

The Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) has determined that today's regulatory action is not a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under the Executive Order.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of General Counsel's Web site: <http://www.gc.doe.gov>.

DOE reviewed today's rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003, and certified in the NOPR that the proposed rule would not impose a significant economic impact on a substantial

number of small entities. (64 FR 69597). We received no comments on this issue, and after considering the potential small entity impact of this final rule, DOE affirms the certification that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review pursuant to 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act

This rulemaking will impose no new information or recordkeeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

D. Review Under the National Environmental Policy Act

DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and the Department's implementing regulations at 10 CFR Part 1021. Specifically, this rule amends an existing rule without changing the environmental effect of the rule being amended, and, therefore, is covered by the Categorical Exclusion in paragraph A5 to subpart D, 10 CFR Part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined today's rule and has determined that it does not

preempt State law and does 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. No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, Section 3(a) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in Section 3(a) and Section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. With respect to a proposed regulatory action that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector of \$100 million or more (adjusted annually for inflation), Section 202 of the Act requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy (2 U.S.C. 1532(a),(b)). The Act

also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under the Act (62 FR 12820) (also available at <http://www.gc.doe.gov>). The rule published today does not contain any Federal mandate, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined pursuant to Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 18, 1988) that this regulation would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that:

(1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and, therefore, is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under Section 301 of the Department of Energy Organization Act (Pub. L. 95-91), the Department must comply with Section 32 of the Federal Energy Administration Act of 1974 (FEAA), as amended by the Federal Energy Administration Authorization Act of 1977, 15 U.S.C. 788. The Department stated in the NOPR the reasons why Section 32 does not apply to two of the commercial standards incorporated into the proposed rule, ANSI Standard Z21.47-1993 and UL Standard 727-1994, 64 FR 69608. The Department did not receive any comments on this issue. The rule published today incorporates the UL Standard, as well as an amended version of the ANSI Standard. The Department continues to adhere to the view expressed in the NOPR that Section 32 of the FEAA does not apply to these standards.

The Department also indicated in the NOPR that Section 32 does apply to the other two commercial standards it is incorporating in this rule, ASHRAE Standard 103-1993 and HI BTS-2000, 64 FR 69608. As required by Section

32(c) of the FEAA, the Department has consulted with the Attorney General and the Chairman of the Federal Trade Commission concerning the impact of these two standards on competition, and neither recommended against incorporation of these standards.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

N. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's rule.

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Energy conservation, Incorporation by reference.

Issued in Washington, DC, on July 27, 2004.

David K. Garman,

Assistant Secretary, Energy Efficiency and Renewable Energy.

■ For the reasons set forth in the preamble, Part 431 of Chapter II of Title 10, Code of Federal Regulations, is amended, as set forth below:

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for Part 431 continues to read as follows:

Authority: 42 U.S.C. 6311-6316.

Subpart A—General Provisions

■ 2. Section 431.2 of subpart A is revised to read as follows:

§ 431.2 Definitions.

The following definitions apply for purposes of this part. Any words or terms not defined in this Section or elsewhere in this Part shall be defined as provided in Section 340 of the Act.

Act means the Energy Policy and Conservation Act of 1975, as amended, 42 U.S.C. 6291-6316.

Btu means British thermal unit, which is the quantity of heat required to raise the temperature of one pound of water by one degree Fahrenheit.

Covered equipment means any electric motor, as defined in § 431.12, or commercial heating, ventilating, and air conditioning, and water heating product (HVAC & WH product), as defined in § 431.72.

DOE or the Department means the U.S. Department of Energy.

EPCA means the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6291-6316.

Gas means propane or natural gas as defined by the Federal Power Commission.

ISO means International Organization for Standardization.

Manufacture means to manufacture, produce, assemble, or import.

Manufacturer means any person who manufactures industrial equipment, including any manufacturer of a commercial packaged boiler.

Secretary means the Secretary of Energy.

State means a State, the District of Columbia, Puerto Rico, or any territory or possession of the United States.

State regulation means a law or regulation of a State or political subdivision thereof.

Appendix A to Subpart A—[Removed]

■ 3. Appendix A to subpart A of Part 431 is removed.

■ 4. Subpart B is revised to read as follows:

Subpart B—Electric Motors

Sec.

431.11 Purpose and scope.

431.12 Definitions.

Test Procedures, Materials Incorporated and Methods of Determining Efficiency

431.15 Materials incorporated by reference.

431.16 Test procedures for the measurement of energy efficiency.

431.17 Determination of efficiency.

431.18 Testing laboratories.

431.19 Department of Energy recognition of accreditation bodies.

431.20 Department of Energy recognition of nationally recognized certification programs.

431.21 Procedures for recognition and withdrawal of recognition of accreditation bodies and certification programs.

Energy Conservation Standards

431.25 Energy conservation standards and effective dates.

431.26 Preemption of State regulations.

Labeling

431.30 Applicability of labeling requirements.

431.31 Labeling requirements.

431.32 Preemption of State regulations.

Certification

431.35 Applicability of certification requirements.

431.36 Compliance Certification.

Appendix A to Subpart B of 10 CFR Part 431—Policy Statement for Electric Motors Covered Under the Energy Policy and Conservation Act

Appendix B to Subpart B of Part 431—
Uniform Test Method for Measuring
Nominal Full Load Efficiency of Electric
Motors

Appendix C to Subpart B of Part 431—
Compliance Certification

Subpart B—Electric Motors

§ 431.11 Purpose and scope.

This subpart contains energy conservation requirements for electric motors. It contains test procedures that EPCA requires DOE to prescribe, related requirements, energy conservation standards prescribed by EPCA, labeling rules, and compliance procedures. It also identifies materials incorporated by reference in this part.

§ 431.12 Definitions.

The following definitions apply for purposes of this subpart, and of subparts K through M of this part. Any words or terms not defined in this Section or elsewhere in this Part shall be defined as provided in Section 340 of the Act.

Accreditation means recognition by an accreditation body that a laboratory is competent to test the efficiency of electric motors according to the scope and procedures given in Test Method B of Institute of Electrical and Electronics Engineers (IEEE) Standard 112–1996, *Test Procedure for Polyphase Induction Motors and Generators*, and Test Method (1) of CSA Standard C390–93, *Energy Efficient Test Methods for Three-Phase Induction Motors*. (Incorporated by reference, see § 431.15)

Accreditation body means an organization or entity that conducts and administers an accreditation system and grants accreditation.

Accreditation system means a set of requirements to be fulfilled by a testing laboratory, as well as rules of procedure and management, that are used to accredit laboratories.

Accredited laboratory means a testing laboratory to which accreditation has been granted.

Alternative efficiency determination method or *AEDM* means, with respect to an electric motor, a method of calculating the total power loss and average full load efficiency.

Average full load efficiency means the arithmetic mean of the full load efficiencies of a population of electric motors of duplicate design, where the full load efficiency of each motor in the population is the ratio (expressed as a percentage) of the motor's useful power output to its total power input when the motor is operated at its full rated load, rated voltage, and rated frequency.

Basic model means, with respect to an electric motor, all units of a given type of electric motor (or class thereof)

manufactured by a single manufacturer, and which have the same rating, have electrical characteristics that are essentially identical, and do not have any differing physical or functional characteristics which affect energy consumption or efficiency. For the purpose of this definition, “rating” means one of the 113 combinations of an electric motor's horsepower (or standard kilowatt equivalent), number of poles, and open or enclosed construction, with respect to which § 431.25 prescribes nominal full load efficiency standards.

Certificate of conformity means a document that is issued by a certification program, and that gives written assurance that an electric motor complies with the energy efficiency standard applicable to that motor, as specified in § 431.25.

Certification program means a certification system that determines conformity by electric motors with the energy efficiency standards prescribed by and pursuant to the Act.

Certification system means a system, that has its own rules of procedure and management, for giving written assurance that a product, process, or service conforms to a specific standard or other specified requirements, and that is operated by an entity independent of both the party seeking the written assurance and the party providing the product, process or service.

CSA means CSA International.

Definite purpose motor means any motor designed in standard ratings with standard operating characteristics or standard mechanical construction for use under service conditions other than usual, such as those specified in National Electrical Manufacturers Association (NEMA) Standards Publication MG1–1993 (MG1), *Motors and Generators*, paragraph 14.03, “Unusual Service Conditions,” (Incorporated by reference, see § 431.15) or for use on a particular type of application, and which cannot be used in most general purpose applications.

Electric motor is defined as follows:

(1) “Electric motor” means a machine which converts electrical power into rotational mechanical power and which:

(i) Is a general purpose motor, including but not limited to motors with explosion-proof construction;

(ii) Is a single speed, induction motor (MG1);

(iii) Is rated for continuous duty (MG1) operation, or is rated duty type S1 (International Electrotechnical Commission (IEC));

(iv) Contains a squirrel-cage (MG1) or cage (IEC) rotor, and has foot-mounting,

including foot-mounting with flanges or detachable feet;

(v) Is built in accordance with NEMA T-frame dimensions (MG1), or IEC metric equivalents (IEC);

(vi) Has performance in accordance with NEMA Design A (MG1) or B (MG1) characteristics, or equivalent designs such as IEC Design N (IEC); and

(vii) Operates on polyphase alternating current 60-Hertz sinusoidal power, and:

(A) Is rated 230 volts or 460 volts, or both, including any motor that is rated at multi-voltages that include 230 volts or 460 volts, or

(B) Can be operated on 230 volts or 460 volts, or both.

(2) Terms in this definition followed by the parenthetical “MG1” must be construed with reference to provisions in NEMA Standards Publication MG1–1993, *Motors and Generators*, with Revisions 1, 2, 3 and 4, (Incorporated by reference, see § 431.15) as follows:

(i) Section I, *General Standards Applying to All Machines*, Part 1, *Referenced Standards and Definitions*, paragraphs 1.16.1, 1.16.1.1, 1.17.1.1, 1.17.1.2, and 1.40.1 (Incorporated by reference, see § 431.15) pertain to the terms “induction motor,” “squirrel-cage,” “NEMA Design A,” “NEMA Design B,” and “continuous duty” respectively;

(ii) Section I, *General Standards Applying to All Machines*, Part 4, *Dimensions, Tolerances, and Mounting*, paragraph 4.01 and Figures 4–1, 4–2, 4–3, and 4–4 (Incorporated by reference, see § 431.15) pertain to “NEMA T-frame dimensions;”

(iii) Section II, *Small (Fractional) and Medium (Integral) Machines*, Part 11, *Dimensions—AC and DC Small and Medium Machines*, paragraphs 11.01.2, 11.31 (except the lines for frames 447T, 447TS, 449T and 449TS), 11.32, 11.34 (except the line for frames 447TC and 449TC, and the line for frames 447TSC and 449TSC), 11.35, and 11.36 (except the line for frames 447TD and 449TD, and the line for frames 447TSD and 449TSD), and Table 11–1, (Incorporated by reference, see § 431.15) pertain to “NEMA T-frame dimensions;” and

(iv) Section II, *Small (Fractional) and Medium (Integral) Machines*, Part 12, *Tests and Performance—AC and DC Motors*, paragraphs 12.35.1, 12.35.5, 12.38.1, 12.39.1, and 12.40.1, and Table 12–2, (Incorporated by reference, see § 431.15) pertain both to “NEMA Design A” and “NEMA Design B.”

(3) Terms in this definition followed by the parenthetical “IEC” must be construed with reference to provisions in IEC Standards as follows:

(i) IEC Standard 60034-1 (1996), *Rotating electrical machines, Part 1: Rating and performance*, with Amendment 1 (1997), Section 3: *Duty*, clause 3.2.1 and figure 1 (Incorporated by reference, see § 431.15) pertain to “duty type S1”;

(ii) IEC Standard 60050-411 (1996), *International Electrotechnical Vocabulary Chapter 411: Rotating machines*, sections 411-33-07 and 411-37-26, (Incorporated by reference, see § 431.15) pertain to “cage”;

(iii) IEC Standard 60072-1 (1991), *Dimensions and output series for rotating electrical machines—Part 1: Frame numbers 56 to 400 and flange numbers 55 to 1080*, clauses 2, 3, 4.1, 6.1, 7, and 10, and Tables 1, 2 and 4, (Incorporated by reference, see § 431.15) pertain to “IEC metric equivalents” to “T-frame” dimensions; and

(iv) IEC Standard 60034-12 (1980), *Rotating electrical machines, Part 12: Starting performance of single-speed three-phase cage induction motors for voltages up to and including 660 V*, with Amendment 1 (1992) and Amendment 2 (1995), clauses 1, 2, 3.1, 4, 5, and 6, and Tables I, II, and III, (Incorporated by reference, see § 431.15) pertain to “IEC Design N.”

Enclosed motor means an electric motor so constructed as to prevent the free exchange of air between the inside and outside of the case but not sufficiently enclosed to be termed airtight.

General purpose motor means any motor which is designed in standard ratings with either:

(1) Standard operating characteristics and standard mechanical construction for use under usual service conditions, such as those specified NEMA Standards Publication MG1-1993, paragraph 14.02, “Usual Service Conditions,” (Incorporated by reference, see § 431.15) and without restriction to a particular application or type of application; or

(2) Standard operating characteristics or standard mechanical construction for use under unusual service conditions, such as those specified in NEMA Standards Publication MG1-1993, paragraph 14.03, “Unusual Service Conditions,” (Incorporated by reference, see § 431.15) or for a particular type of application, and which can be used in most general purpose applications.

IEC means the International Electrotechnical Commission.

IEEE means the Institute of Electrical and Electronics Engineers, Inc.

NEMA means the National Electrical Manufacturers Association.

Nominal full load efficiency means, with respect to an electric motor, a

representative value of efficiency selected from Column A of Table 12-8, NEMA Standards Publication MG1-1993, (Incorporated by reference, see § 431.15), that is not greater than the average full load efficiency of a population of motors of the same design.

Open motor means an electric motor having ventilating openings which permit passage of external cooling air over and around the windings of the machine.

Special purpose motor means any motor, other than a general purpose motor or definite purpose motor, which has special operating characteristics or special mechanical construction, or both, designed for a particular application.

Total power loss means that portion of the energy used by an electric motor not converted to rotational mechanical power, expressed in percent.

Test Procedures, Materials Incorporated and Methods of Determining Efficiency

§ 431.15 Materials incorporated by reference.

(a) *General.* We incorporate by reference the following test procedures into Subpart B of Part 431. The material listed in paragraph (b) of this section has been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR 51. Any subsequent amendment to a standard by the standard-setting organization will not affect the DOE test procedures unless and until amended by DOE. Material is incorporated as it exists on the date of the approval and a notice of any change in the material will be published in the **Federal Register**.

(b) *List of standards incorporated by reference.* (1) The following provisions of National Electrical Manufacturers Association Standards Publication MG1-1993, *Motors and Generators*, with Revisions 1, 2, 3 and 4, IBR approved for §§ 431.12; 431.31 and appendix B to subpart B of Part 431:

(i) Section I, *General Standards Applying to All Machines*, Part 1, *Referenced Standards and Definitions*, paragraphs 1.16.1, 1.16.1.1, 1.17.1.1, 1.17.1.2, and 1.40.1, IBR approved for § 431.12;

(ii) Section I, *General Standards Applying to All Machines*, Part 4, *Dimensions, Tolerances, and Mounting*, paragraph 4.01 and Figures 4-1, 4-2, 4-3, and 4-4, IBR approved for § 431.12;

(iii) Section II, *Small (Fractional) and Medium (Integral) Machines*, Part 11, *Dimensions—AC and DC Small and*

Medium Machines, paragraphs 11.01.2, 11.31 (except the lines for frames 447T, 447TS, 449T and 449TS), 11.32, 11.34 (except the line for frames 447TC and 449TC, and the line for frames 447TSC and 449TSC), 11.35, and 11.36 (except the line for frames 447TD and 449TD, and the line for frames 447TSD and 449TSD), and Table 11-1, IBR approved for § 431.12;

(iv) Section II, *Small (Fractional) and Medium (Integral) Machines*, Part 12, *Tests and Performance—AC and DC Motors*, paragraphs 12.35.1, 12.35.5, 12.38.1, 12.39.1, and 12.40.1, 12.58.1, and Tables 12-2 and 12-8, IBR approved for § 431.12; and

(v) Section II, *Small (Fractional) and Medium (Integral) Machines*, Part 14, *Application Data—AC and DC Small and Medium Machines*, paragraphs 14.02 and 14.03, IBR approved for § 431.12.

(2) Institute of Electrical and Electronics Engineers, Inc., Standard 112-1996, *Test Procedure for Polyphase Induction Motors and Generators*, Test Method B, *Input-Output with Loss Segregation*, and the correction to the calculation at item (28) in Section 10.2 Form B-Test Method B issued by IEEE on January 20, 1998. (Note: Paragraph 2 of appendix A to subpart B of Part 431 sets forth modifications to this Standard when it is used for purposes of Part 431 and EPCA, IBR approved for §§ 431.12; 431.19; 431.20; appendix B to subpart B of Part 431.

(3) CSA International Standard C390-93, *Energy Efficiency Test Methods for Three-Phase Induction Motors*, Test Method (1), *Input-Output Method With Indirect Measurement of the Stray-Load Loss and Direct Measurement of the Stator Winding (I₂R), Rotor Winding (I₂R), Core and Windage-Friction Losses*, IBR approved for §§ 431.12; 431.19; 431.20; appendix B to subpart B of Part 431.

(4) International Electrotechnical Commission Standard 60034-1 (1996), *Rotating electrical machines, Part 1: Rating and performance*, with Amendment 1 (1997), Section 3: *Duty*, clause 3.2.1 and figure 1, IBR approved for § 431.12.

(5) International Electrotechnical Commission Standard 60050-411 (1996), *International Electrotechnical Vocabulary Chapter 411: Rotating machines*, sections 411-33-07 and 411-37-26, IBR approved for § 431.12.

(6) International Electrotechnical Commission Standard 60072-1 (1991), *Dimensions and Output Series for Rotating Electrical Machines—Part 1: Frame numbers 56 to 400 and flange numbers 55 to 1080*, clauses 2, 3, 4.1,

6.1, 7, and 10, and Tables 1, 2 and 4, IBR approved for § 431.12.

(7) International Electrotechnical Commission Standard 60034-12 (1980), *Rotating Electrical Machines, Part 12: Starting performance of single-speed three-phase cage induction motors for voltages up to and including 660 V*, with Amendment 1 (1992) and Amendment 2 (1995), clauses 1, 2, 3.1, 4, 5, and 6, and Tables I, II, and III, IBR approved for § 431.12.

(c) *Inspection of standards.* The standards incorporated by reference are available for inspection at:

(1) National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html;

(2) U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Hearings and Dockets, "Test Procedures, Labeling, and Certification Requirements for Electric Motors," Docket No. EE-RM-96-400, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC.

(d) *Availability of standards.* Standards incorporated by reference may be obtained from the following sources:

(1) Copies of IEEE Standard 112-1996 can be obtained from the Institute of Electrical and Electronics Engineers, Inc., 445 Hoes Lane, P.O. Box 1331, Piscataway, NJ 08855-1331, 1-800-678-IEEE (4333);

(2) Copies of NEMA Standards Publication MG1-1993 with Revisions 1, 2, 3, and 4, and copies of International Electrotechnical Commission standards can be obtained from Global Engineering Documents, 15 Inverness Way East, Englewood, Colorado 80112-5776, 1-800-854-7179 (within the U.S.) or (303) 397-7956 (international).

(3) Copies of CSA International Standard C390-93 can be obtained from CSA International, 5060 Spectrum Way, Mississauga, Ontario, Canada L4W5N6, (416) 747-4044;

(e) *Reference standards*—(1) *General.* The standards listed in this paragraph are referred to in the DOE procedures for testing laboratories, and recognition of accreditation bodies and certification programs but are not incorporated by reference. These sources are given here for information and guidance.

(2) *List of references.* (i) National Voluntary Laboratory Accreditation Program Handbooks 150, "Procedures and General Requirements," March 1994, and 150-10, "Efficiency of

Electric Motors," August 1995. National Voluntary Laboratory Accreditation Program, National Institute of Standards and Technology, Gaithersburg, MD 20899.

(ii) ISO/IEC Guide 25, "General requirements for the competence of calibration and testing laboratories."

(iii) ISO Guide 27, "Guidelines for corrective action to be taken by a certification body in the event of either misapplication of its mark of conformity to a product, or products which bear the mark of the certification body being found to subject persons or property to risk."

(iv) ISO/IEC Guide 28, "General rules for a model third-party certification system for products."

(v) ISO/IEC Guide 58, "Calibration and testing laboratory accreditation systems—General requirements for operation and recognition."

(vi) ISO/IEC Guide 65, "General requirements for bodies operating product certification systems."

§ 431.16 Test procedures for the measurement of energy efficiency.

For purposes of 10 CFR Part 431 and EPCA, the test procedures for measuring the energy efficiency of an electric motor shall be the test procedures specified in appendix B to this subpart B.

§ 431.17 Determination of efficiency.

When a party determines the energy efficiency of an electric motor in order to comply with an obligation imposed on it by or pursuant to Part C of Title III of EPCA, 42 U.S.C. 6311-6316, this Section applies. This section does not apply to enforcement testing conducted pursuant to § 431.192.

(a) *Provisions applicable to all electric motors*—(1) *General requirements.* The average full load efficiency of each basic model of electric motor must be determined either by testing in accordance with § 431.16 of this subpart, or by application of an alternative efficiency determination method (AEDM) that meets the requirements of paragraphs (a)(2) and (3) of this section, provided, however, that an AEDM may be used to determine the average full load efficiency of one or more of a manufacturer's basic models only if the average full load efficiency of at least five of its other basic models is determined through testing.

(2) *Alternative efficiency determination method.* An AEDM applied to a basic model must be:

(i) Derived from a mathematical model that represents the mechanical and electrical characteristics of that basic model, and

(ii) Based on engineering or statistical analysis, computer simulation or modeling, or other analytic evaluation of performance data.

(3) *Substantiation of an alternative efficiency determination method.* Before an AEDM is used, its accuracy and reliability must be substantiated as follows:

(i) The AEDM must be applied to at least five basic models that have been tested in accordance with § 431.16, and

(ii) The predicted total power loss for each such basic model, calculated by applying the AEDM, must be within plus or minus ten percent of the mean total power loss determined from the testing of that basic model.

(4) *Subsequent verification of an AEDM.* (i) Each manufacturer shall periodically select basic models representative of those to which it has applied an AEDM, and for each basic model selected shall either:

(A) Subject a sample of units to testing in accordance with §§ 431.16 and 431.17(b)(2) by an accredited laboratory that meets the requirements of § 431.18;

(B) Have a certification body recognized under § 431.20 certify its nominal full load efficiency; or

(C) Have an independent state-registered professional engineer, who is qualified to perform an evaluation of electric motor efficiency in a highly competent manner and who is not an employee of the manufacturer, review the manufacturer's representations and certify that the results of the AEDM accurately represent the total power loss and nominal full load efficiency of the basic model.

(ii) Each manufacturer that has used an AEDM under this section shall have available for inspection by the Department of Energy records showing: the method or methods used; the mathematical model, the engineering or statistical analysis, computer simulation or modeling, and other analytic evaluation of performance data on which the AEDM is based; complete test data, product information, and related information that the manufacturer has generated or acquired pursuant to paragraphs (a)(3) and (a)(4)(i) of this section; and the calculations used to determine the average full load efficiency and total power losses of each basic model to which the AEDM was applied.

(iii) If requested by the Department, the manufacturer shall conduct simulations to predict the performance of particular basic models of electric motors specified by the Department, analyses of previous simulations conducted by the manufacturer, sample

testing of basic models selected by the Department, or a combination of the foregoing.

(5) *Use of a certification program or accredited laboratory.* (i) A manufacturer may have a certification program, that DOE has classified as nationally recognized under § 431.20, certify the nominal full load efficiency of a basic model of electric motor, and issue a certificate of conformity for the motor.

(ii) For each basic model for which a certification program is not used as described in paragraph (a)(5)(i) of this section, any testing of the motor pursuant to paragraphs (a)(1) through (3) of this section to determine its energy efficiency must be carried out in accordance with paragraph (b) of this section, in an accredited laboratory that meets the requirements of § 431.18. (This includes testing of the basic model, pursuant to paragraph (a)(3)(i) of this section, to substantiate an AEDM.)

(b) *Additional testing requirements applicable when a certification program is not used—(1) Selection of basic models for testing.* (i) Basic models must be selected for testing in accordance with the following criteria:

(A) Two of the basic models must be among the five basic models with the highest unit volumes of production by the manufacturer in the prior year, or during the prior 12 calendar month period beginning in 1997,¹ whichever is later;

(B) The basic models should be of different horsepowers without duplication;

(C) The basic models should be of different frame number series without duplication; and

(D) Each basic model should be expected to have the lowest nominal full load efficiency among the basic models with the same rating ("rating" as used here has the same meaning as it has in the definition of "basic model").

(ii) In any instance where it is impossible for a manufacturer to select basic models for testing in accordance with all of these criteria, the criteria shall be given priority in the order in which they are listed. Within the limits imposed by the criteria, basic models shall be selected randomly.

(2) *Selection of units for testing.* For each basic model selected for testing,² a sample of units shall be selected at

random and tested. The sample shall be comprised of production units of the basic model, or units that are representative of such production units. The sample size shall be not fewer than five units, except that when fewer than five units of a basic model would be produced over a reasonable period of time (approximately 180 days), then each unit shall be tested. In a test of compliance with a represented average or nominal efficiency:

(i) The average full-load efficiency of the sample \bar{X} which is defined by

$$\bar{X} = \frac{1}{n} \sum_{i=1}^n X_i,$$

where X_i is the measured full-load efficiency of unit i and n is the number of units tested, shall satisfy the condition:

$$\bar{X} \geq \frac{100}{1 + 1.05 \left(\frac{100}{RE} - 1 \right)}$$

where RE is the represented nominal full-load efficiency, and

(ii) The lowest full-load efficiency in the sample X_{\min} , which is defined by

$$X_{\min} = \min (X_i)$$

shall satisfy the condition

$$\bar{X}_{\min} \geq \frac{100}{1 + 1.15 \left(\frac{100}{RE} - 1 \right)}$$

(3) *Substantiation of an alternative efficiency determination method.* The basic models tested under § 431.17(a)(3)(i) must be selected for testing in accordance with paragraph (b)(1) of this section, and units of each such basic model must be tested in accordance with paragraph (b)(2) of this section by an accredited laboratory that meets the requirements of § 431.18.

§ 431.18 Testing laboratories.

(a) Testing pursuant to § 431.17(a)(5)(ii) must be conducted in an accredited laboratory for which the accreditation body was:

(1) The National Institute of Standards and Technology/National Voluntary Laboratory Accreditation Program (NIST/NVLAP); or

(2) A laboratory accreditation body having a mutual recognition arrangement with NIST/NVLAP; or

(3) An organization classified by the Department, pursuant to § 431.19, as an accreditation body.

(b) NIST/NVLAP is under the auspices of the National Institute of Standards and Technology (NIST) which is part of the U.S. Department of

Commerce. NIST/NVLAP accreditation is granted on the basis of conformance with criteria published in 15 CFR Part 285, *The National Voluntary Laboratory Accreditation Program Procedures and General Requirements*. NIST Handbook 150-10, August 1995, presents the technical requirements of the National Voluntary Laboratory Accreditation Program for the Efficiency of Electric Motors field of accreditation. This handbook supplements NIST Handbook 150, *National Voluntary Laboratory Accreditation Program Procedures and General Requirements*, which contains 15 CFR Part 285 plus all general NIST/NVLAP procedures, criteria, and policies. Changes in NIST/NVLAP's criteria, procedures, policies, standards or other bases for granting accreditation, occurring subsequent to the initial effective date of 10 CFR Part 431, shall not apply to accreditation under this Part unless approved in writing by the Department of Energy. Information regarding NIST/NVLAP and its Efficiency of Electric Motors Program (EEM) can be obtained from NIST/NVLAP, 100 Bureau Drive, Mail Stop 2140, Gaithersburg, MD 20899-2140, telephone (301) 975-4016, or telefax (301) 926-2884.

§ 431.19 Department of Energy recognition of accreditation bodies.

(a) *Petition.* To be classified by the Department of Energy as an accreditation body, an organization must submit a petition to the Department requesting such classification, in accordance with paragraph (c) of this section and § 431.21. The petition must demonstrate that the organization meets the criteria in paragraph (b) of this section.

(b) *Evaluation criteria.* To be classified as an accreditation body by the Department, the organization must meet the following criteria:

(1) It must have satisfactory standards and procedures for conducting and administering an accreditation system and for granting accreditation. This must include provisions for periodic audits to verify that the laboratories receiving its accreditation continue to conform to the criteria by which they were initially accredited, and for withdrawal of accreditation where such conformance does not occur, including failure to provide accurate test results.

(2) It must be independent of electric motor manufacturers, importers, distributors, private labelers or vendors. It cannot be affiliated with, have financial ties with, be controlled by, or be under common control with any such entity.

¹ In identifying these five basic models, any electric motor that does not comply with § 431.25 shall be excluded from consideration.

² Components of similar design may be substituted without requiring additional testing if the represented measures of energy consumption continue to satisfy the applicable sampling provision.

(3) It must be qualified to perform the accrediting function in a highly competent manner.

(4) It must be expert in the content and application of the test procedures and methodologies in IEEE Standard 112–1996 Test Method B and CSA Standard C390–93 Test Method (1), (Incorporated by reference, see § 431.15) or similar procedures and methodologies for determining the energy efficiency of electric motors.

(c) *Petition format.* Each petition requesting classification as an accreditation body must contain a narrative statement as to why the organization meets the criteria set forth in paragraph (b) of this section, must be signed on behalf of the organization by an authorized representative, and must be accompanied by documentation that supports the narrative statement. The following provides additional guidance:

(1) *Standards and procedures.* A copy of the organization's standards and procedures for operating an accreditation system and for granting accreditation should accompany the petition.

(2) *Independent status.* The petitioning organization should identify and describe any relationship, direct or indirect, that it has with an electric motor manufacturer, importer, distributor, private labeler, vendor, trade association or other such entity, as well as any other relationship it believes might appear to create a conflict of interest for it in performing as an accreditation body for electric motor testing laboratories. It should explain why it believes such relationship(s) would not compromise its independence as an accreditation body.

(3) *Qualifications to do accrediting.* Experience in accrediting should be discussed and substantiated by supporting documents. Of particular relevance would be documentary evidence that establishes experience in the application of guidelines contained in the ISO/IEC Guide 58, *Calibration and testing laboratory accreditation systems—General requirements for operation and recognition*, as well as experience in overseeing compliance with the guidelines contained in the ISO/IEC Guide 25, *General Requirements for the Competence of Calibration and Testing Laboratories*.

(4) *Expertise in electric motor test procedures.* The petition should set forth the organization's experience with the test procedures and methodologies in IEEE Standard 112–1996 Test Method B and CSA Standard C390–93 Test Method (1), (Incorporated by reference, see § 431.15) and with similar procedures and methodologies. This

part of the petition should include description of prior projects, qualifications of staff members, and the like. Of particular relevance would be documentary evidence that establishes experience in applying the guidelines contained in the ISO/IEC Guide 25, *General Requirements for the Competence of Calibration and Testing Laboratories*, to energy efficiency testing for electric motors.

(d) *Disposition.* The Department will evaluate the petition in accordance with § 431.21, and will determine whether the applicant meets the criteria in paragraph (b) of this section to be classified as an accrediting body.

§ 431.20 Department of Energy recognition of nationally recognized certification programs.

(a) *Petition.* For a certification program to be classified by the Department of Energy as being nationally recognized in the United States for the purposes of Section 345(c) of EPCA (“nationally recognized”), the organization operating the program must submit a petition to the Department requesting such classification, in accordance with paragraph (c) of this Section and § 431.21. The petition must demonstrate that the program meets the criteria in paragraph (b) of this section.

(b) *Evaluation criteria.* For a certification program to be classified by the Department as nationally recognized, it must meet the following criteria:

(1) It must have satisfactory standards and procedures for conducting and administering a certification system, including periodic follow up activities to assure that basic models of electric motor continue to conform to the efficiency levels for which they were certified, and for granting a certificate of conformity.

(2) It must be independent of electric motor manufacturers, importers, distributors, private labelers or vendors. It cannot be affiliated with, have financial ties with, be controlled by, or be under common control with any such entity.

(3) It must be qualified to operate a certification system in a highly competent manner.

(4) It must be expert in the content and application of the test procedures and methodologies in IEEE Standard 112–1996 Test Method B and CSA Standard C390–93 Test Method (1), (Incorporated by reference, see § 431.15) or similar procedures and methodologies for determining the energy efficiency of electric motors. It must have satisfactory criteria and

procedures for the selection and sampling of electric motors tested for energy efficiency.

(c) *Petition format.* Each petition requesting classification as a nationally recognized certification program must contain a narrative statement as to why the program meets the criteria listed in paragraph (b) of this section, must be signed on behalf of the organization operating the program by an authorized representative, and must be accompanied by documentation that supports the narrative statement. The following provides additional guidance as to the specific criteria:

(1) *Standards and procedures.* A copy of the standards and procedures for operating a certification system and for granting a certificate of conformity should accompany the petition.

(2) *Independent status.* The petitioning organization should identify and describe any relationship, direct or indirect, that it or the certification program has with an electric motor manufacturer, importer, distributor, private labeler, vendor, trade association or other such entity, as well as any other relationship it believes might appear to create a conflict of interest for the certification program in operating a certification system for compliance by electric motors with energy efficiency standards. It should explain why it believes such relationship would not compromise its independence in operating a certification program.

(3) *Qualifications to operate a certification system.* Experience in operating a certification system should be discussed and substantiated by supporting documents. Of particular relevance would be documentary evidence that establishes experience in the application of guidelines contained in the ISO/IEC Guide 65, *General requirements for bodies operating product certification systems*, ISO/IEC Guide 27, *Guidelines for corrective action to be taken by a certification body in the event of either misapplication of its mark of conformity to a product, or products which bear the mark of the certification body being found to subject persons or property to risk*, and ISO/IEC Guide 28, *General rules for a model third-party certification system for products*, as well as experience in overseeing compliance with the guidelines contained in the ISO/IEC Guide 25, *General requirements for the competence of calibration and testing laboratories*.

(4) *Expertise in electric motor test procedures.* The petition should set forth the program's experience with the test procedures and methodologies in IEEE Standard 112–1996 Test Method B

and CSA Standard C390-93 Test Method (1), (Incorporated by reference, see § 431.15) and with similar procedures and methodologies. This part of the petition should include description of prior projects, qualifications of staff members, and the like. Of particular relevance would be documentary evidence that establishes experience in applying guidelines contained in the ISO/IEC Guide 25, *General requirements for the competence of calibration and testing laboratories*, to energy efficiency testing for electric motors.

(d) *Disposition*. The Department will evaluate the petition in accordance with § 431.21, and will determine whether the applicant meets the criteria in paragraph (b) of this section for classification as a nationally recognized certification program.

§ 431.21 Procedures for recognition and withdrawal of recognition of accreditation bodies and certification programs.

(a) *Filing of petition*. Any petition submitted to the Department pursuant to §§ 431.19(a) or 431.20(a), shall be entitled "Petition for Recognition" ("Petition") and must be submitted, in triplicate to the Assistant Secretary for Energy Efficiency and Renewable Energy, U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0121. In accordance with the provisions set forth in 10 CFR 1004.11, any request for confidential treatment of any information contained in such a Petition or in supporting documentation must be accompanied by a copy of the Petition or supporting documentation from which the information claimed to be confidential has been deleted.

(b) *Public notice and solicitation of comments*. DOE shall publish in the **Federal Register** the Petition from which confidential information, as determined by DOE, has been deleted in accordance with 10 CFR 1004.11 and shall solicit comments, data and information on whether the Petition should be granted. The Department

shall also make available for inspection and copying the Petition's supporting documentation from which confidential information, as determined by DOE, has been deleted in accordance with 10 CFR 1004.11. Any person submitting written comments to DOE with respect to a Petition shall also send a copy of such comments to the petitioner.

(c) *Responsive statement by the petitioner*. A petitioner may, within 10 working days of receipt of a copy of any comments submitted in accordance with paragraph (b) of this section, respond to such comments in a written statement submitted to the Assistant Secretary for Energy Efficiency and Renewable Energy. A petitioner may address more than one set of comments in a single responsive statement.

(d) *Public announcement of interim determination and solicitation of comments*. The Assistant Secretary for Energy Efficiency and Renewable Energy shall issue an interim determination on the Petition as soon as is practicable following receipt and review of the Petition and other applicable documents, including, but not limited to, comments and responses to comments. The petitioner shall be notified in writing of the interim determination. DOE shall also publish in the **Federal Register** the interim determination and shall solicit comments, data and information with respect to that interim determination. Written comments and responsive statements may be submitted as provided in paragraphs (b) and (c) of this section.

(e) *Public announcement of final determination*. The Assistant Secretary for Energy Efficiency and Renewable Energy shall as soon as practicable, following receipt and review of comments and responsive statements on the interim determination, publish in the **Federal Register** a notice of final determination on the Petition.

(f) *Additional information*. The Department may, at any time during the recognition process, request additional relevant information or conduct an

investigation concerning the Petition. The Department's determination on a Petition may be based solely on the Petition and supporting documents, or may also be based on such additional information as the Department deems appropriate.

(g) *Withdrawal of recognition—(1) Withdrawal by the Department*. If the Department believes that an accreditation body or certification program that has been recognized under §§ 431.19 or 431.20, respectively, is failing to meet the criteria of paragraph (b) of the section under which it is recognized, the Department will so advise such entity and request that it take appropriate corrective action. The Department will give the entity an opportunity to respond. If after receiving such response, or no response, the Department believes satisfactory correction has not been made, the Department will withdraw its recognition from that entity.

(2) *Voluntary withdrawal*. An accreditation body or certification program may withdraw itself from recognition by the Department by advising the Department in writing of such withdrawal. It must also advise those that use it (for an accreditation body, the testing laboratories, and for a certification organization, the manufacturers) of such withdrawal.

(3) *Notice of withdrawal of recognition*. The Department will publish in the **Federal Register** a notice of any withdrawal of recognition that occurs pursuant to this paragraph.

Energy Conservation Standards

§ 431.25 Energy conservation standards and effective dates.

(a) Each electric motor manufactured (alone or as a component of another piece of equipment) after October 24, 1997, or in the case of an electric motor which requires listing or certification by a nationally recognized safety testing laboratory, after October 24, 1999, shall have a nominal full load efficiency of not less than the following:

Motor horsepower/standard kilowatt equivalent	Nominal full load efficiency					
	Open motors (number of poles)			Enclosed motors (number of poles)		
	6	4	2	6	4	2
1/.75	80.0	82.5	.....	80.0	82.5	75.5
1.5/1.1	84.0	84.0	82.5	85.5	84.0	82.5
2/1.5	85.5	84.0	84.0	86.5	84.0	84.0
3/2.2	86.5	86.5	84.0	87.5	87.5	85.5
5/3.7	87.5	87.5	85.5	87.5	87.5	87.5
7.5/5.5	88.5	88.5	87.5	89.5	89.5	88.5
10/7.5	90.2	89.5	88.5	89.5	89.5	89.5
15/11	90.2	91.0	89.5	90.2	91.0	90.2
20/15	91.0	91.0	90.2	90.2	91.0	90.2

Motor horsepower/standard kilowatt equivalent	Nominal full load efficiency					
	Open motors (number of poles)			Enclosed motors (number of poles)		
	6	4	2	6	4	2
25/18.5	91.7	91.7	91.0	91.7	92.4	91.0
30/22	92.4	92.4	91.0	91.7	92.4	91.0
40/30	93.0	93.0	91.7	93.0	93.0	91.7
50/37	93.0	93.0	92.4	93.0	93.0	92.4
60/45	93.6	93.6	93.0	93.6	93.6	93.0
75/55	93.6	94.1	93.0	93.6	94.1	93.0
100/75	94.1	94.1	93.0	94.1	94.5	93.6
125/90	94.1	94.5	93.6	94.1	94.5	94.5
150/110	94.5	95.0	93.6	95.0	95.0	94.5
200/150	94.5	95.0	94.5	95.0	95.0	95.0

(b) For purposes of determining the required minimum nominal full load efficiency of an electric motor that has a horsepower or kilowatt rating between two horsepower or kilowattages listed consecutively in paragraph (a) of this section, each such motor shall be deemed to have a horsepower or kilowatt rating that is listed in paragraph (a) of this section. The rating that the motor is deemed to have shall be determined as follows:

(1) A horsepower at or above the midpoint between the two consecutive horsepower shall be rounded up to the higher of the two horsepower;

(2) A horsepower below the midpoint between the two consecutive horsepower shall be rounded down to the lower of the two horsepower, or

(3) A kilowatt rating shall be directly converted from kilowatts to horsepower using the formula, 1 kilowatt = (1 / 0.746) horsepower, without calculating beyond three significant decimal places, and the resulting horsepower shall be rounded in accordance with paragraphs (b)(1) or (b)(2) of this section, whichever applies.

(c) This section does not apply to definite purpose motors, special purpose motors, and those motors exempted by the Secretary.

§ 431.26 Preemption of State regulations.

Any State regulation providing for any energy conservation standard, or other requirement with respect to the energy efficiency or energy use, of an electric motor that is not identical to a Federal standard in effect under this subpart is preempted by that standard, except as provided for in Section 345(a) and 327(b) and (c) of the Act.

Labeling

§ 431.30 Applicability of labeling requirements.

The labeling rules in § 431.31, established pursuant to Section 344 of EPCA, 42 U.S.C. 6315, apply only to

electric motors manufactured after October 5, 2000.

§ 431.31 Labeling requirements.

(a) *Electric motor nameplate*—(1) *Required information.* The permanent nameplate of an electric motor for which standards are prescribed in § 431.25 must be marked clearly with the following information:

(i) The motor's nominal full load efficiency (as of the date of manufacture), derived from the motor's average full load efficiency as determined pursuant to this subpart; and

(ii) A Compliance Certification number ("CC number") supplied by DOE to the manufacturer or private labeler, pursuant to § 431.36(f), and applicable to that motor. Such CC number must be on the nameplate of a motor beginning 90 days after either:

(A) The manufacturer or private labeler has received the number upon submitting a Compliance Certification covering that motor, or

(B) The expiration of 21 days from DOE's receipt of a Compliance Certification covering that motor, if the manufacturer or private labeler has not been advised by DOE that the Compliance Certification fails to satisfy § 431.36.

(2) *Display of required information.* All orientation, spacing, type sizes, type faces, and line widths to display this required information shall be the same as or similar to the display of the other performance data on the motor's permanent nameplate. The nominal full load efficiency shall be identified either by the term "Nominal Efficiency" or "Nom. Eff." or by the terms specified in paragraph 12.58.2 of NEMA MG1-1993, (Incorporated by reference, see § 431.15) as for example "NEMA Nom. Eff. _____." The DOE number shall be in the form "CC _____."

(3) *Optional display.* The permanent nameplate of an electric motor, a separate plate, or decalomania, may be

marked with the encircled lower case letters "ee", for example,



or with some comparable designation or logo, if the motor meets the applicable standard prescribed in § 431.25, as determined pursuant to this subpart, and is covered by a Compliance Certification that satisfies § 431.36.

(b) *Disclosure of efficiency information in marketing materials.* (1) The same information that must appear on an electric motor's permanent nameplate pursuant to paragraph (a)(1) of this section, shall be prominently displayed:

(i) On each page of a catalog that lists the motor; and

(ii) In other materials used to market the motor.

(2) The "ee" logo, or other similar logo or designations, may also be used in catalogs and other materials to the same extent they may be used on labels under paragraph (a)(3) of this section.

§ 431.32 Preemption of State regulations.

The provisions of § 431.31 supersede any State regulation to the extent required by Section 327 of the Act. Pursuant to the Act, all State regulations that require the disclosure for any electric motor of information with respect to energy consumption, other than the information required to be disclosed in accordance with this part, are superseded.

Certification

§ 431.35 Applicability of certification requirements.

Section 431.36 sets forth the procedures for manufacturers to certify that electric motors comply with the applicable energy efficiency standards set forth in this subpart.

§ 431.36 Compliance Certification.

(a) *General.* Beginning April 26, 2003, a manufacturer or private labeler shall

not distribute in commerce any basic model of an electric motor which is subject to an energy efficiency standard set forth in this subpart unless it has submitted to the Department a Compliance Certification certifying, in accordance with the provisions of this section, that the basic model meets the requirements of the applicable standard. The representations in the Compliance Certification must be based upon the basic model's energy efficiency as determined in accordance with the applicable requirements of this subpart. This means, in part, that either:

(1) The representations as to the basic model must be based on use of a certification organization; or

(2) Any testing of the basic model on which the representations are based must be conducted at an accredited laboratory.

(b) *Required contents*—(1) *General representations*. Each Compliance Certification must certify that:

(i) The nominal full load efficiency for each basic model of electric motor distributed is not less than the minimum nominal full load efficiency required for that motor by § 431.25;

(ii) All required determinations on which the Compliance Certification is based were made in compliance with the applicable requirements prescribed in this subpart;

(iii) All information reported in the Compliance Certification is true, accurate, and complete; and

(iv) The manufacturer or private labeler is aware of the penalties associated with violations of the Act and the regulations thereunder, and of 18 U.S.C. 1001 which prohibits knowingly making false statements to the Federal Government.

(2) *Specific data*. (i) For each rating of electric motor (as the term "rating" is defined in the definition of basic model) which a manufacturer or private labeler distributes, the Compliance Certification must report the nominal full load efficiency, determined pursuant to §§ 431.16 and 431.17, of the least efficient basic model within that rating.

(ii) The Compliance Certification must identify the basic models on which actual testing has been performed to meet the requirements of § 431.17.

(iii) The format for a Compliance Certification is set forth in appendix C of this subpart.

(c) *Optional contents*. In any Compliance Certification, a manufacturer or private labeler may at its option request that DOE provide it with a unique Compliance Certification number ("CC number") for any brand name, trademark or other label name under which the manufacturer or

private labeler distributes electric motors covered by the Certification. Such a Compliance Certification must also identify all other names, if any, under which the manufacturer or private labeler distributes electric motors, and to which the request does not apply.

(d) *Signature and submission*. A manufacturer or private labeler must submit the Compliance Certification either on its own behalf, signed by a corporate officer of the company, or through a third party (for example, a trade association or other authorized representative) acting on its behalf. Where a third party is used, the Compliance Certification must identify the official of the manufacturer or private labeler who authorized the third party to make representations on the company's behalf, and must be signed by a corporate official of the third party. The Compliance Certification must be submitted to the Department by certified mail, to Department of Energy, Assistant Secretary for Energy Efficiency and Renewable Energy, Building Technologies (EE-2J), Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0121.

(e) *New basic models*. For electric motors, a Compliance Certification must be submitted for a new basic model only if the manufacturer or private labeler has not previously submitted to DOE a Compliance Certification, that meets the requirements of this section, for a basic model that has the same rating as the new basic model, and that has a lower nominal full load efficiency than the new basic model.

(f) *Response to Compliance Certification; Compliance Certification Number (CC number)*—(1) DOE processing of Certification. Promptly upon receipt of a Compliance Certification, the Department will determine whether the document contains all of the elements required by this section, and may, in its discretion, determine whether all or part of the information provided in the document is accurate. The Department will then advise the submitting party in writing either that the Compliance Certification does not satisfy the requirements of this section, in which case the document will be returned, or that the Compliance Certification satisfies this section. The Department will also advise the submitting party of the basis for its determination.

(2) *Issuance of CC number(s)*. (i) Initial Compliance Certification. When DOE advises that the initial Compliance Certification submitted by or on behalf of a manufacturer or private labeler is acceptable, either:

(A) DOE will provide a single unique CC number, "CC _____," to the manufacturer or private labeler, and such CC number shall be applicable to all electric motors distributed by the manufacturer or private labeler, or

(B) When required by paragraph (f)(3) of this section, DOE will provide more than one CC number to the manufacturer or private labeler.

(ii) Subsequent Compliance Certification. When DOE advises that any other Compliance Certification is acceptable, it will provide a unique CC number for any brand name, trademark or other name when required by paragraph (f)(3) of this section.

(iii) When DOE declines to provide a CC number as requested by a manufacturer or private labeler in accordance with § 431.36(c), DOE will advise the requester of the reasons for such refusal.

(3) *Issuance of two or more CC numbers*. (i) DOE will provide a unique CC number for each brand name, trademark or other label name for which a manufacturer or private labeler requests such a number in accordance with § 431.36(c), except as follows. DOE will not provide a CC number for any brand name, trademark or other label name

(A) For which DOE has previously provided a CC number, or

(B) That duplicates or overlaps with other names under which the manufacturer or private labeler sells electric motors.

(ii) Once DOE has provided a CC number for a particular name, that shall be the only CC number applicable to all electric motors distributed by the manufacturer or private labeler under that name.

(iii) If the Compliance Certification in which a manufacturer or private labeler requests a CC number is the initial Compliance Certification submitted by it or on its behalf, and it distributes electric motors not covered by the CC number(s) DOE provides in response to the request(s), DOE will also provide a unique CC number that shall be applicable to all of these other motors.

Appendix A to Subpart B of 10 CFR Part 431, Policy Statement for Electric Motors Covered Under the Energy Policy and Conservation Act

This is a reprint of a policy statement which was published on November 5, 1997 at 62 FR 59978.

Policy Statement for Electric Motors Covered Under the Energy Policy and Conservation Act

I. Introduction

The Energy Policy and Conservation Act (EPCA), 42 U.S.C. 6311, *et seq.*, establishes

energy efficiency standards and test procedures for certain commercial and industrial electric motors manufactured (alone or as a component of another piece of equipment) after October 24, 1997, or, in the case of an electric motor which requires listing or certification by a nationally recognized safety testing laboratory, after October 24, 1999.¹ EPCA also directs the Department of Energy (DOE or Department) to implement the statutory test procedures prescribed for motors, and to require efficiency labeling of motors and certification that covered motors comply with the standards.

Section 340(13)(A) of EPCA defines the term "electric motor" based essentially on the construction and rating system in the National Electrical Manufacturers Association (NEMA) Standards Publication MG1. Sections 340(13)(B) and (c) of EPCA define the terms "definite purpose motor" and "special purpose motor," respectively, for which the statute prescribes no efficiency standards.

In its proposed rule to implement the EPCA provisions that apply to motors (61 FR 60440, November 27, 1996), DOE has proposed to clarify the statutory definition of "electric motor," to mean a machine which converts electrical power into rotational mechanical power and which: (1) Is a general purpose motor, including motors with explosion-proof construction²; (2) is a single speed, induction motor; (3) is rated for continuous duty operation, or is rated duty type S-1 (IEC)³; (4) contains a squirrel-cage or cage (IEC) rotor; (5) has foot-mounting, including foot-mounting with flanges or detachable feet; (6) is built in accordance with NEMA T-frame dimensions, or IEC metric equivalents (IEC); (7) has performance in accordance with NEMA Design A or B characteristics, or equivalent designs such as IEC Design N (IEC); and (8) operates on polyphase alternating current 60-Hertz sinusoidal power, and is (i) rated 230 volts or 460 volts, or both, including any motor that is rated at multi-voltages that include 230 volts or 460 volts, or (ii) can be operated on 230 volts or 460 volts, or both.

Notwithstanding the clarification provided in the proposed rule, there still appears to be uncertainty as to which motors EPCA covers. It is widely understood that the statute covers "general purpose" motors that are manufactured for a variety of applications,

and that meet EPCA's definition of "electric motor." Many modifications, however, can be made to such generic motors. Motor manufacturers have expressed concern as to precisely which motors with such modifications are covered under the statute, and as to whether manufacturers will be able to comply with the statute by October 25, 1997 with respect to all of these covered motors. Consequently, motor manufacturers have requested that the Department provide additional guidance as to which types of motors are "electric motors," "definite purpose motors," and "special purpose motors" under EPCA. The policy statement that follows is based upon input from motor manufacturers and energy efficiency advocates, and provides such guidance.

II. Guidelines for Determining Whether a Motor Is Covered by EPCA

A. General

EPCA specifies minimum nominal full-load energy efficiency standards for 1 to 200 horsepower electric motors, and, to measure compliance with those standards, prescribes use of the test procedures in NEMA Standard MG1 and Institute of Electrical and Electronics Engineers, Inc., (IEEE) Standard 112. In DOE's view, as stated in Assistant Secretary Ervin's letter of May 9, 1996, to NEMA's Malcolm O'Hagan, until DOE's regulations become effective, manufacturers can establish compliance with these EPCA requirements through use of competent and reliable procedures or methods that give reasonable assurance of such compliance. So long as these criteria are met, manufacturers may conduct required testing in their own laboratories or in independent laboratories, and may employ alternative correlation methods (in lieu of actual testing) for some motors. Manufacturers may also establish their compliance with EPCA standards and test procedures through use of third party certification or verification programs such as those recognized by Natural Resources Canada. Labeling and certification requirements will become effective only after DOE has promulgated a final rule prescribing such requirements.

Motors with features or characteristics that do not meet the statutory definition of "electric motor" are not covered, and therefore are not required to meet EPCA requirements. Examples include motors without feet and without provisions for feet, and variable speed motors operated on a variable frequency power supply. Similarly, multi speed motors and variable speed motors, such as inverter duty motors, are not covered equipment, based on their intrinsic design for use at variable speeds. However, NEMA Design A or B motors that are single speed, meet all other criteria under the definitions in EPCA for covered equipment, and can be used with an inverter in variable speed applications as an additional feature, are covered equipment under EPCA. In other words, being suitable for use on an inverter by itself does not exempt a motor from EPCA requirements.

Section 340(13)(F) of EPCA, defines a "small electric motor" as "a NEMA general purpose alternating current single-speed induction motor, built in a two-digit frame

number series in accordance with NEMA Standards Publication MG 1-1987." Section 346 of EPCA requires DOE to prescribe testing requirements and efficiency standards only for those small electric motors for which the Secretary determines that standards are warranted. The Department has not yet made such a determination.

B. Electrical Features

As noted above, the Department's proposed definition of "electric motor" provides in part that it is a motor that "operates on polyphase alternating current 60-Hertz sinusoidal power, and * * * can be operated on 230 volts or 460 volts, or both." In DOE's view, "can be operated" implicitly means that the motor can be operated successfully. According to NEMA Standards Publication MG1-1993, paragraph 12.44, "Variations from Rated Voltage and Rated Frequency," alternating-current motors must operate successfully under running conditions at rated load with a variation in the voltage or the frequency up to the following: Plus or minus 10 percent of rated voltage, with rated frequency for induction motors;⁴ plus or minus 5 percent of rated frequency, with rated voltage; and a combined variation in voltage and frequency of 10 percent (sum of absolute values) of the rated values, provided the frequency variation does not exceed plus or minus 5 percent of rated frequency. DOE believes that, for purposes of determining whether a motor meets EPCA's definition of "electric motor," these criteria should be used to determine when a motor that is not rated at 230 or 460 volts or 60 Hertz can be operated at such voltage and frequency.⁵

NEMA Standards Publication MG1 categorizes electrical modifications to motors according to performance characteristics that include locked rotor torque, breakdown torque, pull-up torque, locked rotor current, and slip at rated load, and assigns design letters, such as Design A, B, C, D, or E, to identify various combinations of such electrical performance characteristics. Under Section 340(13)(A) of EPCA, electric motors subject to EPCA efficiency requirements include only motors that fall within NEMA "Design A and B * * * as defined in [NEMA] Standards Publication MG1-1987." As to locked rotor torque, for example, MG1 specifies a minimum performance value for a Design A or B motor of a given speed and

⁴ For example, a motor that is rated at 220 volts should operate successfully on 230 volts, since $220 + .10(220) = 242$ volts. A 208 volt motor, however, would not be expected to operate successfully on 230 volts, since $208 + .10(208) = 228.8$ volts.

⁵ The Department understands that a motor that can operate at such voltage and frequency, based on variations defined for successful operation, will not necessarily perform in accordance with the industry standards established for operation at the motor's rated voltage and frequency. In addition, under the test procedures prescribed by EPCA, motors are to be tested at their rated values. Therefore, in DOE's view a motor that is not rated for 230 or 460 volts, or 60 Hertz, but that can be successfully operated at these levels, must meet the energy efficiency requirements at its rated voltage(s) and frequency. DOE also notes that when a motor is rated to include a wider voltage range that includes 230/460 volts, the motor should meet the energy efficiency requirements at 230 volts or 460 volts.

¹ The term "manufacture" means "to manufacture, produce, assemble or import." EPCA § 321(10). Thus, the standards apply to motors produced, assembled, imported or manufactured after these statutory deadlines.

² Section 342(b)(1) of EPCA recognizes that EPCA's efficiency standards cover "motors which require listing or certification by a nationally recognized safety testing laboratory." This applies, for example, to explosion-proof motors which are otherwise general purpose motors.

³ Terms followed by the parenthetical "IEC" are referred to in the International Electrotechnical Commission (IEC) Standard 34-1. Such terms are included in DOE's proposed definition of "electric motor" because DOE believes EPCA's efficiency requirements apply to metric system motors that conform to IEC Standard 34, and that are identical or equivalent to motors constructed in accordance with NEMA MG1 and covered by the statute.

horsepower, and somewhat higher minimum values for Design C and D motors of the same speed and horsepower. The Department understands that, under MG1, the industry classifies a motor as Design A or B if it has a locked rotor torque at or above the minimum for A and B but below the minimum for Design C, so long as it otherwise meets the criteria for Design A or B. Therefore, in the Department's view, such a motor is covered by EPCA's requirements for electric motors. By contrast a motor that meets or exceeds the minimum locked rotor torque for Design C or D is not covered by EPCA. In sum, if a motor has electrical modifications that meet Design A or B performance requirements it is covered by EPCA, and if its characteristics meet Design C, D or E it is not covered.

C. Size

Motors designed for use on a particular type of application which are in a frame size that is one or more frame *series* larger than the frame size assigned to that rating by sections 1.2 and 1.3 of NEMA Standards Publication MG 13-1984 (R1990), "Frame Assignments for Alternating Current Integral-Horsepower Induction Motors," are not, in the Department's view, usable in most general purpose applications. This is due to the physical size increase associated with a frame series change. A frame series is defined as the first two digits of the frame size designation. For example, 324T and 326T are both in the same frame series, while 364T is in the next larger frame series. Hence, in the Department's view, a motor that is of a larger frame series than normally assigned to that standard rating of motor is not covered by EPCA. A physically larger motor within the same frame series would be covered, however, because it would be usable in most general purpose applications.

Motors built in a T-frame series or a T-frame size smaller than that assigned by MG 13-1984 (R1990) are also considered usable in most general purpose applications. This is because simple modifications can generally be made to fit a smaller motor in place of a motor with a larger frame size assigned in conformity with NEMA MG 13. Therefore, DOE believes that such smaller motors are covered by EPCA.

D. Motors With Seals

Some electric motors have seals to prevent ingress of water, dust, oil, and other foreign materials into the motor. DOE understands that, typically, a manufacturer will add seals to a motor that it manufactures, so that it will sell two motors that are identical except that one has seals and the other does not. In such a situation, if the motor without seals is "general purpose" and covered by EPCA's efficiency requirements, then the motor with seals will also be covered because it can still be used in most general purpose applications. DOE understands, however, that manufacturers previously believed motors with seals were not covered under EPCA, in part because IEEE Standard 112, "Test Procedure for Polyphase Induction Motors and Generators," prescribed by EPCA, does not address how to test a motor with seals installed.

The efficiency rating of such a motor, if determined with seals installed and when the motor is new, apparently would significantly understate the efficiency of the motor as operated. New seals are stiff, and provide friction that is absent after their initial break-in period. DOE understands that, after this initial period, the efficiency ratings determined for the same motor with and without seals would be virtually identical. To construe EPCA, therefore, as requiring such separate efficiency determinations would impose an unnecessary burden on manufacturers.

In light of the foregoing, the Department believes that EPCA generally permits the efficiency of a motor with seals to be determined without the seals installed. Furthermore, notwithstanding the prior belief that such motors are not covered by EPCA, use of this approach to determining efficiency will enable manufacturers to meet EPCA's standards with respect to covered motors with seals by the date the standards go into effect on October 25, 1997.

III. Discussion of How DOE Would Apply EPCA Definitions, Using the Foregoing Guidelines

Using the foregoing guidelines, the attached matrix provides DOE's view as to which motors with common features are covered by EPCA. Because manufacturers produce many basic models that have many modifications of generic general purpose motors, the Department does not represent that the matrix is all-inclusive. Rather it is a set of examples demonstrating how DOE would apply EPCA definitions, as construed by the above guidelines, to various motor types. By extension of these examples, most motors currently in production, or to be designed in the future, could probably be classified. The matrix classifies motors into five categories, which are discussed in the following passages.

Category I—For "electric motors" (manufactured alone or as a component of another piece of equipment) in Category I, DOE will enforce EPCA efficiency standards and test procedures beginning on October 25, 1997.

The Department understands that some motors essentially are relatively simple modifications of generic general purpose motors. Modifications could consist, for example, of minor changes such as the addition of temperature sensors or a heater, the addition of a shaft extension and a brake disk from a kit, or changes in exterior features such as the motor housing. Such motors can still be used for most general purpose applications, and the modifications have little or no effect on motor performance. Nor do the modifications affect energy efficiency.

Category II—For certain motors that are "definite purpose" according to present industry practice, but that can be used in most general purpose applications, DOE will generally enforce EPCA efficiency standards and test procedures beginning no later than October 25, 1999.

General Statement

EPCA does not prescribe standards and test procedures for "definite purpose motors."

Section 340(13)(B) of EPCA defines the term "definite purpose motor" as "any motor designed in standard ratings with standard operating characteristics or standard mechanical construction for use under service conditions other than usual or for use on a particular type of application *and which cannot be used in most general purpose applications.*" [Emphasis added.] Except, significantly, for exclusion of the italicized language, the industry definition of "definite purpose motor," set forth in NEMA MG1, is identical to the foregoing.

Category II consists of electric motors with horsepower ratings that fall between the horsepower ratings in Section 342(b)(1) of EPCA, thermally protected motors, and motors with roller bearings. As with motors in Category I, these motors are essentially modifications of generic general purpose motors. Generally, however, the modifications contained in these motors are more extensive and complex than the modifications in Category I motors. These Category II motors have been considered "definite purpose" in common industry parlance, but are covered equipment under EPCA because they can be used in most general purpose applications.

According to statements provided during the January 15, 1997, Public Hearing, Tr. pgs. 238-239, Category II motors were, until recently, viewed by most manufacturers as definite purpose motors, consistent with the industry definition that did not contain the clause "which cannot be used in most general purpose applications." Hence, DOE understands that many manufacturers assumed these motors were not subject to EPCA's efficiency standards. During the period prior and subsequent to the hearing, discussions among manufacturers resulted in a new understanding that such motors are general purpose under EPCA, since they *can* be used in most general purpose applications. Thus, the industry only recently recognized that such motors are covered under EPCA. Although the statutory definition adopted in 1992 contained the above-quoted definition of "definite purpose," the delay in issuing regulations which embody this definition may have contributed to industry's delay in recognizing that these motors are covered.

The Department understands that redesign and testing these motors in order to meet the efficiency standards in the statute may require a substantial amount of time. Given the recent recognition that they are covered, it is not realistic to expect these motors will be able to comply by October 25, 1997. A substantial period beyond that will be required. Moreover, the Department believes different manufacturers will need to take different approaches to achieving compliance with respect to these motors, and that, for a particular type of motor, some manufacturers will be able to comply sooner than others. Thus, the Department intends to refrain from taking enforcement action for two years, until October 25, 1999, with respect to motors with horsepower ratings that fall between the horsepower ratings in Section 342(b)(1) of EPCA, thermally protected motors, and motors with roller bearings. Manufacturers are encouraged, however, to manufacture

these motors in compliance with EPCA at the earliest possible date.

The following sets forth in greater detail, for each of these types of motors, the basis for the Department's policy to refrain from enforcement for two years. Also set forth is additional explanation of the Department's understanding as to why manufacturers previously believed intermediate horsepower motors were not covered by EPCA.

Intermediate Horsepower Ratings

Section 342(b)(1) of EPCA specifies efficiency standards for electric motors with 19 specific horsepower ratings, ranging from one through 200 horsepower. Each is a preferred or standardized horsepower rating as reflected in the table in NEMA Standards Publication MG1-1993, paragraph 10.32.4, *Polyphase Medium Induction Motors*. However, an "electric motor," as defined by EPCA, can be built at other horsepower ratings, such as 6 horsepower, 65 horsepower, or 175 horsepower. Such motors, rated at horsepower levels between any two adjacent horsepower ratings identified in Section 342(b)(1) of EPCA will be referred to as "intermediate horsepower motors." In the Department's view, efficiency standards apply to every motor that has a rating from one through 200 horsepower (or kilowatt equivalents), and that otherwise meets the criteria for an "electric motor" under EPCA, including an electric motor with an intermediate horsepower (or kW) rating.

To date, these motors have typically been designed in conjunction with and supplied to a specific customer to fulfill certain performance and design requirements of a particular application, as for example to run a certain type of equipment. See the discussion in Section IV below on "original equipment" and "original equipment manufacturers." In large part for these reasons, manufacturers believed intermediate horsepower motors to be "definite purpose motors" that were not covered by EPCA. Despite their specific uses, however, these motors are electric motors under EPCA when they are capable of being used in most general purpose applications.

Features of a motor that are directly related to its horsepower rating include its physical size, and the ratings of its controller and protective devices. These aspects of a 175 horsepower motor, for example, which is an intermediate horsepower motor, must be appropriate to that horsepower, and would generally differ from the same aspects of 150 and 200 horsepower motors, the two standard horsepower ratings closest to 175. To re-design an existing intermediate horsepower electric motor so that it complies with EPCA could involve all of these elements of a motor's design. For example, the addition of material necessary to achieve EPCA's prescribed level of efficiency could cause the size of the motor to increase. The addition of magnetic material would invite higher inrush current that could cause an incorrectly sized motor controller to malfunction, or the circuit breaker with a standard rating to trip unnecessarily, or both. The Department believes motor manufacturers will require a substantial amount of time to redesign and retest each

intermediate horsepower electric motor they manufacture.

To the extent such intermediate horsepower electric motors become unavailable because motor manufacturers have recognized only recently that they are covered by EPCA, equipment in which they are incorporated would temporarily become unavailable also. Moreover, re-design of such a motor to comply with EPCA could cause changes in the motor that require re-design of the equipment in which the motor is used. For example, if an intermediate horsepower electric motor becomes larger, it might no longer fit in the equipment for which it was designed. In such instances, the equipment would have to be re-designed. Because these motors were previously thought not to be covered, equipment manufacturers may not have had sufficient lead time to make the necessary changes to the equipment without interrupting its production.

With respect to intermediate horsepower motors, the Department intends to refrain from enforcing EPCA for a period of 24 months only as to such motor designs that were being manufactured prior to the date this Policy Statement was issued. The Department is concerned that small adjustments could be made to the horsepower rating of an existing electric motor, in an effort to delay compliance with EPCA, if it delayed enforcement as to all intermediate horsepower motors produced during the 24 month period. For example, a 50 horsepower motor that has a service factor of 1.15 could be renameplated as a 57½ horsepower motor that has a 1.0 service factor. By making this delay in enforcement applicable only to pre-existing designs of intermediate horsepower motors, the Department believes it has made adequate provision for the manufacture of bona fide intermediate horsepower motor designs that cannot be changed to be in compliance with EPCA by October 25, 1997.

Thermally Protected Motors

The Department understands that in order to redesign a thermally protected motor to improve its efficiency so that it complies with EPCA, various changes in the windings must be made which will require the thermal protector to be re-selected. Such devices sense the inrush and running current of the motor, as well as the operating temperature. Any changes to a motor that affect these characteristics will prevent the protector from operating correctly. When a new protector is selected, the motor must be tested to verify proper operation of the device in the motor. The motor manufacturer would test the locked rotor and overload conditions, which could take several days, and the results may dictate that a second selection is needed with additional testing. When the manufacturer has finished testing, typically the manufacturer will have a third party conduct additional testing. This testing may include cycling the motor in a locked-rotor condition to verify that the protector functions properly. This testing may take days or even weeks to perform for a particular model of motor.

Since it was only recently recognized by industry that these motors are covered by EPCA, in the Department's view the total

testing program makes it impossible for manufacturers to comply with the EPCA efficiency levels in thermally protected motors by October 25, 1997, especially since each different motor winding must be tested and motor winding/thermal protector combinations number in the thousands.

Motors With Roller Bearings

Motors with roller bearings fit within the definition of electric motor under the statute. However, because the IEEE Standard 112 Test Method B does not provide measures to test motors with roller bearings installed, manufacturers mistakenly believed such motors were not covered. Under IEEE Standard 112, a motor with roller bearings could only be tested for efficiency with the roller bearings removed and standard ball bearings installed as temporary substitutes. Then on the basis of the energy efficiency information gained from that test, the manufacturer may need to redesign the motor in order to comply with the statute. In this situation, the Department understands that testing, redesigning, and retesting lines of motors with roller bearings, to establish compliance, would be difficult and time consuming.

Categories III, IV and V—Motors not within EPCA's definition of "electric motor," and not covered by EPCA.

Close-Coupled Pump Motors

NEMA Standards Publication MG1-1993, with revisions one through three, Part 18, "Definite-Purpose Machines," defines "a face-mounting close-coupled pump motor" as "a medium alternating-current squirrel-cage induction open or totally enclosed motor, with or without feet, having a shaft suitable for mounting an impeller and sealing device." Paragraphs MG1-18.601-18.614 specify its performance, face and shaft mounting dimensions, and frame assignments that replace the suffix letters T and TS with the suffix letters JM and JP.

The Department understands that such motors are designed in standard ratings with standard operating characteristics for use in certain close-coupled pumps and pumping applications, but cannot be used in non-pumping applications, such as, for example, conveyors. Consequently, the Department believes close-coupled pump motors are definite-purpose motors not covered by EPCA. However, a motor that meets EPCA's definition of "electric motor," and which can be coupled to a pump, for example by means of a C-face or D-flange end shield, as depicted in NEMA Standards Publication MG1, Part 4, "Dimensions, Tolerances, and Mounting," is covered.

Totally-Enclosed Non-Ventilated (TENV) and Totally-Enclosed Air-Over (TEAO) Motors

A motor designated in NEMA MG1-1993, paragraph MG1-1.26.1, as "totally-enclosed non-ventilated (IP54, IC410)"⁶ is "not

⁶ IP refers to the IEC Standard 34-5: Classification of degrees of protection provided by enclosures for rotating machines. IC refers to the IEC Standard 34-6: Methods of cooling rotating machinery. The IP and IC codes are referenced in the NEMA designations for TENV and TEAO motors in MG1-1993 Part 1, "Classification According to Environmental Protection and Methods of Cooling,"

equipped for cooling by means external to the enclosing parts." This means that the motor, when properly applied, does not require the use of any additional means of cooling installed external to the motor enclosure. The TENV motor is cooled by natural conduction and natural convection of the motor heat into the surrounding environment. As stated in NEMA MG1-1993, Suggested Standard for Future Design, paragraph MG1-1.26.1a, a TENV motor "is only equipped for cooling by free convection." The general requirement for the installation of the TENV motor is that it not be placed in a restricted space that would inhibit this natural dissipation of the motor heat. Most general purpose applications use motors which include a means for forcing air flow through or around the motor and usually through the enclosed space and, therefore, can be used in spaces that are more restrictive than those required for TENV motors. Placing a TENV motor in such common restricted areas is likely to cause the motor to overheat. The TENV motor may also be larger than the motors used in most general purpose applications, and would take up more of the available space, thus reducing the size of the open area surrounding the motor. Installation of a TENV motor might require, therefore, an additional means of ventilation to continually exchange the ambient around the motor.

A motor designated in NEMA MG1-1993 as "totally-enclosed air-over (IP54, IC417)" is intended to be cooled by ventilation means external to (*i.e.*, separate and independent from) the motor, such as a fan. The motor must be provided with the additional ventilation to prevent it from overheating.

Consequently, neither the TENV motor nor the TEAO motor would be suitable for most general purpose applications, and, DOE believes they are definite-purpose motors not covered by EPCA.

Integral Gearmotors

An "integral gearmotor" is an assembly of a motor and a specific gear drive or assembly of gears, such as a gear reducer, as a unified package. The motor portion of an integral gearmotor is not necessarily a complete motor, since the end bracket or mounting flange of the motor portion is also part of the gear assembly and cannot be operated when separated from the complete gear assembly. Typically, an integral gearmotor is not manufactured to standard T-frame dimensions specified in NEMA MG1. Moreover, neither the motor portion, nor the entire integral gearmotor, are capable of being used in most general purpose applications without significant modifications. An integral gearmotor is also designed for a specific purpose and can have unique performance characteristics, physical dimensions, and casing, flange and shafting configurations. Consequently, integral gearmotors are outside the scope of the EPCA definition of "electric motor" and are not covered under EPCA.

as a Suggested Standard for Future Design, since the TENV and TEAO motors conform to IEC Standards. Details of protection (IP) and methods of cooling (IC) are defined in MG1 Part 5 and Part 6, respectively.

However, an "electric motor," as defined by EPCA, which is connected to a stand alone mechanical gear drive or an assembly of gears, such as a gear reducer connected by direct coupling, belts, bolts, a kit, or other means, is covered equipment under EPCA.

IV. Electric Motors That Are Components in Certain Equipment

The primary function of an electric motor is to convert electrical energy to mechanical energy which then directly drives machinery such as pumps, fans, or compressors. Thus, an electric motor is always connected to a driven machine or apparatus. Typically the motor is incorporated into a finished product such as an air conditioner, a refrigerator, a machine tool, food processing equipment, or other commercial or industrial machinery. These products are commonly known as "original equipment" or "end-use equipment," and are manufactured by firms known as "original equipment manufacturers" (OEMs).

Many types of motors used in original equipment are covered under EPCA. As noted above, EPCA prescribes efficiency standards to be met by all covered electric motors manufactured after October 24, 1997, except that covered motors which require listing or certification by a nationally recognized safety testing laboratory need not meet the standards until after October 24, 1999. Thus, for motors that must comply after October 24, 1997, once inventories of motors manufactured before the deadline have been exhausted, only complying motors would be available for purchase and use by OEMs in manufacturing original equipment. Any non-complying motors previously included in such equipment would no longer be available.

The physical, and sometimes operational, characteristics of motors that meet EPCA efficiency standards normally differ from the characteristics of comparable existing motors that do not meet those standards. In part because of such differences, the Department is aware of two types of situations where strict application of the October 24, 1997, deadline could temporarily prevent the manufacture of, and remove from the marketplace, currently available original equipment.

One such situation is where an original equipment manufacturer uses an electric motor as a component in end-use equipment that requires listing or certification by a nationally recognized safety testing laboratory, even though the motor itself does not require listing or certification. In some of these instances, the file for listing or certification specifies the particular motor to be used. No substitution could be made for the motor without review and approval of the new motor and the entire system by the safety testing laboratory. Consequently, a specified motor that does not meet EPCA standards could not be replaced by a complying motor without such review and approval.

This re-listing or re-certification process is subject to substantial variation from one piece of original equipment to the next. For some equipment, it could be a simple paperwork transaction between the safety

listing or certification organization and the OEM, taking approximately four to eight weeks to complete. But the process could raise more complex system issues involving redesign of the motor or piece of equipment, or both, and actual testing to assure that safety and performance criteria are met, and could take several months to complete. The completion time could also vary depending on the response time of the particular safety approval agency. Moreover, in the period immediately after October 24, the Department believes wholesale changes could occur in equipment lines when OEMs must begin using motors that comply with EPCA. These changes are likely to be concentrated in the period immediately after EPCA goes into effect on October 24, and if many OEMs seek to re-list or re-certify equipment at the same time, substantial delays in the review and approval process at the safety approval agencies could occur. For these reasons, the Department is concerned that certain end-user equipment that requires safety listing or certification could become unavailable in the marketplace, because an electric motor specifically identified in a listing or certification is covered by EPCA and will become unavailable, and the steps have not been completed to obtain safety approval of the equipment when manufactured with a complying motor.

Second, a situation could exist where an electric motor covered by EPCA is constructed in a T-frame series or T-frame size that is smaller (but still standard) than that assigned by NEMA Standards Publication MG 13-1984 (R1990), sections 1.2 and 1.3, in order to fit into a restricted mounting space that is within certain end-use equipment. (Motors in IEC metric frame sizes and kilowatt ratings could also be involved in this type of situation.) In such cases, the manufacturer of the end-use equipment might need to redesign the equipment containing the mounting space to accommodate a larger motor that complies with EPCA. These circumstances as well could result in certain currently available equipment becoming temporarily unavailable in the market, since the smaller size motor would become unavailable before the original equipment had been re-designed to accommodate the larger, complying motor.

The Department understands that many motor manufacturers and OEMs became aware only recently that the electric motors addressed in the preceding paragraphs were covered by EPCA. This is largely for the same reasons, discussed above, that EPCA coverage of Category II motors was only recently recognized. In addition, the Department understands that some motor manufacturers and original equipment manufacturers confused motors that themselves require safety listing or certification, which need not comply until October 25, 1999, with motors that, while not subject to such requirements, are included in original equipment that requires safety listing or certification. Consequently, motor manufacturers and original equipment manufacturers took insufficient action to assure that appropriate complying motors would be available for the original equipment involved, and that the equipment could accommodate such motors.

OEMs involved in such situations may often be unable to switch to motors that meet EPCA standards in the period immediately following October 24. To mitigate any hardship to purchasers of the original equipment, the Department intends to refrain from enforcing EPCA in certain limited circumstances, under the conditions described below.

Where a particular electric motor is specified in an approved safety listing or certification for a piece of original equipment, and the motor does not meet the applicable efficiency standard in EPCA, the Department's policy will be as follows: For the period of time necessary for the OEM to obtain a revised safety listing or certification for that piece of equipment, with a motor specified that complies with EPCA, but in no event beyond October 24, 1999, the Department would refrain from taking enforcement action under EPCA with respect to manufacture of the motor for installation in such original equipment. This policy would apply only where the motor has been manufactured and specified in the approved safety listing or certification prior to October 25, 1997.

Where a particular electric motor is used in a piece of original equipment and manufactured in a smaller than assigned frame size or series, and the motor does not meet the applicable efficiency standard in EPCA, the Department's policy will be as follows: For the period of time necessary for the OEM to re-design the piece of equipment to accommodate a motor that complies with

EPCA, but in no event beyond October 24, 1999, the Department would refrain from enforcing the standard with respect to manufacture of the motor for installation in such original equipment. This policy would apply only to a model of motor that has been manufactured and included in the original equipment prior to October 25, 1997.

To allow the Department to monitor application of the policy set forth in the prior two paragraphs, the Department needs to be informed as to the motors being manufactured under the policy. Therefore, each motor manufacturer and OEM should jointly notify the Department as to each motor they will be manufacturing and using, respectively, after October 24, 1997, in the belief that it is covered by the policy. The notification should set forth: (1) The name of the motor manufacturer, and a description of the motor by type, model number, and date of design or production; (2) the name of the original equipment manufacturer, and a description of the application where the motor is to be used; (3) the safety listing or safety certification organization and the existing listing or certification file or document number for which re-listing or re-certification will be requested, if applicable; (4) the reason and amount of time required for continued production of the motor, with a statement that a substitute electric motor that complies with EPCA could not be obtained by an earlier date; and (5) the name, address, and telephone number of the person to contact for further information. The joint request should be signed by a responsible

official of each requesting company, and sent to: U.S. Department of Energy, Assistant Secretary for Energy Efficiency and Renewable Energy, Office of Building Research and Standards, EE-41, Forrestal Building, 1000 Independence Avenue, SW., Room 1J-018, Washington, DC 20585-0121. The Department does not intend to apply this policy to any motor for which it does not receive such a notification. Moreover, the Department may use the notification, and make further inquiries, to be sure motors listed in the notification meet the criteria for application of the policy.

This part of the Policy Statement will not apply to a motor in Category II, discussed above in Section III. Because up to 24 months is contemplated for compliance by Category II motors, the Department believes any issues that might warrant a delay of enforcement for such motors can be addressed during that time period.

V. Further Information

The Department intends to incorporate this Policy Statement into an appendix to its final rule to implement the EPCA provisions that apply to motors. Any comments or suggestions with respect to this Policy Statement, as well as requests for further information, should be addressed to the Director, Building Technologies, EE-2J, U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0121.

EXAMPLES OF MANY COMMON FEATURES OR MOTOR MODIFICATIONS TO ILLUSTRATE HOW THE EPCA DEFINITIONS AND DOE GUIDELINES WOULD BE APPLIED TO MOTOR CATEGORIES: GENERAL PURPOSE; DEFINITE PURPOSE; AND SPECIAL PURPOSE

Motor modification	Category ¹					Explanation
	I	II	III	IV	V	
A. Electrical Modifications						
1 Altitude	X	.....	.....	.....	.....	General purpose up to a frame series change larger.
2 Ambient	X	.....	.....	.....	.....	General purpose up to a frame series change larger.
3 Multispeed .....	.....	.....	.....	.....	X	EPCA applies to single speed only.
4 Special Leads	X	.....	.....	.....	.....
5 Special Insulation	X	.....	.....	.....	.....
6 Encapsulation .....	.....	.....	.....	X	.....	Due to special construction.
7 High Service Factor	X	.....	.....	.....	.....	General purpose up to a frame series change larger.
8 Space Heaters	X	.....	.....	.....	.....
9 Wye Delta Start	X	.....	.....	.....	.....
10 Part Winding Start	X	.....	.....	.....	.....
11 Temperature Rise	X	.....	.....	.....	.....	General purpose up to a frame series change larger.
12 Thermally Protected .....	.....	X	.....	.....	.....	Requires retesting and third party agency approval.
13 Thermostat/Thermistor	X	.....	.....	.....	.....
14 Special Voltages .....	.....	.....	.....	.....	X	EPCA applies to motors operating on 230/460 voltages at 60 Hertz.
15 Intermediate Horsepowers .....	.....	X	.....	.....	.....	Round horsepower according to 10 CFR 431.42 for efficiency.
16 Frequency .....	.....	.....	.....	.....	X	EPCA applies to motors operating on 230/460 voltages at 60 Hertz.
17 Fungus/Trop Insulation	X	.....	.....	.....	.....

B. Mechanical Modifications

EXAMPLES OF MANY COMMON FEATURES OR MOTOR MODIFICATIONS TO ILLUSTRATE HOW THE EPCA DEFINITIONS AND DOE GUIDELINES WOULD BE APPLIED TO MOTOR CATEGORIES: GENERAL PURPOSE; DEFINITE PURPOSE; AND SPECIAL PURPOSE—Continued

Motor modification	Category ¹					Explanation
	I	II	III	IV	V	
18 Special Balance	X	.....	.....	.....	.....	Does not meet definition of T-frame.
19 Bearing Temp. Detector	X	.....	.....	.....	.....
20 Special Base/Feet .....	.....	.....	.....	.....	X	
21 Special Conduit Box	X	.....	.....	.....	.....
22 Auxiliary Conduit Box	X	.....	.....	.....	.....
23 Special Paint/Coating	X	.....	.....	.....	.....
24 Drains	X	.....	.....	.....	.....
25 Drip Cover	X	.....	.....	.....	.....
26 Ground. Lug/Hole	X	.....	.....	.....	.....
27 Screens on ODP Enclosure	X	.....	.....	.....	.....
28 Mounting F1,F2; W1-4; C1,2	X	.....	.....	.....	.....	Foot-mounting, rigid base, and resilient base.
C. Bearings						
29 Bearing Caps	X	.....	.....	.....	.....	Test with a standard bearing.
30 Roller Bearings .....	.....	X	.....	.....	.....
31 Shielded Bearings	X	.....	.....	.....	.....	Test with a standard bearing. Special mechanical construction.
32 Sealed Bearings	X	.....	.....	.....	.....
33 Thrust Bearings .....	.....	.....	.....	X	.....	Special mechanical construction.
34 Clamped Bearings	X	.....	.....	.....	.....
35 Sleeve Bearings .....	.....	.....	.....	X	.....	Special mechanical construction.
D. Special Endshields						
36 C Face	X	.....	.....	.....	.....	As defined in NEMA MG-1.
37 D Flange	X	.....	.....	.....	.....	As defined in NEMA MG-1.
38 Customer Defined .....	.....	.....	.....	X	.....	Special design for a particular application.
E. Seals						
39 Contact Seals	X	.....	.....	.....	.....	Includes lip seals and taconite seals—test with seals removed.
40 Non-Contact Seal	X	.....	.....	.....	.....	Includes labyrinth and slinger seals—test with seals installed.
F. Shafts						
41 Standard Shafts/NEMA Mg-1	X	.....	.....	.....	.....	Includes single and double, cylindrical, tapered, and short shafts.
42 Non Standard Material	X	.....	.....	.....	.....
G. Fans						
43 Special Material	X	.....	.....	.....	.....
44 Quiet Design	X	.....	.....	.....	.....
H. Other Motors						
45 Washdown	X	.....	.....	.....	.....	Test with seals removed.
46 Close-coupled pump .....	.....	.....	X	.....	.....	JM and JP frame assignments.
47 Integral Gear Motor .....	.....	.....	.....	.....	X	Typically special mechanical design, and not a T-frame; motor and gearbox inseparable and operate as one system.
48 Vertical—Normal Thrust .....	.....	.....	.....	.....	X	EPCA covers foot-mounting.
49 Saw Arbor .....	.....	.....	.....	X	.....	Special electrical/mechanical design.
50 TENV .....	.....	.....	X	.....	.....	Totally-enclosed non-ventilated not equipped for cooling (IP54, IC410).
51 TEAO .....	.....	.....	X	.....	.....	Totally-enclosed air-over requires airflow from external source (IP54, IC417).
52 Fire Pump	X	.....	.....	.....	.....	When safety certification is not required. See also EPCA § 342(b)(1).
53 Non-continuous .....	.....	.....	.....	.....	X	EPCA covers continuous ratings.
54 Integral Brake Motor .....	.....	.....	.....	X	.....	Integral brake design factory built within the motor.

¹ Category I—General purpose electric motors as defined in EPCA.

Category II—Definite purpose electric motors that can be used in most general purpose applications as defined in EPCA.

Category III—Definite purpose motors as defined in EPCA.

Category IV—Special purpose motors as defined in EPCA.

Category V—Outside the scope of “electric motor” as defined in EPCA.

Appendix B to Subpart B of Part 431—Uniform Test Method for Measuring Nominal Full Load Efficiency of Electric Motors

1. *Definitions.*

Definitions contained in §§ 431.2 and 431.12 are applicable to this appendix.

2. *Test Procedures.*

Efficiency and losses shall be determined in accordance with NEMA MG1–1993 with Revisions 1 through 4, paragraph 12.58.1, “Determination of Motor Efficiency and Losses,” (Incorporated by reference, see § 431.15) and either:

(1) CSA International (or Canadian Standards Association) Standard C390–93 Test Method (1), (Incorporated by reference, see § 431.15), *Input-Output Method With Indirect Measurement of the Stray-Load Loss and Direct Measurement of the Stator Winding (I²R), Rotor Winding (I²R), Core and Windage-Friction Losses*, or

(2) IEEE Standard 112–1996 Test Method B, *Input-Output With Loss Segregation*, (Incorporated by reference, see § 431.15) with IEEE correction notice of January 20, 1998, except as follows:

(i) Page 8, subclause 5.1.1., *Specified temperature*, the introductory clause does not apply. Instead the following applies:

The specified temperature used in making resistance corrections should be determined by one of the following (Test Method B only allows the use of preference (a) or (b).), which are listed in order of preference.

(ii) Page 17, subclause 6.4.1.3., *No-load test*, the text does not apply. Instead, the following applies:

See 5.3 including 5.3.3, the separation of core loss from friction and windage loss. Prior to making this test, the machine shall be operated at no-load until the input has stabilized.

(iii) Page 40, subclause 8.6.3, *Termination of test*, the third sentence does not apply. Instead, the following applies:

For continuous rated machines, the temperature test shall continue until there is 1 °C or less change in temperature rise over a 30-minute time period.

(iv) Page 47, at the top of 10.2 form B, immediately after the line that reads “Rated Load Heat Run Stator Winding Resistance Between Terminals,” the following additional line applies:

Temperature for Resistance Correction (t_s) = –°C (See 6.4.3.2).

(v) Page 47, at the bottom of 10.2 Form B, after the first sentence to footnote t_r, the following additional sentence applies:

The values for t_s and t_r shall be based on the same method of temperature measurement, selected from the four methods in subclause 8.3.

(vi) Page 47, at the bottom of 10.2 Form B, below the footnotes and above “Summary of Characteristics,” the following additional note applies:

Note: The temperature for resistance correction (t_s) is equal to [(4) – (5) + 25 °C].

(vii) Page 48, item (22), the torque constants “k = 9.549 for torque, in N·m” and

“k = 7.043 for torque, in 1bf·ft” do not apply. Instead, the following applies:

“k₂ = 9.549 for torque, in N·m” and “k₂ = 7.043 for torque, in 1bf·ft.”

(viii) Page 48, at the end of item (27), the following additional reference applies:

“See 6.4.3.2.”

(ix) Page 48, item (29). “See 4.3.2.2, Eq. 4,” does not apply. Instead the following applies:

Is equal to (10)·[k₁ + (4) – (5) + 25 °C] / [k₁ + (7)], see 6.4.3.3.”

3. *Amendments to test procedures.*

Any revision to IEEE Standard 112–1996 Test Method B with correction notice of January 20, 1998, to NEMA Standards Publication MG1–1993 with Revisions 1 through 4, or to CSA Standard C390–93 Test Method (1), subsequent to promulgation of this appendix B, shall not be effective for purposes of test procedures required under Part 431 and this appendix B, unless and until Part 431 and this appendix B are amended.

Appendix C to Subpart B of Part 431—Compliance Certification

Certification of Compliance With Energy Efficiency Standards for Electric Motors (Office of Management and Budget Control Number: 1910–5104. Expires 09/30/2007)

1. Name and Address of Company (the “company”):

2. Name(s) to be Marked on Electric Motors to Which this Compliance Certification Applies:

3. If manufacturer or private labeler wishes to receive a unique Compliance Certification number for use with any particular brand name, trademark, or other label name, fill out the following two items:

A. List each brand name, trademark, or other label name for which the company requests a Compliance Certification number:

B. List other name(s), if any, under which the company sells electric motors (if not listed in item 2 above):

Submit by Certified Mail to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies (EE–2J), Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121.

This Compliance Certification reports on and certifies compliance with requirements contained in 10 CFR Part 431 (Energy Conservation Program for Certain

Commercial and Industrial Equipment) and Part C of the Energy Policy and Conservation Act (Pub. L. 94–163), and amendments thereto. It is signed by a responsible official of the above named company. Attached and incorporated as part of this Compliance Certification is a Listing of Electric Motor Efficiencies. For each rating of electric motor* for which the Listing specifies the nominal full load efficiency of a basic model, the company distributes no less efficient basic model with that rating and all basic models with that rating comply with the applicable energy efficiency standard.

*For this purpose, the term “rating” means one of the 113 combinations of an electric motor’s horsepower (or standard kilowatt equivalent), number of poles, and open or enclosed construction, with respect to which § 431.25 of 10 CFR Part 431 prescribes nominal full load efficiency standards.

Person to Contact for Further Information:

Name: _____

Address: _____

Telephone Number: _____

Facsimile Number: _____

If any part of this Compliance Certification, including the Attachment, was prepared by a third party organization under the provisions of 10 CFR 431.36, the company official authorizing third party representations:

Name: _____

Address: _____

Telephone Number: _____

Facsimile Number: _____

Third Party Organization Officially Acting as Representative:

Third Party Organization: _____

Responsible Person at that Organization: _____

Address: _____

Telephone Number: _____

Facsimile Number: _____

All required determinations on which this Compliance Certification is based were made in conformance with the applicable requirements in 10 CFR Part 431, subpart B. All information reported in this Compliance Certification is true, accurate, and complete. The company is aware of the penalties associated with violations of the Act and the regulations thereunder, and is also aware of the provisions contained in 18 U.S.C. 1001, which prohibits knowingly making false statements to the Federal Government.

Signature: _____

Date: _____

Name: _____

Title: _____

Firm or Organization: _____ **Attachment to Certification of Compliance With Energy Efficiency Standards for Electric Motors: Listing of Electric Motor Efficiencies** Name of Company: _____
 Date: _____

Rating of electric motor			Least efficient basic model—(model numbers(s))	Nominal full load efficiency
Motor horsepower/kilowatts	Number of poles	Open or enclosed motor		
1 or .75	6	Open	_____	_____
1 or .75	4	Open	_____	_____
1 or .75	6	Enclosed	_____	_____
1 or .75	4	Enclosed	_____	_____
1 or .75	2	Enclosed	_____	_____
1.5 or 1.1	6	Open	_____	_____
1.5 or 1.1	4	Open	_____	_____
1.5 or 1.1	2	Open	_____	_____
1.5 or 1.1	6	Enclosed	_____	_____
1.5 or 1.1	4	Enclosed	_____	_____
1.5 or 1.1	2	Enclosed	_____	_____
.....	_____	_____
Etc.	Etc.	Etc.	_____	_____

Note: Place an asterisk beside each reported nominal full load efficiency that is determined by actual testing rather than by application of an alternative efficiency determination method. Also list below additional basic models that were subjected to actual testing.
Basic Model means all units of a given type of electric motor (or class thereof) manufactured by a single manufacturer, and which (i) have the same rating, (ii) have electrical design characteristics that are essentially identical, and (iii) do not have any differing physical or functional characteristics that affect energy consumption or efficiency.
Rating means one of the 113 combinations of an electric motor's horsepower (or standard kilowatt equivalent), number of poles, and open or enclosed construction, with respect to which § 431.25 of 10 CFR Part 431 prescribes nominal full load efficiency standards.

MODELS ACTUALLY TESTED AND NOT PREVIOUSLY IDENTIFIED

Rating of electric motor			Basic model(s) (model number(s))	Nominal full load efficiency
Motor power output (e.g. 1 hp or .75 kW)	Number of poles	Open or enclosed motor		
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Etc.	Etc.	Etc.	Etc.	Etc.

Subpart C—[Removed and Reserved]

- 5. Subpart C is removed and reserved.
- 6. Subpart D is revised to read as follows:

Subpart D—Commercial Warm Air Furnaces

Sec.
 431.71 Purpose and scope.
 431.72 Definitions concerning commercial warm air furnaces.

Test Procedures

431.75 Materials incorporated by reference.
 431.76 Uniform test method for the measurement of energy efficiency of commercial warm air furnaces.

Energy Conservation Standards

431.77 Energy conservation standards and their effective dates.

Subpart D—Commercial Warm Air Furnaces

§ 431.71 Purpose and scope.

This subpart contains energy conservation requirements for

commercial warm air furnaces, pursuant to Part C of Title III of the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6311–6316.

§ 431.72 Definitions concerning commercial warm air furnaces.

The following definitions apply for purposes of this subpart D, and of subparts J through M of this part. Any words or terms not defined in this Section or elsewhere in this Part shall be defined as provided in Section 340 of the Act.

Commercial warm air furnace means a warm air furnace that is industrial equipment, and that has a capacity (rated maximum input) of 225,000 Btu per hour or more.

Thermal efficiency for a commercial warm air furnace equals 100 percent minus percent flue loss determined using test procedures prescribed under § 431.76.

Warm air furnace means a self-contained oil-fired or gas-fired furnace

designed to supply heated air through ducts to spaces that require it and includes combination warm air furnace/electric air conditioning units but does not include unit heaters and duct furnaces.

Test Procedures

§ 431.75 Materials incorporated by reference.

(a) We incorporate by reference the following test procedures into subpart D of Part 431. The Director of the Federal Register has approved the material listed in paragraph (b) of this section for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR 51. Any subsequent amendment to this material by the standard-setting organization will not affect the DOE test procedures unless and until DOE amends its test procedures. We incorporate the material as it exists on the date of the approval and a notice of

any change in the material will be published in the **Federal Register**.

(b) *List of test procedures incorporated by reference.* (1) American National Standards Institute (ANSI) Standard Z21.47–1998, “Gas-Fired Central Furnaces,” IBR approved for § 431.76.

(2) Underwriters Laboratories (UL) Standard 727–1994, “Standard for Safety Oil-Fired Central Furnaces,” IBR approved for § 431.76.

(3) Sections 8.2.2, 11.1.4, 11.1.5, and 11.1.6.2 of the Hydronics Institute (HI) Division of GAMA Boiler Testing Standard BTS–2000, “Method to Determine Efficiency of Commercial Space Heating Boilers,” published January 2001 (HI BTS–2000), IBR approved for § 431.76.

(4) Sections 7.2.2.4, 7.8, 9.2, and 11.3.7 of the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE) Standard 103–1993, “Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers,” IBR approved for § 431.76.

(c) *Availability of references.* (1) *Inspection of test procedures.* The test procedures incorporated by reference are available for inspection at:

(i) National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(ii) U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Hearings and Dockets, “Test Procedures and Efficiency Standards for Commercial Warm Air Furnaces; Efficiency Certification, Compliance, and Enforcement Requirements for Commercial Heating, Air Conditioning and Water Heating Equipment;” Docket No. EE–RM/TP–99–450, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

(2) *Obtaining copies of Standards.* Anyone can purchase a copy of standards incorporated by reference from the following sources:

(i) The ASHRAE Standard from the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., 1971 Tullie Circle, NE., Atlanta, GA 30329, or <http://www.ashrae.org/book/bookshop.htm>.

(ii) The ANSI Standard from Global Engineering Documents, 15 Inverness Way East, Englewood, CO 80112, or <http://global.ih.com/>, or <http://webstore.ansi.org/ansidocstore/>.

(iii) The UL Standard from Global Engineering Documents, 15 Inverness

Way East, Englewood, CO 80112, or <http://global.ih.com/>.

(iv) The HI Standard from the Hydronics Institute Division of GAMA, P.O. Box 218, Berkeley Heights, NJ 07922, or <http://www.gamanet.org/publist/hydroordr.htm>.

§ 431.76 Uniform test method for the measurement of energy efficiency of commercial warm air furnaces.

(a) This Section covers the test procedures you must follow if, pursuant to EPCA, you are measuring the steady state thermal efficiency of a gas-fired or oil-fired commercial warm air furnace with a rated maximum input of 225,000 Btu per hour or more. Where this Section prescribes use of ANSI standard Z21.47–1998 or UL standard 727–1994, (Incorporated by reference, see § 431.75), perform only the procedures pertinent to the measurement of the steady-state efficiency.

(b) *Test setup.* (1) *Test setup for gas-fired commercial warm air furnaces.* The test setup, including flue requirement, instrumentation, test conditions, and measurements for determining thermal efficiency is as specified in sections 1.1 (Scope), 2.1 (General), 2.2 (Basic Test Arrangements), 2.3 (Test Ducts and Plenums), 2.4 (Test Gases), 2.5 (Test Pressures and Burner Adjustments), 2.6 (Static Pressure and Air Flow Adjustments), 2.38 (Thermal Efficiency), and 4.2.1 (Basic Test Arrangements for Direct Vent Control Furnaces) of the ANSI Standard Z21.47–1998. The thermal efficiency test must be conducted only at the normal inlet test pressure, as specified in Section 2.5.1 of ANSI Standard Z21.47–1998, (Incorporated by reference, see § 431.75), and at the maximum hourly Btu input rating specified by the manufacturer for the product being tested.

(2) *Test setup for oil-fired commercial warm air furnaces.* The test setup, including flue requirement, instrumentation, test condition, and measurement for measuring thermal efficiency is as specified in sections 1 (Scope), 2 (Units of Measurement), 3 (Glossary), 37 (General), 38 and 39 (Test Installation), 40 (Instrumentation, except 40.4 and 40.6.2 through 40.6.7, which are not required for the thermal efficiency test), 41 (Initial Test Conditions), 42 (Combustion Test—Burner and Furnace), 43.2 (Operation Tests), 44 (Limit Control Cutout Test), 45 (Continuity of Operation Test), and 46 (Air Flow, Downflow or Horizontal Furnace Test), of the UL Standard 727–1994. You must conduct a fuel oil analysis for heating value, hydrogen

content, carbon content, pounds per gallon, and American Petroleum Institute (API) gravity as specified in Section 8.2.2 of the HI BTS–2000 (Incorporated by reference, see § 431.75). The steady-state combustion conditions, specified in Section 42.1 of UL Standard 727–1994, (Incorporated by reference, see § 431.75), are attained when variations of not more than 5°F in the measured flue gas temperature occur for three consecutive readings taken 15 minutes apart.

(c) *Additional test measurements.* (1) *Measurement of flue CO₂* (carbon dioxide) for oil-fired commercial warm air furnaces. In addition to the flue temperature measurement specified in Section 40.6.8 of UL Standard 727–1994, (Incorporated by reference, see § 431.75) you must locate one or two sampling tubes within six inches downstream from the flue temperature probe (as indicated on Figure 40.3 of UL Standard 727–1994) (Incorporated by reference, see § 431.75). If you use an open end tube, it must project into the flue one-third of the chimney connector diameter. If you use other methods of sampling CO₂, you must place the sampling tube so as to obtain an average sample. There must be no air leak between the temperature probe and the sampling tube location. You must collect the flue gas sample at the same time the flue gas temperature is recorded. The CO₂ concentration of the flue gas must be as specified by the manufacturer for the product being tested, with a tolerance of ±0.1 percent. You must determine the flue CO₂ using an instrument with a reading error no greater than ±0.1 percent.

(2) *Procedure for the measurement of condensate for a gas-fired condensing commercial warm air furnace.* The test procedure for the measurement of the condensate from the flue gas under steady state operation must be conducted as specified in sections 7.2.2.4, 7.8 and 9.2 of the ASHRAE Standard 103–1993 (Incorporated by reference, see § 431.75) under the maximum rated input conditions. You must conduct this condensate measurement for an additional 30 minutes of steady state operation after completion of the steady state thermal efficiency test specified in paragraph (b) of this section.

(d) *Calculations of thermal efficiency.* (1) *Gas-fired commercial warm air furnaces.* You must use the calculation procedure specified in Section 2.38, Thermal Efficiency, of ANSI Standard Z21.47–1998 (Incorporated by reference, see § 431.75).

(2) *Oil-fired commercial warm air furnaces.* You must calculate the

percent flue loss (in percent of heat input rate) by following the procedure specified in sections 11.1.4, 11.1.5, and 11.1.6.2 of the HI BTS-2000 (Incorporated by reference, see § 431.75). The thermal efficiency must be calculated as:

Thermal Efficiency (percent) = 100 percent – flue loss (in percent).

(e) *Procedure for the calculation of the additional heat gain and heat loss, and adjustment to the thermal efficiency, for a condensing commercial warm air furnace.*

(1) You must calculate the latent heat gain from the condensation of the water vapor in the flue gas, and calculate heat loss due to the flue condensate down the drain, as specified in sections 11.3.7.1 and 11.3.7.2 of ASHRAE Standard 103-1993, (Incorporated by reference, see § 431.75), with the exception that in the equation for the heat loss due to hot condensate flowing down the drain in Section 11.3.7.2, the assumed indoor temperature of 70° F and the temperature term T_{OA} must be replaced by the measured room temperature as specified in Section 2.2.8 of ANSI Standard Z21.47-1998 (Incorporated by reference, see § 431.75).

(2) Adjustment to the Thermal Efficiency for Condensing Furnace. You must adjust the thermal efficiency as calculated in paragraph (d)(1) of this section by adding the latent gain, expressed in percent, from the condensation of the water vapor in the flue gas, and subtracting the heat loss (due to the flue condensate down the drain), also expressed in percent, both as calculated in paragraph (e)(1) of this section, to obtain the thermal efficiency of a condensing furnace.

Energy Conservation Standards

§ 431.77 Energy conservation standards and their effective dates.

Each commercial warm air furnace manufactured on or after January 1, 1994, must meet the following energy efficiency standard levels:

(a) For a gas-fired commercial warm air furnace with capacity of 225,000 Btu per hour or more, the thermal efficiency at the maximum rated capacity (rated maximum input) must be not less than 80 percent.

(b) For an oil-fired commercial warm air furnace with capacity of 225,000 Btu per hour or more, the thermal efficiency at the maximum rated capacity (rated maximum input) must be not less than 81 percent.

■ 7. Subpart E heading is revised to read as follows:

Subpart E—Commercial Packaged Boilers [Reserved]

§§ 431.81 through 431.83 [Removed]

- 8. Sections 431.81 through 431.83 are removed.
- 9. Subpart G heading is revised to read as follows:

Subpart G—Commercial Water Heaters, Hot Water Supply Boilers and Unfired Hot Water Storage Tanks [Reserved]

§§ 431.121 through 431.132 and Appendices A and B to Subpart G [Removed]

- 10. Sections 431.121 through 431.132 and appendices A and B to subpart G are removed.

Subparts H and I [Added and Reserved]

- 11. Subparts H and I are added and reserved.
- 12. Subparts J through M are added to read as follows:

Subpart J—Provisions for Commercial HVAC & Water Heating Products

- Sec.
431.171 Purpose and scope. [Reserved]
431.172 Definitions.

Subpart K—Enforcement

- Sec.
431.190 Purpose and scope.
431.191 Prohibited acts.
431.192 Enforcement process for electric motors.
431.193 [Reserved]
431.194 Cessation of distribution of a basic model of an electric motor.
431.195 Remedies.
431.196 Hearings and appeals.
Appendix A to Subpart K of Part 431—
Sampling Plan for Enforcement Testing of Electric Motors

Subpart L—General Provisions

- Sec.
431.201 Petitions for waiver, and applications for interim waiver, of test procedure.
431.202 Preemption of State regulations for commercial HVAC & WH products.
431.203 Maintenance of records.
431.204 Imported equipment.
431.205 Exported equipment.
431.206 Subpoena.
431.207 Confidentiality.

Subpart M—Petitions To Exempt State Regulation From Preemption; Petitions To Withdraw Exemption of State Regulation

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Subpart J—Provisions for Commercial HVAC & Water Heating Products

§ 431.171 Purpose and scope. [Reserved]

§ 431.172 Definitions.

The following definitions apply for purposes of subparts D through G and J through M of this part. Other terms in these subparts shall be as defined elsewhere in this Part and, if not defined in this part, shall have the meaning set forth in Section 340 of the Act.

Basic model means, with respect to a commercial HVAC & WH product, all units of such product, manufactured by one manufacturer, which have the same primary energy source and which do not have any differing electrical, physical, or functional characteristics that affect energy consumption.

Commercial HVAC & WH product means any small or large commercial package air-conditioning and heating equipment, packaged terminal air conditioner, packaged terminal heat pump, commercial packaged boiler, hot water supply boiler, commercial warm air furnace, instantaneous water heater, storage water heater, or unfired hot water storage tank.

Flue loss means the sum of the sensible heat and latent heat above room temperature of the flue gases leaving the appliance.

Industrial equipment means an article of equipment, regardless of whether it is in fact distributed in commerce for industrial or commercial use, of a type which:

- (1) In operation consumes, or is designed to consume energy;
- (2) To any significant extent, is distributed in commerce for industrial or commercial use; and
- (3) Is not a “covered product” as defined in Section 321(2) of EPCA, 42 U.S.C. 6291(2), other than a component of a covered product with respect to which there is in effect a determination under Section 341(c) of EPCA, 42 U.S.C. 6312(c).

Private labeler means, with respect to a commercial HVAC & WH product, an owner of a brand or trade mark on the label of a product which bears a private label. A commercial HVAC & WH product bears a private label if:

- (1) Such product (or its container) is labeled with the brand or trademark of a person other than a manufacturer of such product;
- (2) The person with whose brand or trademark such product (or container) is labeled has authorized or caused such product to be so labeled; and
- (3) The brand or trademark of a manufacturer of such product does not appear on such label.

Subpart K—Enforcement**§ 431.190 Purpose and scope.**

This subpart describes violations of EPCA's energy conservation requirements, specific procedures we will follow in pursuing alleged non-compliance of an electric motor with an applicable energy conservation standard or labeling requirement, and general procedures for enforcement action, largely drawn directly from EPCA, that apply to both electric motors and commercial HVAC & WH products.

§ 431.191 Prohibited acts.

(a) Each of the following is a prohibited act under sections 332 and 345 of the Act:

(1) Distribution in commerce by a manufacturer or private labeler of any "new covered equipment" which is not labeled in accordance with an applicable labeling rule prescribed in accordance with Section 344 of the Act, and in this part;

(2) Removal from any "new covered equipment" or rendering illegible, by a manufacturer, distributor, retailer, or private labeler, of any label required under this Part to be provided with such covered equipment;

(3) Failure to permit access to, or copying of records required to be supplied under the Act and this part, or failure to make reports or provide other information required to be supplied under the Act and this part;

(4) Advertisement of an electric motor or motors, by a manufacturer, distributor, retailer, or private labeler, in a catalog from which the equipment may be purchased, without including in the catalog all information as required by § 431.31(b)(1), provided, however, that this shall not apply to an advertisement of an electric motor in a catalog if distribution of the catalog began before the effective date of the labeling rule applicable to that motor;

(5) Failure of a manufacturer to supply at his expense a reasonable number of units of covered equipment to a test laboratory designated by the Secretary;

(6) Failure of a manufacturer to permit a representative designated by the Secretary to observe any testing required by the Act and this part, and to inspect the results of such testing; and

(7) Distribution in commerce by a manufacturer or private labeler of any new covered equipment which is not in compliance with an applicable energy efficiency standard prescribed under the Act and this part.

(b) In accordance with sections 333 and 345 of the Act, any person who knowingly violates any provision of

paragraph (a) of this section may be subject to assessment of a civil penalty of no more than \$110 for each violation. Each violation of paragraphs (a)(1), (2), and (7) of this section shall constitute a separate violation with respect to each unit of any covered equipment, and each day of noncompliance with paragraphs (a)(3) through (6) of this section shall constitute a separate violation.

(c) For purposes of this section:

(1) The term "new covered equipment" means covered equipment the title of which has not passed to a purchaser who buys such product for purposes other than:

(i) Reselling it; or

(ii) Leasing it for a period in excess of one year; and

(2) The term "knowingly" means:

(i) Having actual knowledge; or

(ii) Presumed to have knowledge deemed to be possessed by a reasonable person who acts in the circumstances, including knowledge obtainable upon the exercise of due care.

§ 431.192 Enforcement process for electric motors.

(a) *Test notice.* Upon receiving information in writing, concerning the energy performance of a particular electric motor sold by a particular manufacturer or private labeler, which indicates that the electric motor may not be in compliance with the applicable energy efficiency standard, or upon undertaking to ascertain the accuracy of the efficiency rating on the nameplate or in marketing materials for an electric motor, disclosed pursuant to subpart B of this part, the Secretary may conduct testing of that electric motor under this subpart by means of a test notice addressed to the manufacturer in accordance with the following requirements:

(1) The test notice procedure will only be followed after the Secretary or his/her designated representative has examined the underlying test data (or, where appropriate, data as to use of an alternative efficiency determination method) provided by the manufacturer and after the manufacturer has been offered the opportunity to meet with the Department to verify, as applicable, compliance with the applicable efficiency standard, or the accuracy of labeling information, or both. In addition, where compliance of a basic model was certified based on an AEDM, the Department shall have the discretion to pursue the provisions of § 431.17(a)(4)(iii) prior to invoking the test notice procedure. A representative designated by the Secretary shall be permitted to observe any re-verification

procedures undertaken pursuant to this subpart, and to inspect the results of such reverification.

(2) The test notice will be signed by the Secretary or his/her designee. The test notice will be mailed or delivered by the Department to the plant manager or other responsible official, as designated by the manufacturer.

(3) The test notice will specify the model or basic model to be selected for testing, the method of selecting the test sample, the date and time at which testing shall be initiated, the date by which testing is scheduled to be completed and the facility at which testing will be conducted. The test notice may also provide for situations in which the specified basic model is unavailable for testing, and may include alternative basic models.

(4) The Secretary may require in the test notice that the manufacturer of an electric motor shall ship at his expense a reasonable number of units of a basic model specified in such test notice to a testing laboratory designated by the Secretary. The number of units of a basic model specified in a test notice shall not exceed 20.

(5) Within five working days of the time the units are selected, the manufacturer shall ship the specified test units of a basic model to the testing laboratory.

(b) *Testing laboratory.* Whenever the Department conducts enforcement testing at a designated laboratory in accordance with a test notice under this section, the resulting test data shall constitute official test data for that basic model. Such test data will be used by the Department to make a determination of compliance or noncompliance if a sufficient number of tests have been conducted to satisfy the requirements of appendix A of this subpart.

(c) *Sampling.* The determination that a manufacturer's basic model complies with its labeled efficiency, or the applicable energy efficiency standard, shall be based on the testing conducted in accordance with the statistical sampling procedures set forth in appendix A of this subpart and the test procedures set forth in appendix B to subpart B of this part.

(d) *Test unit selection.* A Department inspector shall select a batch, a batch sample, and test units from the batch sample in accordance with the provisions of this paragraph and the conditions specified in the test notice.

(1) The batch may be subdivided by the Department utilizing criteria specified in the test notice.

(2) A batch sample of up to 20 units will then be randomly selected from one or more subdivided groups within the

batch. The manufacturer shall keep on hand all units in the batch sample until such time as the basic model is determined to be in compliance or non-compliance.

(3) Individual test units comprising the test sample shall be randomly selected from the batch sample.

(4) All random selection shall be achieved by sequentially numbering all of the units in a batch sample and then using a table of random numbers to select the units to be tested.

(e) *Test unit preparation.* (1) Prior to and during the testing, a test unit selected in accordance with paragraph (d) of this section shall not be prepared, modified, or adjusted in any manner unless such preparation, modification, or adjustment is allowed by the applicable Department of Energy test procedure. One test shall be conducted for each test unit in accordance with the applicable test procedures prescribed in appendix B to subpart B of this part.

(2) No quality control, testing, or assembly procedures shall be performed on a test unit, or any parts and sub-assemblies thereof, that is not performed during the production and assembly of all other units included in the basic model.

(3) A test unit shall be considered defective if such unit is inoperative or is found to be in noncompliance due to failure of the unit to operate according to the manufacturer's design and operating instructions. Defective units, including those damaged due to shipping or handling, shall be reported immediately to the Department. The Department shall authorize testing of an additional unit on a case-by-case basis.

(f) *Testing at manufacturer's option.* (1) If a manufacturer's basic model is determined to be in noncompliance with the applicable energy performance standard at the conclusion of Department testing in accordance with the sampling plan specified in appendix A of this subpart, the manufacturer may request that the Department conduct additional testing of the basic model according to procedures set forth in appendix A of this subpart.

(2) All units tested under this paragraph shall be selected and tested in accordance with the provisions given in paragraphs (a) through (e) of this section.

(3) The manufacturer shall bear the cost of all testing conducted under this paragraph.

(4) The manufacturer shall cease distribution of the basic model tested under the provisions of this paragraph from the time the manufacturer elects to exercise the option provided in this paragraph until the basic model is

determined to be in compliance. The Department may seek civil penalties for all units distributed during such period.

(5) If the additional testing results in a determination of compliance, a notice of allowance to resume distribution shall be issued by the Department.

§ 431.193 [Reserved]

§ 431.194 Cessation of distribution of a basic model of an electric motor.

(a) In the event that a model of an electric motor is determined non-compliant by the Department in accordance with § 431.192 or if a manufacturer or private labeler determines a model of an electric motor to be in noncompliance, then the manufacturer or private labeler shall:

(1) Immediately cease distribution in commerce of the basic model.

(2) Give immediate written notification of the determination of noncompliance, to all persons to whom the manufacturer has distributed units of the basic model manufactured since the date of the last determination of compliance.

(3) Pursuant to a request made by the Secretary, provide the Department within 30 days of the request, records, reports, and other documentation pertaining to the acquisition, ordering, storage, shipment, or sale of a basic model determined to be in noncompliance.

(4) The manufacturer may modify the non-compliant basic model in such manner as to make it comply with the applicable performance standard. Such modified basic model shall then be treated as a new basic model and must be certified in accordance with the provisions of this subpart; except that in addition to satisfying all requirements of this subpart, the manufacturer shall also maintain records that demonstrate that modifications have been made to all units of the new basic model prior to distribution in commerce.

(b) If a basic model is not properly certified in accordance with the requirements of this subpart, the Secretary may seek, among other remedies, injunctive action to prohibit distribution in commerce of such basic model.

§ 431.195 Remedies.

If the Secretary determines that a basic model of any covered equipment does not comply with an applicable energy conservation standard:

(a) The Secretary will notify the manufacturer, private labeler, or any other person as required, of this finding and of the Secretary's intent to seek a judicial order restraining further distribution in commerce of units of

such a basic model unless the manufacturer, private labeler or other person as required, delivers, within 15 calendar days, a satisfactory statement to the Secretary, of the steps the manufacturer, private labeler or other person will take to insure that the noncompliant basic model will no longer be distributed in commerce. The Secretary will monitor the implementation of such statement.

(b) If the manufacturer, private labeler or any other person as required, fails to stop distribution of the noncompliant basic model, the Secretary may seek to restrain such violation in accordance with sections 334 and 345 of the Act.

(c) The Secretary will determine whether the facts of the case warrant the assessment of civil penalties for knowing violations in accordance with sections 333 and 345 of the Act.

§ 431.196 Hearings and appeals.

(a) Under sections 333(d) and 345 of the Act, before issuing an order assessing a civil penalty against any person, the Secretary must provide to such a person a notice of the proposed penalty. Such notice must inform the person that such person can choose (in writing within 30 days after receipt of the notice) to have the procedures of paragraph (c) of this section (in lieu of those in paragraph (b) of this section) apply with respect to such assessment.

(b)(1) Unless a person elects, within 30 calendar days after receipt of a notice under paragraph (a) of this section, to have paragraph (c) of this section apply with respect to the civil penalty under paragraph (a), the Secretary will assess the penalty, by order, after providing an opportunity for an agency hearing under 5 U.S.C. 554, before an administrative law judge appointed under 5 U.S.C. 3105, and making a determination of violation on the record. Such assessment order will include the administrative law judge's findings and the basis for such assessment.

(2) Any person against whom the Secretary assesses a penalty under this paragraph may, within 60 calendar days after the date of the order assessing such penalty, initiate action in the United States Court of Appeals for the appropriate judicial circuit for judicial review of such order in accordance with 5 U.S.C. chapter 7. The court will have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(c)(1) In the case of any civil penalty with respect to which the procedures of this paragraph have been elected, the

Secretary will promptly assess such penalty, by order, after the date of the receipt of the notice under paragraph (a) of this section of the proposed penalty.

(2) If the person has not paid the civil penalty within 60 calendar days after the assessment has been made under paragraph (c)(1) of this section, the Secretary will institute an action in the appropriate District Court of the United States for an order affirming the assessment of the civil penalty. The court will have authority to review de novo the law and the facts involved and jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(3) Any election to have this paragraph apply can only be revoked with the consent of the Secretary.

(d) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (b) of this section, or after the appropriate District Court has entered final judgment in favor of the Secretary under paragraph (c) of this section, the Secretary will institute an action to recover the amount of such penalty in any appropriate District Court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment will not be subject to review.

(e)(1) In accordance with the provisions of sections 333(d)(5)(A) and 345 of the Act and notwithstanding the provisions of title 28, United States Code, or Section 502(c) of the Department of Energy Organization Act, the General Counsel of the Department of Energy (or any attorney or attorneys within DOE designated by the Secretary) will represent the Secretary, and will supervise, conduct, and argue any civil litigation to which paragraph (c) of this section applies (including any related collection action under paragraph (d) of this section) in a court of the United States or in any other court, except the Supreme Court of the United States. However, the Secretary or the General Counsel will consult with the Attorney General concerning such litigation and the Attorney General will provide, on request, such assistance in the conduct of such litigation as may be appropriate.

(2) In accordance with the provisions of sections 333(d)(5)(B) and 345 of the Act, and subject to the provisions of Section 502(c) of the Department of Energy Organization Act, the Secretary will be represented by the Attorney General, or the Solicitor General, as appropriate, in actions under this section, except to the extent provided in paragraph (e)(1) of this section.

(3) In accordance with the provisions of Section 333(d)(5)(c) and 345 of the Act, Section 402(d) of the Department of Energy Organization Act will not apply with respect to the function of the Secretary under this section.

Appendix A to Subpart K of Part 431— Sampling Plan for Enforcement Testing of Electric Motors

Step 1. The first sample size (n_1) must be five or more units.

Step 2. Compute the mean (\bar{X}_1) of the measured energy performance of the n_1 units in the first sample as follows:

$$\bar{X}_1 = \frac{1}{n_1} \sum_{i=1}^{n_1} X_i \quad (1)$$

where X_i is the measured full-load efficiency of unit i .

Step 3. Compute the sample standard deviation (S_1) of the measured full-load efficiency of the n_1 units in the first sample as follows:

$$S_1 = \sqrt{\frac{\sum_{i=1}^{n_1} (X_i - \bar{X}_1)^2}{n_1 - 1}} \quad (2)$$

Step 4. Compute the standard error ($SE(\bar{X}_1)$) of the mean full-load efficiency of the first sample as follows:

$$SE(\bar{X}_1) = \frac{S_1}{\sqrt{n_1}} \quad (3)$$

Step 5. Compute the lower control limit (LCL_1) for the mean of the first sample using RE as the desired mean as follows:

$$LCL_1 = RE - tSE(\bar{X}_1) \quad (4)$$

where: RE is the applicable EPCA nominal full-load efficiency when the test is to determine compliance with the applicable statutory standard, or is the labeled nominal full-load efficiency when the test is to determine compliance with the labeled efficiency value, and t is the 2.5th percentile of a t -distribution for a sample size of n_1 , which yields a 97.5 percent confidence level for a one-tailed t -test.

Step 6. Compare the mean of the first sample (\bar{X}_1) with the lower control limit (LCL_1) to determine one of the following:

- (i) If the mean of the first sample is below the lower control limit, then the basic model is in non-compliance and testing is at an end.
- (ii) If the mean is equal to or greater than the lower control limit, no final determination of compliance or non-compliance can be made; proceed to Step 7.

Step 7. Determine the recommended sample size (n) as follows:

$$n = \left\lceil \frac{tS_1(120 - 0.2RE)}{RE(20 - 0.2RE)} \right\rceil^2 \quad (5)$$

where S_1 , RE and t have the values used in Steps 3 and 5, respectively. The factor

$$\frac{120 - 0.2RE}{RE(20 - 0.2RE)}$$

is based on a 20 percent tolerance in the total power loss at full-load and fixed output power.

Given the value of n , determine one of the following:

(i) If the value of n is less than or equal to n_1 and if the mean energy efficiency of the first sample (\bar{X}_1) is equal to or greater than the lower control limit (LCL_1), the basic model is in compliance and testing is at an end.

(ii) If the value of n is greater than n_1 , the basic model is in non-compliance. The size of a second sample n_2 is determined to be the smallest integer equal to or greater than the difference $n - n_1$. If the value of n_2 so calculated is greater than $20 - n_1$, set n_2 equal to $20 - n_1$.

Step 8. Compute the combined (\bar{X}_2) mean of the measured energy performance of the n_1 and n_2 units of the combined first and second samples as follows:

$$\bar{X}_2 = \frac{1}{n_1 + n_2} \sum_{i=1}^{n_1+n_2} X_i \quad (6)$$

Step 9. Compute the standard error ($SE(\bar{X}_2)$) of the mean full-load efficiency of the n_1 and n_2 units in the combined first and second samples as follows:

$$SE(\bar{X}_2) = \frac{S_1}{\sqrt{n_1 + n_2}} \quad (7)$$

(Note that S_1 is the value obtained above in Step 3.)

Step 10. Set the lower control limit (LCL_2) to,

$$LCL_2 = RE - tSE(\bar{X}_2) \quad (8) \sqrt{b^2 - 4ac}$$

where t has the value obtained in Step 5, and compare the combined sample mean (\bar{X}_2) to the lower control limit (LCL_2) to find one of the following:

(i) If the mean of the combined sample (\bar{X}_2) is less than the lower control limit (LCL_2), the basic model is in non-compliance and testing is at an end.

(ii) If the mean of the combined sample (\bar{X}_2) is equal to or greater than the lower control limit (LCL_2), the basic model is in compliance and testing is at an end.

Manufacturer-Option Testing

If a determination of non-compliance is made in Steps 6, 7 or 10, of this appendix A, the manufacturer may request that additional testing be conducted, in accordance with the following procedures.

Step A. The manufacturer requests that an additional number, n_3 , of units be tested, with n_3 chosen such that $n_1 + n_2 + n_3$ does not exceed 20.

Step B. Compute the mean full-load efficiency, standard error, and lower control limit of the new combined sample in accordance with the procedures prescribed in Steps 8, 9, and 10, of this appendix A.

Step C. Compare the mean performance of the new combined sample to the lower control limit (LCL_2) to determine one of the following:

(a) If the new combined sample mean is equal to or greater than the lower control limit, the basic model is in compliance and testing is at an end.

(b) If the new combined sample mean is less than the lower control limit and the value of $n_1 + n_2 + n_3$ is less than 20, the manufacturer may request that additional units be tested. The total of all units tested may not exceed 20. Steps A, B, and C are then repeated.

(c) Otherwise, the basic model is determined to be in non-compliance.

Subpart L—General Provisions

§ 431.201 Petitions for waiver, and applications for interim waiver, of test procedure.

(a) *General criteria.* (1) Any interested person may submit a petition to waive for a particular basic model any requirements of §§ 431.16, 431.76, 431.86, 431.96, and 431.106 of this part, upon the grounds that either the basic model contains one or more design characteristics which prevent testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data.

(2) Any person who has submitted a Petition for Waiver as provided in this subpart, may also file an Application for Interim Waiver of the applicable test procedure requirements.

(b) *Submission, content, and publication.* (1) You must submit your Petition for Waiver in triplicate, to the Assistant Secretary for Energy Efficiency and Renewable Energy, U.S. Department of Energy. Each Petition for Waiver must:

(i) Identify the particular basic model(s) for which a waiver is requested, the design characteristic(s) constituting the grounds for the petition, and the specific requirements sought to be waived, and must discuss in detail the need for the requested waiver;

(ii) Identify manufacturers of all other basic models marketed in the United States and known to the petitioner to incorporate similar design characteristic(s);

(iii) Include any alternate test procedures known to the petitioner to evaluate the characteristics of the basic model in a manner representative of its energy consumption; and

(iv) Be signed by you or by an authorized representative. In accordance with the provisions set forth in 10 CFR 1004.11, any request for confidential treatment of any information contained in a Petition for Waiver or in supporting documentation must be accompanied by

a copy of the petition, application or supporting documentation from which the information claimed to be confidential has been deleted. DOE will publish in the **Federal Register** the petition and supporting documents from which confidential information, as determined by DOE, has been deleted in accordance with 10 CFR 1004.11 and will solicit comments, data and information with respect to the determination of the petition.

(2) You must submit any Application for Interim Waiver in triplicate, with the required three copies of the Petition for Waiver, to the Assistant Secretary for Energy Efficiency and Renewable Energy, U.S. Department of Energy. Each Application for Interim Waiver must reference the Petition for Waiver by identifying the particular basic model(s) for which you seek a waiver and temporary exception. Each Application for Interim Waiver must demonstrate likely success of the Petition for Waiver and address what economic hardship and/or competitive disadvantage is likely to result absent a favorable determination on the Application for Interim Waiver. You or an authorized representative must sign the Application for Interim Waiver.

(c) *Notification to other manufacturers.* (1) After filing a Petition for Waiver with DOE, and after DOE has published the Petition for Waiver in the **Federal Register**, you must, within five working days of such publication, notify in writing all known manufacturers of domestically marketed units of the same product type (as defined in Section 340(1) of the Act) and must include in the notice a statement that DOE has published in the **Federal Register** on a certain date the Petition for Waiver and supporting documents from which confidential information, if any, as determined by DOE, has been deleted in accordance with 10 CFR 1004.11. In complying with the requirements of this paragraph, you must file with DOE a statement certifying the names and addresses of each person to whom you have sent a notice of the Petition for Waiver.

(2) If you apply for Interim Waiver, whether filing jointly with or subsequent to your Petition for Waiver with DOE, you must concurrently notify in writing all known manufacturers of domestically marketed units of the same product type (as defined in Section 340(1) of the Act), and must include in the notice a copy of the Petition for Waiver and a copy of the Application for Interim Waiver. In complying with this section, you must in the written notification include a statement that the Assistant Secretary for Energy Efficiency

and Renewable Energy will receive and consider timely written comments on the Application for Interim Waiver. Upon filing an Application for Interim Waiver, you must in complying with the requirements of this paragraph certify to DOE that a copy of these documents has been sent to all known manufacturers of domestically marked units of the same product type (as listed in Section 340(1) of the Act). Such certification must include the names and addresses of such persons. You must comply with the provisions of paragraph (c)(1) of this Section with respect to the petition for waiver.

(d) *Comments; responses to comments.* (1) Any person submitting written comments to DOE with respect to an Application for Interim Waiver must also send a copy of the comments to the applicant.

(2) Any person submitting written comments to DOE with the respect to a Petition for Waiver must also send a copy of such comments to the petitioner. In accordance with paragraph (b)(1) of this section, a petitioner may submit a rebuttal statement to the Assistant Secretary for Energy Efficiency and Renewable Energy.

(e) *Provisions specific to interim waivers—(1) Disposition of application.* If administratively feasible, DOE will notify the applicant in writing of the disposition of the Application for Interim Waiver within 15 business days of receipt of the application. Notice of DOE's determination on the Application for Interim Waiver will be published in the **Federal Register**.

(2) *Consequences of filing application.* The filing of an Application for Interim Waiver will not constitute grounds for noncompliance with any requirements of this subpart, until an Interim Waiver has been granted.

(3) *Criteria for granting.* The Assistant Secretary for Energy Efficiency and Renewable Energy will grant an Interim Waiver from test procedure requirements if he or she determines that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or if the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver.

(4) *Duration.* An interim waiver will terminate 180 days after issuance or upon the determination on the Petition for Waiver, whichever occurs first. DOE may extend an interim waiver for up to 180 days or modify its terms based on

relevant information contained in the record and any comments received subsequent to issuance of the interim waiver. DOE will publish in the **Federal Register** notice of such extension and/or any modification of the terms or duration of the interim waiver.

(f) *Provisions specific to waivers*—(1) *Rebuttal by petitioner.* Following publication of the Petition for Waiver in the **Federal Register**, a petitioner may, within 10 working days of receipt of a copy of any comments submitted in accordance with paragraph (b)(1) of this section, submit a rebuttal statement to the Assistant Secretary for Energy Efficiency and Renewable Energy. A petitioner may rebut more than one response in a single rebuttal statement.

(2) *Disposition of petition.* DOE will notify the petitioner in writing as soon as practicable of the disposition of each Petition for Waiver. The Assistant Secretary for Energy Efficiency and Renewable Energy will issue a decision on the petition as soon as is practicable following receipt and review of the Petition for Waiver and other applicable documents, including, but not limited to, comments and rebuttal statements.

(3) *Consequence of filing petition.* The filing of a Petition for Waiver will not constitute grounds for noncompliance with any requirements of this subpart, until a waiver or interim waiver has been granted.

(4) *Granting: criteria, conditions, and publication.* The Assistant Secretary for Energy Efficiency and Renewable Energy will grant a waiver if he or she determines that either the basic model for which the waiver was requested contains a design characteristic which prevents testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. The Assistant Secretary for Energy Efficiency and Renewable Energy may grant a waiver subject to conditions, which may include adherence to alternate test procedures. DOE will promptly publish in the **Federal Register** notice of each waiver granted or denied, and any limiting conditions of each waiver granted.

(g) *Revision of regulation.* Within one year of the granting of any waiver, the Department will publish in the **Federal Register** a notice of proposed rulemaking to amend our regulations so as to eliminate any need for the continuation of such waiver. As soon thereafter as practicable, the Department will publish in the **Federal Register** a

final rule. Such waiver will terminate on the effective date of such final rule.

(h) *Exhaustion of remedies.* In order to exhaust administrative remedies, any person aggrieved by an action under this Section must file an appeal with the DOE's Office of Hearings and Appeals as provided in 10 CFR Part 1003, subpart C.

§ 431.202 Preemption of State regulations for commercial HVAC & WH products.

Beginning on the effective date of such standard, an energy conservation standard set forth in this Part for a commercial HVAC & WH product supersedes any State or local regulation concerning the energy efficiency or energy use of that product, except as provided for in Section 345(b)(2)(B)–(D) of the Act.

§ 431.203 Maintenance of records.

(a) If you are the manufacturer of any covered equipment, you must establish, maintain and retain records of the following:

(1) The test data for all testing conducted pursuant to this part;

(2) For electric motors, the development, substantiation, application, and subsequent verification of any AEDM used under this part; and

(3) For electric motors, any written certification received from a certification program, including a certificate or conformity, relied on under the provisions of this part.

(b) You must organize such records and index them so that they are readily accessible for review. The records must include the supporting test data associated with tests performed on any test units to satisfy the requirements of this Part (except tests performed by us directly).

(c) For each basic model, you must retain all such records for a period of two years from the date that production of all units of that basic model has ceased. You must retain records in a form allowing ready access to DOE, upon request.

§ 431.204 Imported equipment.

(a) Under sections 331 and 345 of the Act, any person importing any covered equipment into the United States must comply with the provisions of the Act and of this part, and is subject to the remedies of this part.

(b) Any covered equipment offered for importation in violation of the Act and of this part will be refused admission into the customs territory of the United States under rules issued by the Secretary of the Treasury, except that the Secretary of the Treasury may, by such rules, authorize the importation of

such covered equipment upon such terms and conditions (including the furnishing of a bond) as may appear to the Secretary of Treasury appropriate to ensure that such covered equipment will not violate the Act and this part, or will be exported or abandoned to the United States.

§ 431.205 Exported equipment.

Under Sections 330 and 345 of the Act, this Part does not apply to any covered equipment if:

(a) Such equipment is manufactured, sold, or held for sale for export from the United States (or such equipment was imported for export), unless such equipment is, in fact, distributed in commerce for use in the United States; and,

(b) Such equipment, when distributed in commerce, or any container in which it is enclosed when so distributed, bears a stamp or label stating that such covered equipment is intended for export.

§ 431.206 Subpoena.

Pursuant to sections 329(a) and 345 of the Act, for purposes of carrying out this part, the Secretary or the Secretary's designee, may sign and issue subpoenas for the attendance and testimony of witnesses and the production of relevant books, records, papers, and other documents, and administer the oaths. Witnesses summoned under the provisions of this section shall be paid the same fees and mileage as are paid to witnesses in the courts of the United States. In case of contumacy by, or refusal to obey a subpoena served upon any persons subject to this part, the Secretary may seek an order from the District Court of the United States for any District in which such person is found or resides or transacts business requiring such person to appear and give testimony, or to appear and produce documents. Failure to obey such order is punishable by such court as a contempt thereof.

§ 431.207 Confidentiality.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data which the person believes to be confidential and exempt from public disclosure should submit one complete copy, and 15 copies from which the information believed to be confidential has been deleted. In accordance with the procedures established at 10 CFR 1004.11, the Department shall make its own determination with regard to any claim that information submitted be exempt from public disclosure.

Subpart M—Petitions To Exempt State Regulation From Preemption; Petitions To Withdraw Exemption of State Regulation

§ 431.211 Purpose and scope.

(a) The regulations in this subpart prescribe the procedures to be followed in connection with petitions requesting a rule that a State regulation prescribing an energy conservation standard or other requirement respecting energy use or energy efficiency of a type (or class) of covered equipment not be preempted.

(b) The regulations in this subpart also prescribe the procedures to be followed in connection with petitions to withdraw a rule exempting a State regulation prescribing an energy conservation standard or other requirement respecting energy use or energy efficiency of a type (or class) of covered equipment.

§ 431.212 Prescriptions of a rule.

(a) *Criteria for exemption from preemption.* Upon petition by a State which has prescribed an energy conservation standard or other requirement for a type or class of covered equipment for which a Federal energy conservation standard is applicable, the Secretary shall prescribe a rule that such standard not be preempted if he/she determines that the State has established by a preponderance of evidence that such requirement is needed to meet unusual and compelling State or local energy interests. For the purposes of this regulation, the term “unusual and compelling State or local energy interests” means interests which are substantially different in nature or magnitude from those prevailing in the U.S. generally, and are such that when evaluated within the context of the State’s energy plan and forecast, the costs, benefits, burdens, and reliability of energy savings resulting from the State regulation make such regulation preferable or necessary when measured against the costs, benefits, burdens, and reliability of alternative approaches to energy savings or production, including reliance on reasonably predictable market-induced improvements in efficiency of all equipment subject to the State regulation. The Secretary may not prescribe such a rule if he finds that interested persons have established, by a preponderance of the evidence, that the State’s regulation will significantly burden manufacturing, marketing, distribution, sale or servicing of the covered equipment on a national basis. In determining whether to make such a finding, the Secretary shall evaluate all relevant factors including: The extent to

which the State regulation will increase manufacturing or distribution costs of manufacturers, distributors, and others; the extent to which the State regulation will disadvantage smaller manufacturers, distributors, or dealers or lessen competition in the sale of the covered equipment in the State; the extent to which the State regulation would cause a burden to manufacturers to redesign and produce the covered equipment type (or class), taking into consideration the extent to which the regulation would result in a reduction in the current models, or in the projected availability of models, that could be shipped on the effective date of the regulation to the State and within the U.S., or in the current or projected sales volume of the covered equipment type (or class) in the State and the U.S.; and the extent to which the State regulation is likely to contribute significantly to a proliferation of State commercial and industrial equipment efficiency requirements and the cumulative impact such requirements would have. The Secretary may not prescribe such a rule if he/she finds that such a rule will result in the unavailability in the State of any covered equipment (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the State at the time of the Secretary’s finding. The failure of some classes (or types) to meet this criterion shall not affect the Secretary’s determination of whether to prescribe a rule for other classes (or types).

(1) Requirements of petition for exemption from preemption. A petition from a State for a rule for exemption from preemption shall include the information listed in paragraphs (a)(1)(i) through (a)(1)(vi) of this section. A petition for a rule and correspondence relating to such petition shall be available for public review except for confidential or proprietary information submitted in accordance with the Department of Energy’s Freedom of Information Regulations set forth in 10 CFR Part 1004.

(i) The name, address, and telephone number of the petitioner;

(ii) A copy of the State standard for which a rule exempting such standard is sought;

(iii) A copy of the State’s energy plan and forecast;

(iv) Specification of each type or class of covered equipment for which a rule exempting a standard is sought;

(v) Other information, if any, believed to be pertinent by the petitioner; and

(vi) Such other information as the Secretary may require.

(b) *Criteria for exemption from preemption when energy emergency conditions exist within State.* Upon petition by a State which has prescribed an energy conservation standard or other requirement for a type or class of covered equipment for which a Federal energy conservation standard is applicable, the Secretary may prescribe a rule, effective upon publication in the **Federal Register**, that such regulation not be preempted if he determines that in addition to meeting the requirements of paragraph (a) of this Section the State has established that: an energy emergency condition exists within the State that imperils the health, safety, and welfare of its residents because of the inability of the State or utilities within the State to provide adequate quantities of gas or electric energy to its residents at less than prohibitive costs; and cannot be substantially alleviated by the importation of energy or the use of interconnection agreements; and the State regulation is necessary to alleviate substantially such condition.

(1) Requirements of petition for exemption from preemption when energy emergency conditions exist within a State. A petition from a State for a rule for exemption from preemption when energy emergency conditions exist within a State shall include the information listed in paragraphs (a)(1)(i) through (a)(1)(vi) of this section. A petition shall also include the information prescribed in paragraphs (b)(1)(i) through (b)(1)(iv) of this section, and shall be available for public review except for confidential or proprietary information submitted in accordance with the Department of Energy’s Freedom of Information Regulations set forth in 10 CFR Part 1004:

(i) A description of the energy emergency condition which exists within the State, including causes and impacts.

(ii) A description of emergency response actions taken by the State and utilities within the State to alleviate the emergency condition;

(iii) An analysis of why the emergency condition cannot be alleviated substantially by importation of energy or the use of interconnection agreements;

(iv) An analysis of how the State standard can alleviate substantially such emergency condition.

(c) *Criteria for withdrawal of a rule exempting a State standard.* Any person subject to a State standard which, by rule, has been exempted from Federal preemption and which prescribes an

energy conservation standard or other requirement for a type or class of covered equipment, when the Federal energy conservation standard for such equipment subsequently is amended, may petition the Secretary requesting that the exemption rule be withdrawn. The Secretary shall consider such petition in accordance with the requirements of paragraph (a) of this section, except that the burden shall be on the petitioner to demonstrate that the exemption rule received by the State should be withdrawn as a result of the amendment to the Federal standard. The Secretary shall withdraw such rule if he determines that the petitioner has shown the rule should be withdrawn.

(1) Requirements of petition to withdraw a rule exempting a State standard. A petition for a rule to withdraw a rule exempting a State standard shall include the information prescribed in paragraphs (c)(1)(i) through (c)(1)(vii) of this section, and shall be available for public review, except for confidential or proprietary information submitted in accordance with the Department of Energy's Freedom of Information Regulations set forth in 10 CFR Part 1004:

(i) The name, address and telephone number of the petitioner;

(ii) A statement of the interest of the petitioner for which a rule withdrawing an exemption is sought;

(iii) A copy of the State standard for which a rule withdrawing an exemption is sought;

(iv) Specification of each type or class of covered equipment for which a rule withdrawing an exemption is sought;

(v) A discussion of the factors contained in paragraph (a) of this section;

(vi) Such other information, if any, believed to be pertinent by the petitioner; and

(vii) Such other information as the Secretary may require.

(2) [Reserved]

§ 431.213 Filing requirements.

(a) *Service.* All documents required to be served under this subpart shall, if mailed, be served by first class mail. Service upon a person's duly authorized representative shall constitute service upon that person.

(b) *Obligation to supply information.* A person or State submitting a petition is under a continuing obligation to provide any new or newly discovered information relevant to that petition. Such information includes, but is not limited to, information regarding any other petition or request for action subsequently submitted by that person or State.

(c) *The same or related matters.* A person or State submitting a petition or other request for action shall state whether to the best knowledge of that petitioner the same or related issue, act, or transaction has been or presently is being considered or investigated by any State agency, department, or instrumentality.

(d) *Computation of time.* (1) Computing any period of time prescribed by or allowed under this subpart, the day of the action from which the designated period of time begins to run is not to be included. If the last day of the period is Saturday, or Sunday, or Federal legal holiday, the period runs until the end of the next day that is neither a Saturday, or Sunday or Federal legal holiday.

(2) Saturdays, Sundays, and intervening Federal legal holidays shall be excluded from the computation of time when the period of time allowed or prescribed is 7 days or less.

(3) When a submission is required to be made within a prescribed time, DOE may grant an extension of time upon good cause shown.

(4) Documents received after regular business hours are deemed to have been submitted on the next regular business day. Regular business hours for the DOE's National Office, Washington, DC, are 8:30 a.m. to 4:30 p.m.

(5) DOE reserves the right to refuse to accept, and not to consider, untimely submissions.

(e) *Filing of petitions.* (1) A petition for a rule shall be submitted in triplicate to: The Assistant Secretary for Energy Efficiency and Renewable Energy, U.S. Department of Energy, Section 327 Petitions, Building Technologies, EE-2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

(2) A petition may be submitted on behalf of more than one person. A joint petition shall indicate each person participating in the submission. A joint petition shall provide the information required by § 431.212 for each person on whose behalf the petition is submitted.

(3) All petitions shall be signed by the person(s) submitting the petition or by a duly authorized representative. If submitted by a duly authorized representative, the petition shall certify this authorization.

(4) A petition for a rule to withdraw a rule exempting a State regulation, all supporting documents, and all future submissions shall be served on each State agency, department, or instrumentality whose regulation the petitioner seeks to supersede. The petition shall contain a certification of this service which states the name and

mailing address of the served parties, and the date of service.

(f) *Acceptance for filing.* (1) Within 15 days of the receipt of a petition, the Secretary will either accept it for filing or reject it, and the petitioner will be so notified in writing. The Secretary will serve a copy of this notification on each other party served by the petitioner. Only such petitions which conform to the requirements of this subpart and which contain sufficient information for the purposes of a substantive decision will be accepted for filing. Petitions which do not so conform will be rejected and an explanation provided to petitioner in writing.

(2) For purposes of the Act and this subpart, a petition is deemed to be filed on the date it is accepted for filing.

(g) *Docket.* A petition accepted for filing will be assigned an appropriate docket designation. Petitioner shall use the docket designation in all subsequent submissions.

§ 431.214 Notice of petition.

(a) Promptly after receipt of a petition and its acceptance for filing, notice of such petition shall be published in the **Federal Register**. The notice shall set forth the availability for public review of all data and information available, and shall solicit comments, data and information with respect to the determination on the petition. Except as may otherwise be specified, the period for public comment shall be 60 days after the notice appears in the **Federal Register**.

(b) In addition to the material required under paragraph (a) of this section, each notice shall contain a summary of the State regulation at issue and the petitioner's reasons for the rule sought.

§ 431.215 Consolidation.

DOE may consolidate any or all matters at issue in two or more proceedings docketed where there exist common parties, common questions of fact and law, and where such consolidation would expedite or simplify consideration of the issues. Consolidation shall not affect the right of any party to raise issues that could have been raised if consolidation had not occurred.

§ 431.216 Hearing.

The Secretary may hold a public hearing, and publish notice in the **Federal Register** of the date and location of the hearing, when he determines that such a hearing is necessary and likely to result in a timely and effective resolution of the issues. A

transcript shall be kept of any such hearing.

§ 431.217 Disposition of petitions.

(a) After the submission of public comments under § 431.213(a), the Secretary shall prescribe a final rule or deny the petition within 6 months after the date the petition is filed.

(b) The final rule issued by the Secretary or a determination by the Secretary to deny the petition shall include a written statement setting forth his findings and conclusions, and the reasons and basis therefor. A copy of the Secretary's decision shall be sent to the petitioner and the affected State agency. The Secretary shall publish in the **Federal Register** a notice of the final rule granting or denying the petition and the reasons and basis therefor.

(c) If the Secretary finds that he cannot issue a final rule within the 6-month period pursuant to paragraph (a) of this section, he shall publish a notice in the **Federal Register** extending such period to a date certain, but no longer than one year after the date on which the petition was filed. Such notice shall include the reasons for the delay.

§ 431.218 Effective dates of final rules.

(a) A final rule exempting a State standard from Federal preemption will be effective:

(1) Upon publication in the **Federal Register** if the Secretary determines that such rule is needed to meet an "energy emergency condition" within the State;

(2) Three years after such rule is published in the **Federal Register**; or

(3) Five years after such rule is published in the **Federal Register** if the Secretary determines that such additional time is necessary due to the burdens of retooling, redesign or distribution.

(b) A final rule withdrawing a rule exempting a State standard will be effective upon publication in the **Federal Register**.

§ 431.219 Request for reconsideration.

(a) Any petitioner whose petition for a rule has been denied may request reconsideration within 30 days of denial. The request shall contain a statement of facts and reasons supporting reconsideration and shall be submitted in writing to the Secretary.

(b) The denial of a petition will be reconsidered only where it is alleged and demonstrated that the denial was based on error in law or fact and that evidence of the error is found in the record of the proceedings.

(c) If the Secretary fails to take action on the request for reconsideration within 30 days, the request is deemed

denied, and the petitioner may seek such judicial review as may be appropriate and available.

(d) A petitioner has not exhausted other administrative remedies until a request for reconsideration has been filed and acted upon or deemed denied.

§ 431.220 Finality of decision.

(a) A decision to prescribe a rule that a State energy conservation standard or other requirement not be preempted is final on the date the rule is issued, *i.e.*, signed by the Secretary. A decision to prescribe such a rule has no effect on other regulations of covered equipment of any other State.

(b) A decision to prescribe a rule withdrawing a rule exempting a State standard or other requirement is final on the date the rule is issued, *i.e.*, signed by the Secretary. A decision to deny such a petition is final on the day a denial of a request for reconsideration is issued, *i.e.*, signed by the Secretary.

Subpart Q—[Removed]

- 13. Subpart Q is removed.

[FR Doc. 04-17729 Filed 10-20-04; 8:45 am]

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DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 431

[Docket No. EE-RM/TP-99-470]

RIN 1904-AB02

Energy Efficiency Program for Certain Commercial and Industrial Equipment: Test Procedures and Efficiency Standards for Commercial Packaged Boilers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: Pursuant to Part C of title III of the Energy Policy and Conservation Act (EPCA), the Department of Energy (DOE or the Department) promulgates a rule prescribing test procedures to rate the energy efficiency of commercial packaged boilers and definitions relevant to this equipment. The rule also recodifies energy conservation standards prescribed by EPCA for commercial packaged boilers so that they are located contiguous with the test procedures that DOE promulgates today.

DATES: This rule is effective November 22, 2004. The incorporation by reference

of certain publications listed in this rule is approved by the Director of the Federal Register as of November 22, 2004.

FOR FURTHER INFORMATION CONTACT:

Mohammed Khan, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station, EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7892, FAX (202) 586-4617, e-mail: Mohammed.Khan@ee.doe.gov, or Francine Pinto, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station, GC-72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507, e-mail: Francine.Pinto@hq.doe.gov.

SUPPLEMENTARY INFORMATION: This final rule incorporates, by reference, into Subpart E of Part 431, two test procedures contained in industry standards referenced by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE) and the Illuminating Engineering Society of North America (IES) Standard 90.1 ("ASHRAE/IES Standard 90.1") for commercial packaged boilers. Those industry standards are: the Hydronics Institute (HI) Division of the Gas Appliance Manufacturer's Association (GAMA) Boiler Testing Standard BTS-2000, "Method to Determine Efficiency of Commercial Space Heating Boilers" (which supersedes the ASHRAE Standard 90.1 referenced 1989 HI Standard, "Testing and Rating Standard for Heating Boilers," 6th Edition, 1989); and American Society of Mechanical Engineers (ASME) PTC 4.1-1964/RA-1991, "Power Test Codes for Steam Generating Units."

You can view copies of these standards in the resource room of the Building Technologies Program, room 1J-018 at the U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards-Jones at (202) 586-2945, for additional information regarding visiting the resource room.

You can purchase copies of the HI Standard BTS-2000 from Hydronics Institute Division of GAMA, P.O. Box 218, Berkeley Heights, NJ 07922, <http://www.gamanet.org/publist/hydroordr.htm>; and Standards ANSI Z21.47-1998 and UL 727-1994 from Global Engineering Documents, 15 Inverness Way East, Englewood, CO 80112, <http://global.ihs.com/> respectively.

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I. Introduction

A. Authority

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions designed to improve energy efficiency. Part B of title III (42 U.S.C. 6291–6309) provides for the “Energy Conservation Program for Consumer Products other than Automobiles.” Part C of Title III (42 U.S.C. 6311–6317) provides for a program similar to Part B which is entitled “Certain Industrial Equipment” and which includes commercial air conditioning equipment, packaged boilers, water heaters, and other types of commercial equipment.

DOE publishes today’s final rule pursuant to Part C which specifically provides for definitions, test procedures, labeling provisions, energy conservation standards, and authority to require information and reports from

manufacturers. *See* 42 U.S.C. 6311–6317. With regard to test procedures, Part C generally authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which reflect energy efficiency, energy use and estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6314) With respect to some commercial equipment for which EPCA prescribes energy conservation standards, including commercial packaged boilers, this statute provides that “the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute or by the American Society of Heating, Refrigerating and Air Conditioning Engineers, as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992.” (42 U.S.C. 6314(a)(4)(A)) Further, if such an industry testing or rating procedure is amended, DOE must revise its test procedures to be consistent with the amendment, unless the Secretary determines, based on clear and convincing evidence, that to do so would not meet certain general requirements spelled out in the statute for test procedures. (42 U.S.C. 6314(a)(4)(B)) Before prescribing any test procedures for such equipment, the Secretary must publish them in the **Federal Register** and afford interested persons at least 45 days to present data, views and arguments. (42 U.S.C. 6314(b)) Effective 360 days after a test procedure rule applicable to any covered commercial equipment, such as a commercial packaged boiler, is prescribed, no manufacturer, distributor, retailer or private labeler may make any representation in writing or in broadcast advertisement respecting the energy consumption or cost of energy consumed by such equipment, unless it has been tested in accordance with the prescribed procedure and such representation fairly discloses the results of the testing. (42 U.S.C. 6314(d)) Finally, under the terms of Part C of title III of EPCA, the Secretary is authorized to require manufacturers of covered commercial products to submit information and reports for a variety of purposes, including ensuring compliance with requirements. *See* 42 U.S.C. 6316(b)(1).

B. Background

DOE began implementation of Part C of title III of EPCA by establishing 10 CFR part 431. Part 431 is entitled “Energy Efficiency Program for Certain Commercial and Industrial Equipment.” Eventually, part 431 will include

commercial heating, air conditioning and water heating products. It will consist of: Test procedures, Federal energy conservation standards, labeling, and certification and enforcement procedures. Today DOE proposes amendments to part 431 in order further to implement Part C of title III of EPCA.

As a first step in the process that led to today’s final rule, DOE convened public workshops on April 14 and 15, 1998, and October 18, 1998, to solicit views and information from interested persons to aid in developing proposed rules that would address test procedures, certification and enforcement procedures, and EPCA’s coverage for this equipment. The workshop discussions and comments focused on the following issues for packaged boilers specifically:

- (1) The definition of commercial packaged boiler;
- (2) Whether the efficiency standards and test procedures prescribed by EPCA apply only to boilers used in certain applications, to boilers below a certain capacity, and to low pressure boilers;
- (3) The test procedures to be adopted;
- (4) Adoption of separate testing provisions for condensing boilers, modular boilers, multiple boilers, or boilers designed for low temperature applications; and
- (5) Testing and rating of a boiler designed for both steam and hot water applications.

After considering both oral and written comments, on August 9, 2000, DOE published a Notice of Proposed Rulemaking and Public Hearing (“proposed rule” or “NOPR”) (65 FR 48838) to implement the energy efficiency standards and test procedures mandated by EPCA for commercial packaged boilers. 65 FR 48838. The NOPR requested data, comments, and information regarding the proposed regulations. DOE conducted a public workshop/hearing (the public hearing) on September 20, 2000, to receive oral comments, and DOE also accepted written comments. In formulating today’s final rule, DOE considered these comments and have incorporated recommendations where appropriate. Section II below discusses the comments that questioned or disagreed with the Department’s positions as presented in the NOPR.

Energy conservation standard levels were not at issue in these proceedings. The NOPR merely proposed to recodify into the Department’s regulations on efficiency requirements for commercial packaged boilers the energy conservation standard levels that had been established in 42 U.S.C. 6313(a) of EPCA for this equipment.

C. Summary of the Final Rule

Today's final rule incorporates the following for commercial packaged boilers: (1) Clarification of EPCA's definition and coverage, (2) energy efficiency test procedures, and (3) energy conservation standards. The commercial packaged boilers covered under today's final rule: (1) Are low pressure steam and hot water heating boilers (steam boilers with a pressure of 15 psi gauge (psig) or less and hot water boilers with a pressure of 160 psig or less and water temperature of 250° F or less), (2) having a rated maximum input capacity of 300,000 Btu per hour (Btu/hr) or more, and (3) that are, "to any significant extent," distributed in commerce for the heating, space conditioning or service water heating in buildings. High pressure steam and high temperature water boilers (steam boilers with a pressure higher than 15 psig, and water boilers with a pressure above 160 psig or a water temperature exceeding 250° F, or both) are not covered by the test procedures and standards in today's rule. This final rule also provides, in essence, that the person or entity that specifies the major component parts used in an assembled boiler is responsible for the boiler's compliance with EPCA efficiency requirements.

Today's final rule incorporates the test procedures contained in the commercial boiler testing standard HI BTS-2000 from the Hydronics Institute Division of GAMA (Incorporated by reference, see § 431.85) (including its provisions for testing condensing boilers) to determine the energy efficiency of commercial packaged boilers under EPCA. And the rule allows, as an alternative during a two year transition period, the use of ASME PTC 4.1-1964 (R1991) to test steel boilers under EPCA, since many manufacturers have traditionally used that procedure to test such boilers.

Finally, so that the efficiency test procedures and standards for commercial packaged boilers will be in the same place in our regulations, this rule recodifies elsewhere in part 431 the minimum energy efficiency levels prescribed in 42 U.S.C. 6313(a) of EPCA.¹ Also, because DOE is combining in 10 CFR part 431 the existing requirements for electric motors with the new requirements for commercial equipment such as packaged boilers,

¹ These efficiency levels are under review by the Department as discussed in the notice of final rulemaking for commercial equipment, entitled, "Energy Efficiency Program for Commercial and Industrial Equipment: Efficiency Standards for Commercial Heating, Air Conditioning and Water Heating Equipment," 66 FR 3336, 3349-3352 (January 12, 2001).

DOE is placing today's new rules in Subpart E rather than in Subpart K as proposed in the NOPR, using different section numbers than it proposed.

II. Discussion

A. General

Representatives of eight organizations, comprising trade associations (the American Gas Association and GAMA), manufacturers (A.O. Smith Water Products Co. and Bock Water Heaters), private research/consulting entities (the Gas Technology Institute (GTI), Arthur D. Little Inc. (ADL), and BR Laboratories, Inc. (BR Labs)), and a state government energy agency (the California Energy Commission (CEC)), attended the public hearing on September 20, 2000. The American Society of Testing and Materials (ASTM) did not attend the public hearing but submitted written comments. GAMA and CEC also submitted written statements in advance of the hearing.

The following summarizes the issues addressed in the preamble of the NOPR and discusses in detail the points on which significant comments were presented during and after the public hearing.

B. Commercial Packaged Boilers: Definitions and Scope of Coverage

1. Definition—General

a. Background

EPCA defines "packaged boiler" as "a boiler that is shipped complete with heating equipment, mechanical draft equipment, and automatic controls; usually shipped in one or more sections." (42 U.S.C. 6311(11)(B)) As discussed in the NOPR and as further discussed below, ASHRAE/IES Standard 90.1-1989, refers to five test standards for commercial heating boilers. The definitions for packaged boiler or boiler assembly in three of the four standards are essentially the same as, but not identical to, EPCA's definition with respect to the heating equipment and controls. The fourth standard defines only the type of low-pressure boilers that it covers and the fifth does not define packaged boilers.

The NOPR discussed in detail whether EPCA's efficiency requirements for commercial packaged boilers apply only to certain types of boilers based on their method of shipment and assembly, application (e.g., space heating/conditioning, service water heating, industrial processing, and utility applications), capacity (size), and operating characteristics (e.g., low pressure steam and hot water heating

boilers, high temperature hot water boilers, and high pressure steam boilers). The Department's proposed resolution of these issues was reflected in the NOPR's proposed definitions of "commercial packaged boiler" and "packaged boiler." The issues were further addressed in comments on the NOPR, which are discussed below in the following subsections: method of shipment and assembly; application; capacity; and high pressure steam and high temperature water boilers. But first the Department addresses comments that raised questions as to the meaning of terms used in the NOPR's definition of "commercial packaged boiler."

b. Meaning of Terms Used

GAMA suggested that in the NOPR's definition for "commercial packaged boiler" (proposed § 431.352), the phrase "capacity of 300,000 Btu/hr or more" should be replaced with "input rating of 300,000 Btu/hr or more." GAMA stated that the word "capacity" is imprecise because it specifies neither input nor output. (GAMA, No. 2EE at p. 1). At the public hearing, GAMA explained that "capacity" in this context has more than one meaning. It means the output capacity to most people, but could mean input to a minor segment of the industry. GAMA stated that, as used in the definition, however, the 300,000 Btu/hr value should be the input rating of the boiler. Otherwise commercial boilers with input ratings of approximately 300,000 to 375,000 Btu/hr would not be covered by the proposed Federal regulations, since those boilers would have an output capacity of less than 300,000 Btu/hr. (GAMA, Tr. 35-38). CEC supported GAMA's suggestion, stating in part that the rated input has always been: (1) Used to define the size of gas appliances in the ANSI Z21 series of standards, (2) intended as the basis for defining capacity in ASHRAE/IES Standard 90.1, and (3) what the State of California believes is the basis for preemption of state efficiency requirements. (CEC, Tr. 35, 39). BR Laboratories, Inc. supported GAMA's position. (BR Labs., Tr. 39).

For a number of reasons, the Department agrees with the above comments that it should define "capacity" in terms of input rating. First, we accept the representations that rated input has been the capacity measure for differentiating efficiency requirements in voluntary standards. Particularly relevant here is that ASHRAE/IES Standard 90.1-1989 delineated categories of boilers (and prescribed efficiency requirements) by reference to the 300,000 Btu/hr value, without mentioning input or output,

whereas the corresponding portion of Standard 90.1–1999 explicitly states that such size categories are based on “input.” We believe this change was designed to clarify rather than alter the scope of the applicable efficiency requirements. Because EPCA’s efficiency requirements for commercial boilers are based on these same provisions in ASHRAE 90.1, and also use the 300,000 Btu/hr level as a cut-off for differentiating efficiency requirements, ASHRAE’s categorization of commercial boiler sizes by reference to input strongly suggests that boiler “capacity” in EPCA means input capacity. Second, the Department believes that, because EPCA provides efficiency standards for boilers that are consumer (residential) products if they have an “input rate” of less than 300,000 Btu/hr, (42 U.S.C. 6291–6292), the “capacity” of commercial boilers to which Section 342(a)(4) of EPCA refers is also the input rate. To begin with, the most reasonable construction of EPCA is that the capacities of residential and commercial boilers must be measured in a uniform manner under the statute. If the term “capacity” in EPCA were construed as providing standards for commercial boilers with an output rate of 300,000 BTU/hr or more, there would be a gap between the capacities of the largest consumer boiler and the smallest commercial boiler for which EPCA prescribes standards. We do not believe Congress intended such a result.

For these reasons, we construe the term “capacity,” as applied to commercial packaged boilers in section 42 U.S.C. 6313(a)(4)(C)–(D) of EPCA, to mean the rated input not the output capacity. To clarify this point, we are including in our definition of “commercial packaged boiler,” in 10 CFR 431.82, the parenthetical “(rated maximum input)” to modify the term “capacity.”

CEC suggested that we delete the phrases “HVAC & WH product” and “to any significant extent” from the proposed definition of “commercial packaged boiler.” (CEC, No. 6 at pp. 3 and 5). DOE believes that it should not simply delete the term “HVAC & WH product” from this definition, but should instead replace it in the final rule. The Department proposed to include “HVAC & WH product” in the definition of “commercial packaged boiler” in order to incorporate by reference the qualifications set forth in EPCA’s definition of “industrial equipment.” (42 U.S.C. 6311(2)(A)) Therefore, to clarify the regulatory language and respond to CEC’s comments the definition of “commercial packaged boiler” in today’s final rule

includes the term “industrial equipment,” in place of “HVAC & WH product,” and we will incorporate the EPCA definition of “industrial equipment” elsewhere in 10 CFR Part 431. We address use of the term “to any significant extent” in Section II–B–3 below.

2. Method of Shipment and Assembly

As discussed in the NOPR, steel and copper boilers are usually shipped as completely assembled units. Cast iron boilers, however, are occasionally shipped from the boiler manufacturer’s factory completely assembled and wired, or in separate sections for assembly at the job site, but are usually sold through boiler distributors who either ship all the necessary sections out of their inventories, or have manufacturers ship some or all of the components, directly to the customer for assembly at the customer’s site. Such boilers typically conform to a predefined design, which consists of sections specified by the manufacturer of the cast iron boiler section, *i.e.*, the boiler manufacturer, and may include a burner, for example, that has been produced by another manufacturer. The boiler manufacturer will test and guarantee the efficiency of such a boiler. Sometimes, however, a vendor or installer will sell a commercial boiler that consists of a combination of sections that has not been specified by a boiler manufacturer. 65 FR 48841–42. In summary, boilers are shipped in the following three ways: (1) As completely assembled units; (2) in sections that conform to a design specified by the manufacturer; and (3) in a combination of sections not specified by the manufacturer.

In the NOPR, DOE stated that it believes boilers distributed in these three ways whether directly by manufacturers or by distributors, fit within EPCA’s definition of packaged boiler. Accordingly, DOE proposed to adopt EPCA’s definition of packaged boiler, but with added language to clarify that if a commercial packaged boiler is shipped in more than one section, it will be covered even if the sections are produced by more than one manufacturer or originated or shipped at different times and from more than one location. DOE also indicated in the preamble of the NOPR that it does not believe EPCA’s requirements for “packaged boilers” apply to custom-designed, field-constructed boiler systems which generally require alteration, cutting, drilling, threading, welding or similar tasks by the installer. DOE received no comments on these points. Therefore, the definition of

“packaged boiler” in the final rule contains the language proposed in the NOPR. But to make the rule more explicit, DOE has added language to provide that field constructed, custom designed boilers are not included.

At the public hearing, GAMA again addressed the issue of who would be responsible for the testing and the efficiency rating of a commercial packaged boiler does not consist of manufacturer specified sections. DOE had stated, in essence, in the NOPR that if a vendor sells a commercial packaged boiler with components that are not specified and approved by a boiler manufacturer, DOE would consider the vendor to be the manufacturer of the boiler. GAMA stated at the hearing that it may be necessary to create, in the regulation, a special definition of a manufacturer. (GAMA, Tr. 45). CEC stated that in California a distributor or contractor on occasion will change the burner in a commercial packaged boiler shipped by the boiler manufacturer. CEC believes that such distributor or contractor should be responsible for the boiler’s efficiency rating and supports GAMA’s suggestion of having a definition of manufacturer that would make the regulation self-contained on this point. (CEC, Tr. 28, 43, 46–47).

The Department agrees that the regulations should define the term “manufacturer” with respect to commercial packaged boilers so as to clarify that any vendor or installer who sells a commercial packaged boiler that has components not specified by the boiler manufacturer is responsible for the testing and efficiency rating of that equipment. In such circumstances, the vendor or installer will be treated as a manufacturer for purposes of applying EPCA’s requirements because it would be performing a manufacturing function. The Department will not treat such a firm merely as a distributor, retailer, or installer of such equipment. In addition, this definition of “manufacturer” in the final rule makes clear that the boiler manufacturer is responsible for complying with EPCA’s requirements where the boiler consists of the components that the manufacturer has specified. Therefore, DOE is prescribing in § 431.82 of today’s final rule a definition of “manufacturer for commercial packaged boilers” that incorporates EPCA’s definition of this term and clarifies it as just described.

3. Application

As explained in detail in the NOPR, we believe that the intent of EPCA is to apply the term “packaged boiler” to commercial boilers used in buildings for space conditioning and service water

heating. 65 FR 48842. Accordingly, the proposed definition for commercial packaged boilers included only boilers distributed "to any significant extent" for these purposes.

The Department received no comment on the portion of the NOPR that directly addressed this issue. The CEC, however, suggested deletion of the phrase "to any significant extent" from the proposed definition of "commercial packaged boiler" (CEC, Tr. 66) because it believes the definition would be complete without it. As indicated in the NOPR, 65 FR 48842, inclusion of this phrase in the definition makes clear that the types of boilers used almost exclusively for industrial process heating or utility applications, and rarely sold for heating, space conditioning, or service water heating in buildings, are not covered by the standards and test procedures prescribed by EPCA for a "packaged boiler." Accordingly we are not altering the proposed definition in this respect.

4. Capacity

At the April 1998 workshop, participants discussed whether the DOE test procedure should apply only to packaged boilers that had a rated capacity below some upper limit. In the NOPR, we included no upper limit on capacity in the proposed definition of "commercial packaged boiler," stating that we had no grounds to conclude that EPCA covers only boilers below a certain size. Nevertheless, given the limited quantities of high-capacity boilers used for space heating, and their large size, we solicited comments on whether there is an upper limit on capacity above which the proposed testing procedure would be unduly burdensome to conduct.

At the public hearing, GAMA stated that it still believed that the DOE testing and certification requirements should be limited to low pressure steam and hot water boilers having inputs of eight million Btu/hr or less. (GAMA, No. 2EE at pp. 1-2, and Tr. 49-56). GAMA stated that an upper limit of eight million Btu/hr would cover the vast majority of boilers sold in the U.S. for use in space heating of commercial buildings, and covered under ASHRAE standard 90.1, and that those boilers could be tested according to the test procedure in the HI-1989 standard under a controlled laboratory setting, as in the current industry certification programs. GAMA stated that for large buildings with a large heating load, it is more reasonable to use a modular boiler system or a multiple boiler system (consisting of several smaller boilers) than a single large boiler. Also, GAMA stated its view that low pressure boilers above eight

million Btu/hr are usually custom designed for specific applications and constructed on site from a variety of separately supplied components in accordance with detailed engineering requirements. These boilers cannot be tested for efficiency until after they are constructed and made operational at the site, and such field tests are different from the testing of a completed packaged boiler unit under controlled laboratory conditions.

GAMA agreed that the I=B=R Directory (GAMA's directory of ratings for boilers and other heating equipment) does show a few boilers with sizes over eight million Btu/hr. GAMA stated that a manufacturer lists such boilers in the Directory to indicate its capability of building one at that large size, and usually will build only a few each year. GAMA stated that the testing of those large boilers at a manufacturer's facility in accordance with the HI standard is extremely difficult, and that is the reason that all manufacturers of cast iron steam and hot water boilers obtain those boilers' ratings based on the steam test only. GAMA stated that the larger size cast iron boilers usually are part of a family series of boilers with the same design and construction. According to GAMA, in the HI certification program it typically obtains the efficiency rating of those large size boilers by extrapolating or interpolating the tested efficiency ratings of two boilers in the same family series, picked near the extreme ends (in size, one at the small end, the other at the large end) of the family. GAMA stated this type of projection of the efficiency of a boiler in a family series is based on the boiler industry's long experience. GAMA stated that the manufacturer offers, in essence, a given model in a variety of inputs, where not every input is tested for the efficiency rating.

BR Labs stated that a boiler assembled in the field is normally tested there, and suggested that field testing might be warranted to obtain the efficiency rating of large size boilers. BR Labs also stated that it is common to make steel (fire tube or water tube) boilers having an input greater than 8 million Btu/hr for use by institutions, and that those boilers are designed in part for space heating. Furthermore, according to BR Labs, boilers larger than five to six million Btu/hr are commonly tested at the manufacturer's facility. (BR Labs, Tr. 44-45 and 57-58). CEC asserted that the statute clearly applies to all packaged boilers without any limitation with respect to size, but that DOE has the authority to make the test requirements for large boilers different from those for the small ones. (CEC, Tr. 61).

The foregoing discussion essentially raises two issues. One is the extent to which EPCA's definition of "packaged boiler," and its efficiency requirements for that product, cover low pressure boilers with inputs greater than eight million Btu/hr. The second is whether, assuming such products are covered, DOE's test procedure should make special provision for them.

On the first issue, as stated above, the Department said in the NOPR that it had no grounds to conclude that EPCA covers only boilers below a certain size. There is nothing in the record that would justify DOE changing this position, or concluding that its earlier interpretation of EPCA was incorrect. Accordingly today's final rule contains no upper limit on the size of commercial packaged boilers that are covered by the rule. GAMA, however, in arguing that the DOE test procedure should not cover boilers with rated inputs above eight million Btu/hr, asserted that such boilers are rarely used for space heating and comfort conditioning, and are usually custom-designed and field-constructed. Pursuant to the definitions of "packaged boiler" and "commercial packaged boiler," in section 431.82, today's final rule covers only boilers that are distributed "to any significant extent" for heating, space conditioning or service water heating in buildings, and excludes from coverage boilers that are custom-designed and field-constructed. These limitations on coverage exclude from the scope of the DOE test procedure all or most of the boilers GAMA asserts should be excluded.

As to the feasibility of testing boilers with rated inputs over eight million Btu/hr that would remain subject to the test procedure, ANSI Standard Z21.13 covers low pressure steam and hot water boilers with up to 12,500,000 Btu/hr rated input. That standard has been used by gas boiler manufacturers for several decades, indicating that testing of gas boilers for efficiency at rated inputs of eight to 12.5 million Btu/hr has been conducted without major difficulty. Most of the boilers listed in the directory of the HI 1998 I=B=R Ratings for Heating Boilers, which includes cast iron, steel, and copper boilers made by 21 commercial boiler manufacturers, had a nameplate input of under seven million Btu/hr. This substantiates GAMA's statement that most boilers certified by the HI are under eight million Btu/hr. However, one manufacturer listed models of its cast iron gas boilers at inputs of up to 9.5 million Btu/hr, and a major cast iron boiler manufacturer listed models of oil and gas fired boilers at inputs of up to

approximately 16 to 17.6 million Btu/hr. According to Section 5.2.1 of the 1989 HI Standard, the overall efficiency tests "shall be conducted on at least the smallest and largest assembly of a series to be catalogued, where a consistent geometry exists throughout the series." In addition, the combustion efficiency test can always be conducted during an overall efficiency test. This indicates that the two manufacturers of boilers larger than eight million Btu/hr obtained the efficiency ratings for each boiler series that contained one or more of these larger boilers through interpolating data from tests that included the actual testing of at least one of these large boilers. Therefore, it appears that the eight million Btu/hr value suggested by GAMA is not the limiting value above which the laboratory test cannot be conducted under the HI-1989 test standard. The Department notes also the BR Labs comment that steel boilers with capacities above eight million Btu/hr can be tested at the manufacturer's facility.

Based on the foregoing, the DOE test procedure in today's rule is not limited to packaged boilers below a specified upper limit in capacity, and contains no special provision for boilers over 8 million Btu/hr rated input. DOE notes, however, that the rules for commercial products allow a firm to determine a product's efficiency through use of calculation methods rather than testing, and to seek a waiver of the test procedure for a particular basic model. These provisions should give sufficient alternatives to firms that believe they cannot test these large boilers under the DOE test procedure.

5. High Pressure Steam and High Temperature Water Boilers

Participants in the April and October 1998 workshops expressed differing opinions on the coverage of high pressure steam and high temperature water boilers, referred to here as "high pressure boilers." In the NOPR, DOE stated that since no language in EPCA excludes packaged high pressure boilers from coverage under the statute, and since DOE believed high pressure packaged boilers are sometimes used for heating buildings, under the proposed rule EPCA's efficiency requirements would apply to packaged high pressure boilers which, "to any significant extent," are distributed for use for space conditioning in buildings. However, DOE stated that there may not be clear-cut criteria for distinguishing a packaged high pressure boiler that can be used for space conditioning, and the limited quantities and large sizes of

packaged high pressure boilers employed in space heating may make testing under the proposed DOE procedure unduly burdensome. Therefore, DOE solicited comments on the options of limiting application of EPCA efficiency requirements to those packaged high pressure boilers that are principally designed for heating buildings, or limiting coverage of packaged high pressure boilers to a specific maximum working pressure, such as 150 psig, above which one is unlikely to use it for commercial space heating. 65 FR 48843.

In comments on the NOPR, GAMA again stated its belief that high pressure boilers should be excluded from DOE testing requirements, because they are typically utilized for industrial process or power applications, not for commercial space heating applications. (GAMA, No. 2EE at p. 3).

The Department has further reviewed this issue, considering the statements from GAMA at the public hearing together with the comments from the participants at the earlier workshops. First, the Department again consulted the ASHRAE Handbook for HVAC Systems and Equipment. As stated in Chapter 10, Steam Systems, of the 2000 ASHRAE HVAC System and Equipment Handbook (Handbook), one of the most important decisions in the selection of a steam system is the design pressure. The Handbook states that on the basis of investment and operating cost considerations, energy efficiency, and control stability, the pressure should be held to the minimum values above the atmospheric pressure that accomplishes the required heating task, and that space heating and domestic water heating can best be accomplished, directly or indirectly, with low pressure steam less than 15 psig or hot water temperature less than 250 °F. High pressure steam is required only for loads such as dryers, presses, molding dies, power drives, and other processing, manufacturing, and power requirements, and there are significant increases in investment and operating cost associated with a high pressure system.

The Department also reviewed the definition of "boiler" in ASHRAE/IES Standard 90.1-1999. In the 1989 version of the Standard, "boiler" was defined as a "self-contained appliance for supplying steam or hot water." In the 1999 version of the standard, the definition was revised to "a self-contained low-pressure appliance for supplying steam or hot water." The Department believes the revised definition indicates that the consensus of the subcommittee on mechanical equipment of the ASHRAE Standard

Project Committee 90.1R, whose members represent a wide range of interests in the HVAC industry, is that low pressure boilers are the boilers used for space heating in most commercial buildings, and that use of high pressure boilers for this purpose is not common.

Finally, representatives of the relevant industries (GAMA, the Council of Industrial Boiler Owners and the American Boiler Manufacturers Association) uniformly stated that high pressure boilers are not commonly used in space heating applications in commercial buildings.

On the basis of the above comments and information, the Department has decided upon further review of this issue that high pressure boilers are not currently covered by the standards and test procedures prescribed in EPCA. For reasons indicated in the NOPR and elsewhere in this notice, these requirements apply only to packaged boilers that are distributed to any significant extent for heating, space conditioning, or service water heating in buildings. The Department has now concluded that the information in the record demonstrates that high pressure boilers are not distributed to a significant extent for these purposes. Accordingly, the efficiency standards in today's final rule do not apply to these boilers, nor does the rule include a test procedure for high pressure steam and high temperature hot water boilers, as proposed in the NOPR. Instead, the rule prescribes only a test procedure for commercial packaged low pressure steam and hot water boilers, commonly referred to as ASME Section IV Heating Boilers. The Department may revisit the issue of EPCA's coverage of packaged high pressure boilers at a future date if some of the circumstances discussed above were to change—if, for example, ASHRAE/IES Standard 90.1 were to incorporate efficiency standards and test procedures for this equipment or additional information indicates that a significant number of these boilers are sold for use in heating and space conditioning in commercial buildings.

C. Commercial Packaged Boiler Test Procedures for the Measurement of Energy Efficiency

EPCA requires that the test procedures for measuring the efficiency of commercial packaged boilers be those generally accepted industry testing or rating procedures that were developed or are recognized by the American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc., as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992. (42 U.S.C. 6314(a)(4)(A)). Also, if such an

industry test procedure or rating procedure for commercial packaged boilers is amended, DOE must adopt such revisions unless it determines that to do so would not produce test results which are reasonably designed to reflect energy efficiency, energy use, and estimated operating costs, or that the revised procedures would be unduly burdensome to conduct. (42 U.S.C. 6314(a)(4)(B))

The version of ASHRAE Standard 90.1 in effect on June 30, 1992, referenced five industry test standards that apply to gas-fired boilers or oil-fired boilers or both. These are the ANSI Standard Z21.13-1987 for gas-fired boilers (revised as ANSI Z21.13-1991 with Addendum ANSI Z21.13-1993a); the HI Testing and Rating Standard for Heating Boilers, sixth edition, 1989, for gas and oil-fired boilers (HI 1989); ASME Power Test Codes (PTC) 4.1-1964 (reaffirmed R1991) for Steam Generating Units for fossil fuel boilers (revised in 1998 as ASME PTC 4-1998, Fired Steam Generators, issued on December 31, 1999); the Underwriters Laboratory Standard 795-1973 for gas heating equipment (UL 795, revised in 1994 as UL 795-94); and the Underwriters Laboratory Standard UL Standard 726-1990 for oil-fired boilers (UL 726).

DOE evaluated the five referenced standards and presented those analyses in the April and October 1998 workshops. On the basis of this evaluation and the comments from the workshop attendees, in the NOPR we proposed the adoption of specific test procedures. DOE received comments on these proposals during the September 2000 public hearing and in writing.

As discussed above, the Department has determined that high pressure steam and high temperature water boilers are not covered at present by EPCA's requirements for test procedures and standards for packaged boilers. Therefore, today's rule does not contain test procedures or standards for these products, nor does DOE discuss below any comments it received as to the test procedures DOE should adopt for them. Also, DOE received no comments on our statement in the NOPR that DOE would not provide special test provisions for boilers designed for low temperature application. Therefore, DOE adheres to this rationale and position in the final rule and does not further discuss this issue. Finally, in the NOPR, the Department proposed an approach for testing, rating and reporting on boilers capable of supplying either hot water or steam. DOE received no comments on this approach and therefore it is implementing it in today's final rule.

1. Test Procedure and Test Conditions for Low Pressure Steam and Hot Water Boilers

On the basis of discussions during the two earlier workshops, in the NOPR DOE proposed to adopt, in large part, the HI-1989 standard as the uniform test standard for both gas and oil fired low pressure heating boilers. And because gas fired boilers have commonly been tested under ANSI Z21.13, DOE proposed to adopt certain test conditions specified in the ANSI standard as modifications to the HI-1989 standard. In addition to this, DOE proposed in the NOPR to allow manufacturers the alternative of using the Simplified Efficiency Test (Short Form) of ASME PTC 4.1, with some modifications that would ensure comparability between the two test procedures.

No commenter objected to adoption of HI-1989, with modifications, as the DOE test procedure, and none suggested that this test procedure would affect the efficiencies of boilers as measured using any other test procedure referenced in ASHRAE 90.1 in 1992. At the September 2000 public hearing however, GAMA stated that HI had developed a revised test standard, BTS-2000, "Method to Determine Efficiency of Commercial Space Heating Boilers," which is based on the 1989 HI standard, and will replace that standard. Moreover, GAMA stated that the draft BTS-2000 standard adopts the DOE provisions as described in the NOPR, and recommended that DOE reference the new industry standard in place of the HI-1989 standard. GAMA agreed that it would submit the final version of the standard in the near future for review by DOE and by other stakeholders as requested by CEC. (GAMA, No. 2EE at pp. 2-3, and Tr. 71-80; CEC, Tr. 76-80). Also, GAMA stated that, in referencing the HI-1989 standard in the proposed rule, DOE had ignored certain sections in the standard that are important and needed to establish tolerances for the test data and duration of each test, and should be included in the referencing language. Those sections are Section 5.2.5 on derating the gas power burner rating based on the oil efficiency test, Section 9.1 on input range and definition of equilibrium conditions, and Section 9.2 on length of test. (GAMA, No. 2EE at pp. 2-3).

GAMA provided the Department with a draft version of the BTS-2000 standard in October 2000 (GAMA, No. 3), and a final version, dated January 2001, in April 2001. A comparison of the final version of BTS-2000 to the HI-

1989 standard with respect to the test procedure for commercial heating boilers showed close agreement between the two documents. In addition, BTS-2000: (1) Incorporated the modifications to the HI-1989 standard proposed in the NOPR on the inlet and outlet boiler water temperatures for hot water boilers; (2) included a test procedure for condensing boilers that follows the test method prescribed in the ASHRAE standard 103-1993, as proposed in the NOPR (except the specification on boiler water inlet temperature); and (3) revised the test setup with respect to the test stack and the location for the measurement of flue gas temperature and flue gas sampling for gas-fired boilers for indoor installation to agree with the provisions in the ANSI Z21.13 and the ANSI Z21.13a-1993 addendum. Specifically, with respect to the latter, BTS-2000 (a) differentiates the setup for the test flue stack depending on whether the boiler input rate is below or above 400,000 Btu/hr. and (b) changes the flue gas measurement plane from the location inside the insulated flue pipe section 12 inches downstream of the flue collar or outlet from the boiler (requirement in HI-1989), to "immediately before the flue gases' discharge from the boiler" (specification in ANSI Z21.13). (The latter change eliminates the need for the HI-1989 requirement to insulate 12 inches of the test flue pipe of gas fired boilers, contained in the NOPR by virtue of the proposal to incorporate HI-1989 as the DOE test procedure.)

Pursuant to the statute, 42 U.S.C. 6314(a)(4)(B), the Department reviewed the amendments to the HI-1989 standard as contained in the BTS-2000 standard. The Department determined that the revisions to the HI-1989 standard in BTS-2000 are substantively the same as what was proposed in the NOPR. We have no basis to conclude that the test procedure in BTS-2000 either is not reasonably designed to produce results that reflect energy efficiency, energy use and estimated operating costs, or is unduly burdensome to conduct. Moreover, because BTS-2000 is essentially the same as the test procedure proposed in the NOPR, it would not alter the measured efficiencies that would have resulted from the proposed test procedure and would have little or no effect on efficiencies measured using the existing test procedures. See 65 FR at 48843-45. Nor has any evidence been presented that use of BTS-2000 or the proposed test procedure would render non-compliant a commercial boiler previously measured as minimally

complying with the applicable EPCA standard. For all of these reasons, the Department is referencing the BTS-2000 standard in today's final rule instead of the HI-1989 standard as was proposed in the NOPR.

As described above, GAMA also stated that the rule language should include several sections (5.2.5, 9.1, and 9.2) of the HI-1989 standard. The proposed rule language on test procedures did not reference Section 5.2.5 since it is part of Section 5.2 of HI-1989 on the approval procedure of a boiler's rating, which does not concern the test method. Also, sections 9.1 and 9.2 were already explicitly specified as part of the proposed rule language in Section 431.362(d)(1)(i), Test Measurements for Packaged Low Pressure Steam and Hot Water Boilers. See 65 FR 48851. In prescribing the use of BTS-2000 in today's final rule, DOE has retained the references to sections 9.1 and 9.2.

In its comments, GAMA also asserted that the proposed optional test standard, the ASME PTC 4.1, has the following problems: (1) It lacks "tolerances for input, pressure, number of tests required, and when the boiler has achieved steady state conditions;" (2) the test duration of four hours is too long for a combustion test, and the locations "of temperature, pressure, flue sampling, and stack configuration are not specified;" (3) it is a test standard for the acceptance test of a boiler after it is installed in the field where the test conditions are less controllable than a laboratory test; and (4) it has been replaced by the standard ASME PTC 4-1998 (issued on December 31, 1999), which is vastly different from the original ASME PTC 4.1. For these reasons, GAMA claimed that test results based on the ASME PTC 4.1 standard would be less accurate than results based on the HI-1989 standard. It also asserted that boilers in the same category should all be tested using a consistent procedure. GAMA therefore recommended that Section 431.362(c)(v) of the proposed rule, Alternative Test Procedure for Testing Low Pressure Steam and Hot Water boilers, which allows the use of PTC 4.1, be deleted. However, GAMA also suggested that for large boilers or boilers that are assembled in the field, field testing as per ASME PTC 4.1 might be allowed as an option. (GAMA, No. 2EE at p. 3 and Tr. 81-89). CEC stated that it generally opposes the inclusion of alternate test procedures since there is always confusion as to who has the option of choosing the test procedure—the manufacturer or the enforcing agency—but in this case it has no objection. CEC

also suggested that DOE require one test method for testing certain types of boilers, and another method for other types, rather than allowing all products to use either method. (CEC, No. 2FF at p. 2 and Tr. 87-89).

The Department evaluated the new ASME PTC 4-1998 standard for possible adoption. As stated by GAMA, the new PTC 4-1998 is a completely re-written document and is vastly different from the PTC 4.1 in both style and details, even though the principles behind the test procedures remain unchanged. As stated in the Foreword to the standard, the PTC 4 committee made the decision to discourage the almost universal use of the abbreviated test procedure (The Short Form) in PTC 4.1. Therefore, the Short Form is no longer included in the new standard. After reviewing the PTC 4-1998 standard and analyzing its effect on entities that would be required to use it, the Department believes that, without the abbreviated test procedure, the new test standard is too burdensome an undertaking for testing the small (in comparison with the size of the steam boilers or generators in an utility plant) packaged low pressure steam and hot water boilers employed for commercial space heating. Therefore, the Department has decided that the new ASME PTC 4-1998 should not be adopted in today's final rule as a test procedure for commercial packaged boilers used for commercial space heating purposes.

The Department considered the comments of GAMA with respect to the accuracy of the tests under the ASME PTC 4.1 standard. DOE believes that Section 3.13 of ASME PTC 4.1, which references the relevant ASME Power Test Codes, adequately specifies the required accuracy in instruments and measurement. DOE agrees with GAMA, however, that the test run duration that ASME PTC 4.1 states as preferable, four hours, may be longer than needed for the smaller packaged steel boilers employed for space heating, and that when the test is conducted in the field after a boiler is installed, test conditions such as the room temperature and the boiler inlet water temperature may be different from the conditions in a testing laboratory. But DOE believes that with appropriate modifications to address such problems, including the modifications proposed in the NOPR, the abbreviated test procedure of ASME PTC 4.1 is sound.

Nevertheless, test results for products being rated under the same efficiency standard should be comparable, and DOE believes there would be some differences in the results obtained from the PTC 4.1 procedure and BTS-2000.

Moreover, BTS-2000 is a sound, easy to follow, and up-to-date procedure that is readily available to manufacturers. By contrast, the abbreviated test procedure is not incorporated in a currently available standard, and the Foreword to PTC 4-1998 states that the PTC 4 committee decided to discourage its use.

On the other hand, as discussed in the NOPR, the American Boiler Manufacturers Association stated that its members use PTC 4.1 more frequently to test steel boilers, and the Council of Industrial Boiler Owners (CIBO) stated that its members lack familiarity with the HI-1989 standard. To the extent these firms are concerned about steel boilers used for industrial processes but which are rarely used for space conditioning and service water—and that seems particularly true for CIBO members—such boilers are not covered by today's requirements. Some manufacturers of steel boilers, moreover, have used the HI-1989 standard, the predecessor to BTS-2000, as shown by the listing of their boilers in the Hydronics Institute I=B=R rating directory (three manufacturers in the January 2001 directory). In addition, DOE believes BTS-2000 and ASME PTC 4.1 are essentially similar, and the differences between them are not fundamental. DOE is confident that, to the extent manufacturers need to convert from use of PTC 4.1 to BTS-2000, doing so will not be difficult, and will cause only limited and certainly not undue burdens. Nevertheless, DOE believes it would be reasonable to allow a transition period during which manufacturers of steel boilers can become familiar with BTS-2000 and assure that their products will comply with EPCA standards using that procedure.

Based on all of these considerations, DOE has decided in today's final rule to prescribe BTS-2000 as the DOE test procedure for all commercial packaged boilers, but to allow the use of ASME PTC 4.1, with modifications, as an optional test procedure for steel boilers for two years after the publication of this notice. During this period, manufacturers may use either BTS-2000 or the ASME PTC 4.1 abbreviated test procedure to determine the efficiency of steel boilers under EPCA, but if they use the PTC 4.1 procedure their tests must meet the following criteria:

- (1) The minimum duration of a test run after steady state operation is achieved shall be 30 minutes. (This specification is the same as in BTS-2000.)
- (2) The boiler inlet water temperature shall be at 35° F to 80° F, except that when a boiler is tested in the field after

installation the temperature may be as recommended by the manufacturer, but not more than 140° F. (The 35° F to 80° F range was proposed in the NOPR as a condition of using PTC 4.1. DOE believes the additional specification will allow for field tests under conditions that cannot be controlled as they are in a test facility. In any event, DOE agrees with the participants in the workshops and the public hearing, who pointed out that variations in the boiler inlet water temperature have a very small effect on the combustion efficiency value of a non-condensing boiler.)

(3) For hot water boilers, the boiler outlet water temperature shall be at 180°F ± 2°F.

(4) For steam boilers, steam pressure must range from atmospheric (zero psig) to two psig.

(5) In the heat loss method of ASME PTC 4.1 for calculating efficiency, the radiation loss term (and other minor loss terms) shall be set to zero to obtain the combustion efficiency (of 100 percent minus percent flue loss). These modifications to the abbreviated test procedure should correct the problems we believe exist with this procedure.

2. Provisions for Condensing Boilers

In the NOPR, DOE stated that condensing boilers are significantly more energy efficient than non-condensing boilers and a test procedure should be readily available to allow manufacturers to rate their products accordingly. In addition, a test procedure is needed for evaluating design options underlying any future minimum efficiency standards. The Department proposed to adopt the steady state test procedure for condensing boilers as prescribed in the ASHRAE 103–1993 standard. ASHRAE/IES Standard 90.1 does not directly reference an industry test standard for the testing of condensing boilers, but it references the DOE test procedure for residential boilers with input of less than 300,000 Btu/hr, which, in turn, references the ASHRAE 103–1993 standard. DOE proposed to adopt the procedure specified in sections 7.2.2.4, 7.8, 9.2 and 11.3.7 of ASHRAE standard 103–1993 with two modifications. Of relevance here, one of these modifications was that the boiler inlet water temperature be restricted to 80°F±5°F instead of the range of 35°F to 80°F specified for non-condensing boilers, since the inlet water temperature influences the amount of condensate produced and, thus, needs to be more accurately specified.

At the September 2000 public hearing, no objection was posed to the

proposed testing method for condensing boilers. However, the revised Hydronics Institute Boiler Testing Standard BTS–2000 added a test method for condensing boilers similar to the one proposed in the NOPR, except that it does not restrict inlet water temperature to 80°F±5°F. (See sections 8.5.2, 9.1.2.1.4, 10.2.2, 10.2.3, 11.1.17, 11.1.18, 11.1.19, and 11.2.2 of BTS–2000.) Since the Department is adopting the BTS–2000 standard in today's final rule, ASHRAE Standard 103–1993 need not be referenced in order to provide a procedure for the testing of condensing boilers. But the final rule does provide that, for purposes of the DOE test procedure, in sections 8.5.2 and 9.1.2.1.4 of BTS–2000, the boiler inlet water temperature shall be at 80°F±5°F instead of the 80°F±10°F currently specified in the BTS–2000 standard.

3. Modular Boilers and Multiple Boilers

A modular boiler system consists of a group of identical individual boilers installed as a system. A multiple boiler system consists of a group of individual boilers, of different design or different sizes or both, installed as a system. In the preamble of the NOPR, the Department stated that the efficiency rating for a packaged modular boiler system with individual modules or boilers of identical design and construction may be based on the rating of only one boiler module in the system. For a multiple boiler system where the individual boilers are of different designs, we stated that each boiler of a different design would be considered a separate packaged boiler and be required to meet the minimum efficiency standard prescribed for that product.

At the September 2000 public hearing, GAMA raised the question of why the Department proposed that a modular system would consist of individual boilers of 400,000 Btu/hr input or less. (GAMA, Tr. 90–91). DOE believes that this question results from a misunderstanding of our position. DOE had stated in the NOPR's preamble that "a modular boiler assembly * * * consist[s] of * * * boilers * * * usually of less than 400,000 Btu/hr input each." 65 FR 48847 (emphasis added). This language was part of an explanation of how DOE intended to treat modular boilers under the regulations. DOE did not propose a definition of modular boilers, nor was it DOE's intention, either in the language just quoted or elsewhere in the preamble, to indicate that our treatment of modular boilers would depend on the size of their constituent units. Furthermore, the Department is not imposing such

criterion in today's final rule. The word "usually" does not exclude from the category of modular boiler any system consisting of units each with an input of greater than 400,000 Btu/hr.

4. Outdoor Boilers

In a comment submitted to the Department after the September 2000 public hearing, GAMA stated that the BTS–2000 standard specifies flue pipe and connection requirements for testing power gas and oil boilers, and for gas-fired boilers designed for indoor installations (following the ANSI Z21.13 standard), but does not specify any vent requirement for gas-fired boilers designed for outdoor installations. GAMA also stated that manufacturers currently test both indoor and outdoor gas-fired boilers in accordance with the requirements of the ANSI Z21.13 standard, which specifically states that no test vent apparatus (other than that provided by the manufacturer) is required for gas-fired outdoor boilers. The Department believes that GAMA's comment needs to be addressed in today's final rule, because the test procedure in the rule should address venting for gas fired outdoor boilers. The current industry practice for testing gas-fired outdoor boilers is the ANSI Z21.13–1991 standard, which is referenced by ASHRAE Standard 90.1. Since DOE is not referencing the ANSI Z21.13–1991 standard in this rule, DOE is including the following language from Section 2.1.5 of the ANSI Z21.13 standard in section 431.86 of today's final rule: "A gas-fired boiler for outdoor installation with a venting system must be tested with the venting system in place."

D. Effect of Amended Test Procedure on Measured Energy Efficiency

As to rulemakings to amend test procedures, section 323(e) of EPCA, 42 U.S.C. 6293(e), provides that DOE shall determine whether the amended test procedure would alter the measured energy efficiency of any covered product. If the amendment does alter measured efficiency, the Secretary must determine the average efficiency level under the new test procedure of products that minimally complied with the applicable energy conservation standard prior to the test procedure amendment, and must set the standard at that level. (42 U.S.C. 6293(e)(2)) In addition, any existing model of a product that complied with the previously applicable standard would be deemed to comply with the new standard. (42 U.S.C. 6293(e)(3)) These provisions prevent changes in a test

procedure from indirectly altering the applicable Federal energy conservation standard. They also prevent products that complied with standards using the previous test procedure from being forced out of compliance by the new test procedure.

EPCA provides that the DOE test procedures for commercial packaged boilers shall be those industry test procedures recognized by ASHRAE and referenced in ASHRAE Standard 90.1 and in effect on June 30, 1992. 42 U.S.C. 6314(a)(4)(A). For these products, the version of ASHRAE Standard 90.1 in effect on June 30, 1992, contains five industry test standards that apply to gas-fired boilers or oil-fired boilers or both. 65 FR 48838, 48843. Until today, therefore, since DOE had not adopted a test procedure for these products under EPCA, there was no single existing test procedure that manufacturers were required to use for these products. In practice, however, particular industry test procedures were generally used for particular types of boilers. 65 FR 48844. In the rule published today, DOE is adopting, in part, a test procedure based on a combination of the existing ASHRAE standards in effect on June 30, 1992. Since 42 U.S.C. 6314(a)(4)(A) provides that the DOE test procedures for boilers shall be those referenced in ASHRAE Standard 90.1 and in effect on June 30, 1992, the statute itself sanctions the adoption of provisions of any of these referenced test procedures. Thus, adoption today of a combination of these test procedures does not represent a change or amendment to the existing "required" test procedure for purposes of 42 U.S.C. 6293(e) when that section refers to an "amended test procedure."

In addition, today's final rule provides for DOE adoption of BTS-2000, which in substance consists of the combination of ASHRAE referenced standards just referred to, but with one minor modification. For gas-fired products, BTS-2000 requires use of an equation for calculating flue loss instead of providing for use of a nomogram. This slight change has no effect on the measured energy efficiency. Thus, while this modification is a test procedure amendment within the meaning of 42 U.S.C. 6293(e), DOE need not take further action under that provision because this amendment does not alter the measured energy efficiency.

Today's final rule also contains two modifications to ASME PTC 4.1, another of the five industry test procedures in effect on June 30, 1992, and referenced in ASHRAE Standard 90.1. DOE is making both of these modifications in response to comments that it received

on the NOPR. The first, a reduction in the minimum duration of a part of the test, will not alter the measured energy efficiency. The second, a relaxation of the required inlet water temperature when a manufacturer tests a boiler after installing it, will have only a de minimus effect on the measured combustion efficiency and should not put any models that are currently in compliance out of compliance. Thus, DOE will not take further action under 42 U.S.C. 6293(e) with regard to either of these modifications to ASME PTC 4.1.

III. Procedural Requirements

A. Review Under Executive Order 12866

The Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) has determined that today's regulatory action is not a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under the Executive Order.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of General Counsel's Web site: <http://www.gc.doe.gov>.

DOE reviewed today's rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003, and certified in the NOPR that the proposed rule would not impose a significant economic impact on a substantial number of small entities. (64 FR 69597). We received no comments on this issue, and after considering the potential small entity impact of this final rule, DOE affirms the certification that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not

prepared a regulatory flexibility analysis for this rulemaking. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review pursuant to 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act

This rulemaking will impose no new information or record keeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

D. Review Under the National Environmental Policy Act

DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and the Department's implementing regulations at 10 CFR part 1021. Specifically, this rule amends an existing rule without changing the environmental effect of the rule being amended, and, therefore, is covered by the Categorical Exclusion in paragraph A5 to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined today's rule and has determined that it does not preempt State law and does 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. No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. With respect to a proposed regulatory action that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector of \$100 million or more (adjusted annually for inflation), section 202 of the Act requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy (2 U.S.C. 1532(a),(b)). The Act also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected

small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under the Act (62 FR 12820) (also available at <http://www.gc.doe.gov>). The rule published today does not contain any Federal mandate, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined pursuant to Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 18, 1988) that this regulation would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice of final rulemaking under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs

(OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and, therefore, is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

We stated in the NOPR the reasons why section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977, 15 U.S.C. 788, (the FEAA) does not apply to the commercial standards incorporated into the proposed rule, except for ASHRAE Standard 103-1993. We received no comments on this issue.

As we stated and discussed in the NOPR, today's rule incorporates certain commercial standards which EPCA requires to be used. These standards are referenced in ASHRAE Standard 90.1-1989 and amendments thereto. Because DOE has very limited discretion to depart from the standards referenced in ASHRAE 90.1, Section 32 of the FEAA does not apply to them.

In the NOPR, we also stated that the final rule would include ASHRAE Standard 103-1993, "Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers," a test standard which includes testing method for condensing boilers. We stated that DOE would comply with the requirements of section 32 for this particular standard since it is not referenced in the ASHRAE Standard 90.1. However, today's rule does not include ASHRAE Standard 103-1993. Instead, we are relying on the revised Hydronics Institute Boiler Testing Standard BTS-2000 which now has a method for testing condensing boilers.

This standard is referenced in ASHRAE Standard 90.1. Accordingly, there is now no reason for DOE to fulfill the consultation requirements of section 32 with respect to Standard 103–1993.

Today's rule does not contain industry standards to which Section 32 applies.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

N. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's rule.

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Commercial products, Energy conservation, Incorporation by reference.

Issued in Washington, DC, on July 27, 2004.

David K. Garman,

Assistant Secretary, Energy Efficiency and Renewable Energy.

■ For the reasons set forth in the preamble, Title 10, Part 431 of the Code of Federal Regulations is amended as set forth below:

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for Part 431 continues to read as follows:

Authority: 42 U.S.C. 6311–6316.

■ 2. Subpart E is added to read as follows:

Subpart E—Commercial Packaged Boilers

Sec.

431.81 Purpose and scope.

431.82 Definitions concerning commercial packaged boilers.

Test Procedures

431.85 Materials incorporated by reference.

431.86 Uniform test method for the measurement of energy efficiency of commercial packaged boilers.

Energy Conservation Standards

431.87 Energy conservation standards and their effective dates.

Subpart E—Commercial Packaged Boilers

§ 431.81 Purpose and scope.

This subpart contains energy conservation requirements for certain

commercial packaged boilers, pursuant to Part C of Title III of the Energy Policy and Conservation Act. (42 U.S.C 6311–6316)

§ 431.82 Definitions concerning commercial packaged boilers.

The following definitions apply for purposes of this subpart E, and of subparts A and J through M of this part. Any words or terms not defined in this section or elsewhere in this part shall be defined as provided in 42 U.S.C. 6311.

Combustion efficiency for a commercial packaged boiler means the efficiency descriptor for packaged boilers, determined using test procedures prescribed under § 431.86 and equals to 100 percent minus percent flue loss (percent flue loss is based on input fuel energy).

Commercial packaged boiler means a type of packaged low pressure boiler that is industrial equipment with a capacity, (rated maximum input) of 300,000 Btu per hour (Btu/hr) or more which, to any significant extent, is distributed in commerce:

(1) For heating or space conditioning applications in buildings; or

(2) For service water heating in buildings but does not meet the definition of "hot water supply boiler" in this part.

Condensing boiler means a commercial packaged boiler that condenses part of the water vapor in the flue gases, and that includes a means of collecting and draining this condensate from its heat exchanger section.

Flue condensate means liquid formed by the condensation of moisture in the flue gases.

Manufacturer of a commercial packaged boiler means any person who manufactures, produces, assembles or imports such a boiler, including any person who:

(1) Manufactures, produces, assembles or imports a commercial packaged boiler in its entirety;

(2) Manufactures, produces, assembles or imports a commercial packaged boiler in part, and specifies or approves the boiler's components, including burners or other components produced by others, as for example by specifying such components in a catalogue by make and model number or parts number; or

(3) Is any vendor or installer who sells a commercial packaged boiler that consists of a combination of components that is not specified or approved by a person described in paragraph (1) or (2) of this definition.

Packaged boiler means a boiler that is shipped complete with heating equipment, mechanical draft equipment

and automatic controls; usually shipped in one or more sections and does not include a boiler that is custom designed and field constructed. If the boiler is shipped in more than one section, the sections may be produced by more than one manufacturer, and may be originated or shipped at different times and from more than one location.

Packaged high pressure boiler means a packaged boiler that is:

(1) A steam boiler designed to operate at a steam pressure higher than 15 psi gauge (psig); or

(2) A hot water boiler designed to operate at a water pressure above 160 psig or at a water temperature exceeding 250° F, or both; or

(3) A boiler that is designed to be capable of supplying either steam or hot water, and designed to operate under the conditions in paragraphs (1) and (2) of this definition.

Packaged low pressure boiler means a packaged boiler that is:

(1) A steam boiler designed to operate at or below a steam pressure of 15 psig; or

(2) A hot water boiler designed to operate at or below a water pressure of 160 psig and a temperature of 250° F; or

(3) A boiler that is designed to be capable of supplying either steam or hot water, and designed to operate under the conditions in paragraphs (1) and (2) of this definition.

Test Procedures

§ 431.85 Materials incorporated by reference.

(a) The Department incorporates by reference the following test procedures into subpart E of part 431. The Director of the Federal Register has approved the material listed in paragraph (b) of this section for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Any subsequent amendment to this material by the standard-setting organization will not affect the DOE test procedures unless and until DOE amends its test procedures. The Department incorporates the material as it exists on the date of the approval and a notice of any change in the material will be published in the **Federal Register**.

(b) *List of test procedures incorporated by reference.*

(1) The Hydronics Institute (HI) of GAMA Boiler Testing Standard BTS–2000, "Method to Determine Efficiency of Commercial Space Heating Boilers," published January 2001 (HI BTS–2000), IBR approved for § 431.86.

(2) The American Society of Mechanical Engineers Power Test Codes for Steam Generating Units, ASME PTC

4.1–1964, Reaffirmed 1991 (Including 1968 and 1969 Addenda) (“ASME PTC 4.1”), IBR approved for § 431.86.

(c) *Availability of references.*

(1) *Inspection of test procedures.* The test procedures incorporated by reference are available for inspection at:

(i) National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(ii) U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Hearings and Dockets, “Test Procedures and Efficiency Standards for Commercial Packaged Boilers,” Docket No. EE–RM/TP–99–470, 1000 Independence Avenue, SW., Washington, DC 20585.

(2) *Obtaining copies of Standards.* Anyone can purchase a copy of HI BTS–2000 from the Hydronics Institute Division of GAMA, P.O. Box 218, Berkeley Heights, NJ 07922, or <http://www.gamanet.org/publist/hydroordr.htm>; and a copy of ASME PTC 4.1–1964/RA–1991 from Global Engineering Documents, 15 Inverness Way East, Englewood, CO 80112, 800–854–7179.

§ 431.86 Uniform test method for the measurement of energy efficiency of commercial packaged boilers.

(a) *Scope.* This section provides test procedures that must be followed for measuring, pursuant to EPCA, the steady state combustion efficiency of a gas-fired or oil-fired commercial packaged boiler. These test procedures apply to packaged low pressure boilers that have rated input capacities of 300,000 Btu/hr or more and are “commercial packaged boilers, but do not apply under EPCA to “packaged high pressure boilers.”

(b) *Definitions.* For purposes of this section, the Department incorporates by reference the definitions specified in Section 3.0 of the HI BTS–2000 (Incorporated by reference, see § 431.85), with the exception of the definition for the terms “packaged boiler”, “condensing boilers”, and “packaged low pressure steam” and “hot water boiler”.

(c) *Test Method for Commercial Packaged Boilers—General.* After October 23, 2006, follow the provisions in this paragraph (c) for all testing of packaged low pressure boilers that are commercial packaged boilers. Prior to that date, follow either the provisions of this paragraph (c) or of paragraph (d) of this section to test steel boilers, but

follow the provisions of this paragraph for all other commercial packaged boilers.

(1) *Test Setup.*

(i) *Classifications:* If employing boiler classification, you must classify boilers as given in Section 4.0 of the HI BTS–2000 (Incorporated by reference, see § 431.85).

(ii) *Requirements:* Conduct the combustion efficiency test as given in Section 5.2 (Combustion Efficiency Test) of the HI BTS–2000 (Incorporated by reference, see § 431.85).

(iii) *Instruments and Apparatus:*

(A) Follow the requirements for instruments and apparatus in sections 6 (Instruments) and 7 (Apparatus), of the HI BTS–2000 (Incorporated by reference, see § 431.85), with the exception of section 7.2.5 (flue connection for outdoor boilers) which is replaced with paragraph (c)(1)(iii)(B) of this section:

(B) *Flue Connection for Outdoor Boilers:* For oil-fired and power gas outdoor boilers, the integral venting means may have to be revised to permit connecting the test flue apparatus described in section 7.2.1 of BTS–2000. A gas-fired boiler for outdoor installation with a venting system provided as part of the boiler must be tested with the venting system in place.

(iv) *Test Conditions:* Use test conditions from Section 8.0 (excluding 8.5.2, 8.5.3, and 8.6.2) of HI BTS–2000 (Incorporated by reference, see § 431.85) for the combustion efficiency testing, and use paragraph (c)(1)(iv)(A) of this section when testing a condensing boiler:

(A) *Water Temperatures for Condensing Boilers—*For condensing boilers the outlet temperature shall be 180°F±2°F and the inlet temperature shall be 80°F±5°F at all times during the test. (See also paragraphs (c)(2)(i) and (ii) of this section for condensing boilers.).

(B) [Reserved]

(2) *Test Measurements.*

(i) *Measure for combustion efficiency* according to sections 9.1 (excluding sections 9.1.1.2.3 and 9.1.2.2.3), 9.2 and 10.2 of the HI BTS–2000 (Incorporated by reference, see § 431.85), except that for condensing boilers, replace the boiler water inlet temperature in section 9.1.2.1.4 of the HI BTS–2000 standard with the inlet temperature specified in paragraph (c)(1)(iv)(A) of this section.

(ii) *Procedure for the Measurement of Condensate for a Condensing Boiler.* Collect flue condensate as specified in Section 9.2.2 of HI BTS–2000 (Incorporated by reference, see § 431.85). Measure the condensate from the flue gas under steady state operation

for the 30 minute collection period during the 30 minute steady state combustion efficiency test. Flue condensate mass shall be measured immediately at the end of the 30 minute collection period to prevent evaporation loss from the sample. The humidity of the room shall at no time exceed 80 percent. Determine the mass of flue condensate for the steady state period by subtracting the tare container weight from the total container and flue condensate weight measured at the end of the test period.

(iii) *A Boiler That is Capable of Supplying Either Steam or Hot Water.*

(A) *Testing.* For purposes of EPCA, measure the combustion efficiency of a commercial packaged boiler capable of supplying either steam or hot water either by testing the boiler in the steam mode or by testing it in both the steam and hot water modes.

(B) *Rating.* If testing the boiler only in the steam mode, use the efficiency determined from such testing to rate the boiler for both the steam and water modes. If testing the boiler in both modes, rate the boiler’s efficiency for each mode based on the testing in that mode.

(3) *Calculation of Combustion Efficiency.* Use the calculation procedure for the combustion efficiency test specified in Section 11.2 (including the specified subsections of 11.1) of the HI BTS–2000 (Incorporated by reference, see § 431.85).

(d) *Steel Commercial Packaged Boilers—Alternative Test Method.* Until October 23, 2006, follow either the provisions of this paragraph (d), or of paragraph (c) of this section, to test steel commercial packaged boilers.

(1) *Test setup.* Instead of using HI BTS–2000 as specified in paragraph (c)(1) of this section, conduct the combustion efficiency test for steel packaged low pressure boilers that are commercial packaged boilers using the Abbreviated Efficiency Test (Simplified Efficiency Test or The Short Form) as specified in ASME PTC 4.1 (Incorporated by reference, see § 431.85). If selecting the ASME PTC 4.1 procedure for conducting the required combustion efficiency test for steel boilers, conduct the test under conditions as specified in paragraphs (d)(1)(i) and (ii) of this section.

(i) Use the test procedure for the efficiency test from ASME PTC 4.1 (Incorporated by reference, see § 431.85). Conduct the combustion efficiency test with the Abbreviated Efficiency Test (Simplified Efficiency Test or The Short Form) for gas and oil fuels described in Section 1.07 of ASME

PTC 4.1 (Incorporated by reference, see § 431.85).

(ii) *Test Conditions for the Combustion Efficiency.*

(A) Steam pressure for steam boilers—Test must be made at atmospheric pressure or at a pressure not exceeding 2 psig.

(B) Water temperature for hot water boilers—The inlet temperature must be 35 °F to 80 °F, except that when a boiler is tested in the field after installation the inlet temperature may be as recommended by the manufacturer, but must not exceed 140 °F. The outlet temperature shall be 180 °F ± 2 °F.

(C) After steady state operation is achieved, the minimum duration of a test run shall be 30 minutes.

(2) *Test Measurements.* Use the test procedure from Section 5, Efficiency by Heat Loss Method, of ASME PTC 4.1 (Incorporated by reference, see § 431.85). Use the test conditions as specified in paragraph (d)(1) of this section. For a boiler that is capable of supplying either steam or hot water, follow paragraph (c)(2)(iii) of this section.

(3) *Calculation of Combustion Efficiency.* Use the heat loss method for gas or oil fuel as specified in Section 7.3 and the Test Forms for the Abbreviated Efficiency Test, PTC 4.1–a (Summary Sheet) and PTC 4.1–b (Calculation Sheet), of ASME PTC 4.1 to determine the combustion efficiency, except that the following specific heat loss terms (as listed in Section 7.3 of ASME PTC 4.1) to 0: sections 7.3.2.03 (moisture in fuel), 7.3.2.01 (combustible in dry refuse), 7.3.2.10 (radiation to surroundings), 7.3.2.05 through 7.3.2.09 and 7.3.2.11 through 7.3.2.14 (unmeasured losses) must be set. (Incorporated by reference, see § 431.85)

Energy Efficiency Standards

§ 431.87 Energy conservation standards and their effective dates.

Each manufacturer of a commercial packaged boiler manufactured on or after January 1, 1994, must meet the following energy efficiency standard levels:

(a) For a gas-fired packaged boiler with a capacity (rated maximum input) of 300,000 Btu/hr or more, the combustion efficiency at the maximum rated capacity must be not less than 80 percent.

(b) For an oil-fired packaged boiler with a capacity (rated maximum input) of 300,000 Btu/hr or more, the combustion efficiency at the maximum

rated capacity must be not less than 83 percent.

[FR Doc. 04–17730 Filed 10–20–04; 8:45 am]

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DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 431

[Docket No. EE–RM/TP–99–460]

RIN 1904–AA97

Energy Efficiency Program for Certain Commercial and Industrial Equipment: Test Procedures and Efficiency Standards for Commercial Air Conditioners and Heat Pumps

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Direct final rule.

SUMMARY: Pursuant to the Energy Policy and Conservation Act (EPCA), the Department of Energy (the Department) promulgates a rule that accomplishes three objectives. First and principally, the rule sets forth test procedures to rate the energy efficiency of commercial air conditioners and heat pumps. Second, for ease of reference by commercial air conditioner manufacturers, this rule also includes the energy conservation standards prescribed by EPCA for commercial equipment that the Department has not amended. Third, also for ease of reference by commercial air conditioner manufacturers, the rule moves commercial air conditioning and heat pump minimum efficiency levels to a separate subpart.

DATES: This direct final rule is effective December 20, 2004, unless significant adverse or critical comments are received by November 22, 2004. If the effective date is delayed, a timely notice will be published in the **Federal Register**. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of December 20, 2004.

ADDRESSES: You may submit comments, identified by docket number EE–RM/TP–99–460 and/or RIN number 1904–AA97, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- E-mail: CommACHeatPumpDirect.FinalRuleComments@ee.doe.gov. Include EE–RM/TP–99–460 and/or RIN 1904–AA97 in the subject line of the message.

- Mail: Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Direct Final Rule for Commercial AC and Heat Pumps, EE–RM/TP–99–460 and/or RIN 1904–AA97, 1000 Independence Avenue, SW., Washington, DC, 20585–0121. Telephone: (202) 586–2945. Please submit one signed paper original.

- Hand Delivery/Courier: Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Room 1J–018, 1000 Independence Avenue, SW., Washington, DC, 20585.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking.

Docket: For access to the docket to read background documents or comments received, go to the U.S. Department of Energy, Forrestal Building, Room 1J–018 (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC, (202) 586–9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards-Jones at the above telephone number for additional information regarding visiting the Resource Room. **Please note:** The Department's Freedom of Information Reading Room (formerly Room 1E–190 at the Forrestal Building) is no longer housing rulemaking materials.

FOR FURTHER INFORMATION CONTACT: Mohammed Khan, Project Manager, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Forrestal Building, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–7892, FAX (202) 586–4617, e-mail: Mohammed.Khan@ee.doe.gov, or Francine Pinto, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507, e-mail: Francine.Pinto@hq.doe.gov.

SUPPLEMENTARY INFORMATION: This direct final rule incorporates, by reference, into Subpart F of Part 431, four test procedures for air conditioners and heat pumps contained in industry standards referenced by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE) and the Illuminating Engineering Society of North America (IES or IESNA) Standard 90.1 (ASHRAE/IES Standard 90.1). Two of these industry standards were published

by the Air-Conditioning and Refrigeration Institute (ARI), the third was published by the International Organization for Standardization (ISO), and the fourth was jointly published by the ARI and the Canadian Standards Association (CSA). These four standards are as follows:

- ARI Standard 210/240–2003, “Unitary Air-Conditioning and Air-Source Heat Pump Equipment”,
- ARI Standard 340/360–2000, “Commercial and Industrial Unitary Air-Conditioning and Heat Pump Equipment”,
- ISO Standard 13256–1, “Water-source heat pumps—Testing and rating for performance—Part 1: Water-to-air and brine-to-air heat pumps”, and
- ARI Standard 310/380–2004 (which also has a CSA designation CSA–C744–04), “Standard for Packaged Terminal Air-Conditioners and Heat Pumps.”

You can view copies of these standards in the resource of the Buildings Technologies Program, room 1J–018 of the Forrestal Building at the Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards-Jones at (202) 586–2945, for additional information regarding visiting the resource room. In addition, you can purchase copies of ASHRAE/IES Standard 90.1. from the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., 1971 Tullie Circle, NE., Atlanta, GA 30329, <http://www.ashrae.org>; you can purchase copies of ISO Standard 13256–1 from the International Organization for Standardization, Case Postale 56, CH–1211, Geneva 20, Switzerland. <http://www.iso.ch> or from the American National Standards Institute, 25 West 43rd Street, New York, New York 10036, <http://www.ansi.org/>. Copies of ARI standards are available from the Air-Conditioning and Refrigeration Institute, 4301 North Fairfax Drive, Suite 425, Arlington, VA 22203, <http://www.ari.org>.

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I. Introduction

A. Authority

Part B of Title III of the Energy Policy and Conservation Act (EPCA) of 1975, Public Law 94–163, as amended, by the National Energy Conservation Policy Act of 1978 (NECPA), Public Law 95–619, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPACT), Public Law 102–486, established the “Energy Conservation Program for Consumer Products other than Automobiles.” Part 3 of Title IV of NECPA amended EPCA to add “Energy Efficiency of Industrial Equipment,” which included air conditioning equipment and other types of commercial equipment.¹

EPACT also amended EPCA with respect to certain commercial equipment. It provided definitions, test procedures, labeling provisions, energy conservation standards, and authority to require information and reports from manufacturers. See 42 U.S.C. 6311–6316. EPCA authorizes the Secretary of Energy to prescribe test procedures that

are reasonably designed to produce results which reflect energy efficiency, energy use and estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6314)

With respect to some commercial equipment for which EPCA prescribes energy conservation standards, including commercial air conditioners and heat pumps, “the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute or by the American Society of Heating, Refrigerating and Air Conditioning Engineers, as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992.” (42 U.S.C. 6314(a)(4)(A)) Further, if such an industry testing or rating procedure is amended, the Department must revise its test procedure to be consistent with the amendment, unless the Secretary determines, based on clear and convincing evidence, that to do so would not meet certain general requirements spelled out in the statute for test procedures. (42 U.S.C. 6314(a)(4)(B)) Before prescribing any test procedures for such equipment, the Secretary must publish them in the **Federal Register** and afford interested persons at least 45 days to present data, views and arguments. (42 U.S.C. 6314(b)) Effective 360 days after a test procedure rule applicable to any covered commercial equipment, such as a commercial air conditioner and heat pump, is prescribed, no manufacturer, distributor, retailer or private labeler may make any representation in writing or in broadcast advertisement respecting the energy consumption or cost of energy consumed by such product, unless it has been tested in accordance with the prescribed procedure and such representation fairly discloses the results of the testing. (42 U.S.C. 6314(d)) Finally, EPACT extends certain powers, originally granted to the Secretary under NAECA, to require manufacturers of equipment covered by today’s rule to submit information and reports for a variety of purposes, including ensuring compliance with requirements. See 42 U.S.C. 6316(b)(1).

B. Background

The Department has an energy conservation program for consumer products, and certain commercial equipment, conducted under Part B of Title III of EPCA, 42 U.S.C. 6291–6309. Under EPCA, this program essentially consists of four parts: Test procedures, Federal energy conservation standards, labeling, and certification and

¹“EPCA” or the “Act,” as used in this notice of final rulemaking, refers to the Energy Policy and Conservation Act of 1975 as amended by all of the statutes mentioned in this paragraph.

enforcement procedures. Except for labeling, for which the Federal Trade Commission (FTC) is responsible, the Department implements this program in Title 10 of the Code of Federal Regulations (CFR), Part 430, entitled "Energy Conservation Program for Consumer Products."

Part 431 (10 CFR Part 431), entitled "Certain Industrial Equipment," implements our program for most commercial and industrial equipment covered under EPCA. These will include commercial heating, air conditioning and water heating equipment. Part 431 will consist of: Test procedures, Federal energy conservation standards, labeling, and certification and enforcement procedures. EPCA directs the Department, rather than the FTC, to administer the statute's efficiency labeling provisions for this commercial equipment.

In preparing proposed rules that would address test procedures, certification and enforcement procedures, and issues of EPCA's coverage for this equipment, the Department convened public workshops on April 14 and 15, 1998, and on October 19, 1998. As to commercial air conditioners and heat pumps specifically, workshop discussions and comments dealt with the following six issues:

- (1) Coverage of heating-only heat pumps;
- (2) Coverage of computer room air conditioners;
- (3) Coverage of equipment with a variable-speed drive;
- (4) Test procedures to be adopted;
- (5) Minimum external static pressure; and
- (6) Test procedure for water-source heat pumps.

The Department considered both oral and written comments, and incorporated recommendations where appropriate, in the Notice of Proposed Rulemaking (NPR) of August 9, 2000. 65 FR 48828. The discussion section of the NPR presented our position and explained the reasons for incorporating or not incorporating any significant recommendations. The NPR was followed by a public hearing on September 21, 2000, and an opportunity for submission of written comments. The Department received oral or written comments from interested persons. They questioned or disagreed with the Department's position as presented in the NPR only as to computer room air conditioners, variable speed equipment, and the test procedure for water source heat pumps. These comments are discussed in Section II.

Energy conservation standard levels were not at issue in these proceedings. The NPR merely proposed to

incorporate into the Department's regulations on efficiency requirements for small and large commercial package air conditioning and heating equipment the standard levels that had been established in Section 342(a) of EPCA for these products. Subsequent to issuance of the NPR, in a separate proceeding, the Department promulgated a regulation (10 CFR part 431, Subpart Q) to replace some of these levels by adopting as Federal standards some of the efficiency levels contained in amendments to ASHRAE/IES Standard 90.1. 66 FR 3336, 3354-55 (January 12, 2001). These new Federal standards became effective on October 29, 2003.

C. Summary of the Direct Final Rule

Today's rule for commercial air conditioners and heat pumps includes: (1) Energy efficiency test procedures, (2) energy conservation standards, and (3) clarifications regarding EPCA's coverage.

The four test procedures incorporated in the rule—three ARI Standards and one ISO Standard—are listed at the beginning of this **SUPPLEMENTARY INFORMATION**. In particular, for water-source heat pumps ISO Standard 13256-1 is the prescribed testing methodology. (Incorporated by reference, see § 431.95). Furthermore, today's direct final rule adopts ARI Standard 340/360-2000 both without change as the test procedure for equipment with cooling capacities from 135,000 to 240,000 Btu per hour, and also with modifications (taken from ARI Standard 210/240-2003) as the test procedure for equipment at or above 65,000 but less than 135,000 Btu per hour. These modifications will ensure the proper testing of equipment: (1) With desuperheater/water heating devices, (2) manufactured without indoor air-circulating fans, (3) with indoor fans, and not made for use with field-installed duct systems (free discharge), or (4) that is water-cooled. Section II. discusses the modifications in detail.

As described in the Discussion section below, this rule will adopt the most recent versions of the ARI test standards as referenced above. These revisions occurred subsequent to the publication of the NPR on August 9, 2000. By adopting the revised ARI test standards, with certain modifications, this rule will be current with industry test standards and it will ensure that the equipment covered by this rule is tested properly. However, because there has not been prior opportunity for comment on these revisions, stakeholders will be

given such an opportunity as described at the beginning of this notice.

The Department has included the conservation standards so that they and the test procedures for commercial air conditioners and heat pumps will be in the same place in our regulations. The standards are the currently applicable minimum energy efficiency levels prescribed by Section 342(a) of EPCA, as well as the amendments to certain of these levels, referred to above. The amendments are being transferred from 10 CFR part 431 Subpart Q.²

Because the Department believes that EPCA neither prescribes nor mandates efficiency standards or test procedures for computer room air conditioners, today's direct final rule does not cover this product. Nor does the rule include efficiency standards that account for partial load performance for commercial air conditioning equipment, except to restate those Seasonal Energy Efficiency Ratio (SEER) and Heating Seasonal Performance Factor (HSPF) standards already prescribed by EPCA for certain equipment less than 65,000 Btu per hour, since as to efficiency standards the purpose of today's rule is merely to incorporate existing requirements.

Finally, today's rule provides neither methods for manufacturers to certify to us the efficiency of commercial central air conditioners and heat pumps, nor enforcement and other administrative provisions for this equipment. The Department proposed regulations on these subjects, for air conditioning and certain other commercial equipment, in a notice of proposed rulemaking on December 13, 1999. 64 FR 69597. Until the Department adopts such regulations, the provisions of EPCA will govern directly the enforcement and administration of efficiency requirements for commercial air conditioning equipment. The provisions currently in Part 431 will not apply to these products.

II. Discussion

The following discussion is divided into two sections: (1) Section II.A discusses the test procedures, which ARI revised following publication of the NPR, for equipment other than water-source heat pumps; and (2) section II.B discusses the issues raised by oral or written comments received in response to the NPR.

² Efficiency levels prescribed by EPCA for which amendments are not included in Subpart Q, and in today's rule, are either under review by the Department or were not revised in ASHRAE/IES Standard 90.1.

A. Test Procedures for All Commercial Air-Conditioning Equipment Other Than Water-Source Heat Pumps

1. Adoption of Current Versions of ARI Test Procedures

In the NOPR published on August 9, 2000, the Department proposed to adopt ARI Standard 210/240-94 and ARI Standard 340/360-93 for commercial and industrial unitary air conditioning and heat pump equipment, and ARI Standard 310/380-93 for packaged terminal air-conditioners and heat pumps. ARI Standard 210/240-94 covers equipment with cooling capacities under 135,000 Btu per hour while ARI Standard 340/360-93 covers equipment with cooling capacities greater than or equal to 135,000 Btu per hour.

Since publication of the NOPR, ARI has issued new versions of these test standards. ARI Standard 210/240-2003 has superceded ARI Standard 210/240-94, ARI Standard 340/360-2000 has superceded ARI Standard 340/360-93, and ARI Standard 310/380-2004 has superceded ARI Standard 310/380-93. The changes ARI made to its test standards are primarily editorial in nature, and alter neither efficiency test methods, nor calculation procedures, nor measured efficiencies for the equipment being tested, with one notable exception: Equipment with cooling capacities from 65,000 to 135,000 Btu per hour which were covered by ARI Standard 210/240 are now covered by ARI Standard 340/360.

For all other equipment, the Department is adopting the most recent versions of the ARI test standards in today's direct final rule, without change. These new versions are more readily available than the older versions and are included in the rule for the convenience of the affected parties. Also, to the extent the current versions are considered amendments to the ARI test procedures, their adoption will render the DOE test procedure "consistent with the amended industry test procedure," in accordance with 42 U.S.C. 6314(a)(4)(B). As detailed below (section II.A.2.), the Department is adopting ARI Standard 340/360-2000, but with certain modifications, for equipment with a cooling capacity from 65,000 to 135,000 Btu per hour, to ensure that the test procedure in today's direct final rule allows for the proper testing of such equipment.

2. Test Procedure for Commercial and Industrial Unitary Air-Conditioning and Heat Pump Equipment With Cooling Capacities From 65,000 to 135,000 Btu Per Hour

The most significant outcome of ARI's revisions of its test standards has been to amend the test procedure for equipment with cooling capacities from 65,000 to 135,000 Btu per hour, by replacing ARI Standard 210/240 with ARI Standard 340/360. Under 42 U.S.C. 6314(a)(4)(B), the Department must adopt the industry's amended test procedure unless there is "clear and convincing" evidence that to do so would result in a test procedure which produces results that do not reflect the energy efficiency of the equipment or which would be unduly burdensome to conduct.

Although the organization and language of ARI Standards 340/360-2000 and 210/240-94 differ substantially, for the most part the substance of the efficiency test method and calculation procedures in the two standards is the same. In addition, the test method in Standard 340/360-2000 improves upon the method in 210/240-94 in that Standard 340/360-2000 provides a clarification of the test conditions used to rate air conditioning equipment with optional outdoor air cooling coils. ARI Standard 340/360, however, lacks certain provisions that are in ARI Standard 210/240, and for certain types of equipment with cooling capacities from 65,000 to 135,000 Btu per hour, these omissions represent a substantial change in the test procedure. The Department has determined that, due to these omissions, ARI Standard 340/360-2000 clearly would not produce test results that would accurately reflect the equipment's measured efficiency. As a result, for equipment with cooling capacities from 65,000 to 135,000 Btu per hour, the Department is adopting ARI Standard 340/360-2000, as modified, by adding concepts and language from ARI Standard 210/240-2003 to ensure that the test procedure in today's direct final rule accurately measures the efficiency of all such equipment.

The following sets forth the reasons why ARI Standard 340/360-2000 is inadequate to test this equipment, and the modifications which the Department is incorporating into its test procedure to correct these deficiencies:

- Equipment with a Desuperheater/Water Heating Device: ARI Standard 340/360-2000 does not address the rating of equipment with desuperheater/water heating devices. The energy efficiency test results for such

equipment will vary depending on whether the desuperheater/water heating device is left in operation. To ensure consistent and accurate test results for units equipped with a desuperheater/water heating device, today's test procedure provides that such equipment must be rated while the device is inoperative, consistent with Section 2.2.5 of ARI Standard 210/240-2003. To provide clarity, the rule language characterizes a desuperheater/water heating device as a refrigerant-to-water heat exchanger to heat domestic water.

- Models Manufactured Without Indoor Air-Circulating Fans: ARI Standard 340/360-2000 fails to include provisions to account for the input power of the indoor air-circulating fan for units which do not have such fans furnished as part of the model. Because these units are always installed and operated with such fans, by not providing for the input power of the indoor fan, the test procedure would underestimate the overall input power of the unit, thereby resulting in an energy efficiency rating which would be higher than it otherwise would be if the indoor fan input power were included. To ensure that the effects of air-circulation fans on equipment capacity and input power are accounted for in units which do not have indoor air-circulating fans furnished as part of the model, the Department is incorporating with minor editorial modifications a portion of Section 6.1 and the full text of Section 6.1.3.3c. of ARI Standard 210/240-2003 into its test procedure for equipment with cooling capacities from 65,000 to 135,000 Btu per hour.

The following is the language being incorporated from Section 6.1: "Standard Ratings of units which do not have indoor air-circulating fans furnished as part of the model, *i.e.*, split systems with indoor coil alone, shall be established by subtracting for the total cooling capacity 1,250 Btu/h per 1,000 cfm [775 W/m³/s], and by adding the same amount to the heating capacity. Total power input for both heating and cooling shall be increased by 365 W per 1,000 cfm [226 W/m³/s] of indoor air circulated."

The full text of section 6.1.3.3c, modified to reference the appropriate section in ARI Standard 340/360-2000, states: "Equipment which does not incorporate an indoor fan, but is rated in combination with a device employing a fan shall be rated as described in 6.1.3.2a of 340/360-2000. For equipment of this class which is rated for general use to be applied to a variety of heating units, the indoor-coil airflow rate shall be specified by the

manufacturer in Standard Ratings, not to exceed 37.5 SCFM/1,000 Btu/h [0.06 m³/s per 1,000 W] of rated capacity or the airflow rate obtained through the indoor coil assembly when the pressure drop across the indoor coil assembly and the recommended enclosures and attachment means is not greater than 0.30 inch of water [75 Pa], whichever is less.”

- **Equipment with Indoor Fans, Not Made for Use With Field Installed Duct Systems:** ARI Standard 340/360–2000 does not provide external pressure specifications for units with indoor fans not intended for use with field-installed duct systems (free discharge). Without explicit provisions, these units would be tested with an external pressure greater than 0 inches of water. The resultant power input for the indoor fan would be greater than it otherwise should be, thereby resulting in a measured energy efficiency lower than it otherwise should be. To ensure that equipment with indoor fans not intended for use with field-installed duct systems (free discharge) are tested with the appropriate external pressure, the Department is incorporating with minor editorial modifications the full text of Section 6.1.3.3b and a portion of Section 6.1.3.6 of ARI Standard 210/240–2003 into its test procedure for equipment with cooling capacities from 65,000 to 135,000 Btu per hour.

The full text of section 6.1.3.3b states: “Equipment with indoor fans not intended for use with field installed duct systems (free discharge) shall be rated at the indoor-coil airflow rate delivered when operating at 0 in [sic] H₂O [0 Pa] external pressure as specified by the manufacturer.”

The language incorporated from Section 6.1.3.6 states: “Indoor air-moving equipment not intended for use with field installed duct systems (free discharge) shall be tested at 0 in [sic] H₂O [0 Pa] external pressure.”

- **Water-Cooled Equipment:** ARI Standard 340/360–2003 does not include an allowance for the power inputs for the cooling tower fan and circulating water pump motors for water-cooled units. By not including the input power of the fan and pump, the overall input power of the unit would be underestimated, thereby resulting in an energy efficiency rating which would be higher than it otherwise should be if the power inputs of the fan and pump were included. To ensure that water-cooled units include a total allowance for cooling tower fan and circulating water pump motor power inputs, the Department is incorporating with minor editorial modifications the following portion of Section 6.1 of ARI Standard

210/240–2003 into its test procedure: “Standard Ratings of water-cooled units shall include a total allowance for cooling tower fan motor and circulating water pump power inputs to be added in the amount of 10.0 W per 1,000 Btu/h [34.1 W per 1,000 W] cooling capacity.”

3. Effect of Amended Test Procedures on Measured Energy Efficiency

In accordance with 42 U.S.C. 6293(e), the Department has determined that none of the test procedure changes specified in the foregoing section alter the measured efficiency of equipment with cooling capacities from 65,000 to 135,000 Btu per hour.

B. Test Procedure for Water-Source Heat Pumps

1. Background

At the time the NOPR was published, ASHRAE/IES Standard 90.1 specified ARI Standard 320, “Water-Source Heat Pumps,” as the test procedure for water-source heat pumps. Standard 90.1 also provided that, effective October 29, 2001, efficiency levels would increase for this equipment, and ISO Standard 13256–1, “Water-Source Heat Pumps—Testing and Rating for Performance—Part 1: Water-to-Air and Brine-to-Air Heat Pumps,” would replace ARI Standard 320 as the applicable test procedure. In the NOPR, the Department expressed its intention to prescribe ARI Standard 320–98 as the Department test procedure for water-source heat pumps, and to consider adopting the ISO standard to replace the ARI standard in a subsequent proceeding. The Department also solicited comments, however, on the possibility of adopting the ISO standard, instead of the ARI standard, in the final rule in this proceeding.

ARI provided oral comments during the Public Hearing on September 21, 2000, and written comments dated September 14, 2000, and October 25, 2000. The September 14 comments provided an overview of the differences between ARI Standard 320 and ISO Standard 13256–1. (ARI, No. 2EE, at 2–4)³ In its October 25 comments, ARI urged adoption of the ISO standard in the direct final rule. (ARI, No. 5, at 1–3) ARI cited international acceptance of the standard, ASHRAE’s intention to adopt it through an addendum process in ASHRAE Standard 90.1 with an

³ A notation in this form identifies a written comment the Department received in this rulemaking subsequent to issuance of the NOPR. This notation refers to a comment (1) by ARI, (2) in document number 2EE in the docket in this matter, and (3) appearing at pages 2–4 of document number 2EE.

immediate effective date, and the use of the ISO standard in the ARI certification program. ARI provided test data on 15 water-source heat pumps tested under the two test procedures. The data showed that the EERs for a unit derived from the two test procedures are on average about the same, while the heating coefficient of performance (COP) is on average about 2.2% higher with the ISO test procedure.

Subsequently, in a final rule published on January 12, 2001, the Department amended EPCA’s minimum efficiency levels for water-source heat pumps, adopting the new minimum efficiency levels stipulated by ASHRAE/IES Standard 90.1. 66 FR at 3354–55. These new efficiency levels apply as Federal requirements to all equipment manufactured after October 29, 2003. As mentioned above, ASHRAE/IES Standard 90.1 had been amended effective October 29, 2001, to specify ISO Standard 13256–1 (in place of ARI Standard 320) as the test procedure for water-source heat pumps, to provide a new method for determining compliance with these new efficiency levels under Standard 90.1. Because these levels are now also Federal requirements, the Department decided to address in today’s direct final rule whether it will adopt the ISO test procedure for water source heat pumps.

EPCA in essence directs the Department to revise its test procedure to be consistent with an amendment to an industry testing or rating procedure, unless the Department determines that the new procedure is “unduly burdensome to conduct” or is not “reasonably designed to produce test results which reflect energy efficiency, energy use and estimated operating costs.” (42 U.S.C. 6314(a)(2) and (4)(B)) Additionally, the Department must determine “to what extent, if any, the proposed [amended] test procedure would alter the measured energy efficiency * * * as determined under the existing test procedure.” (42 U.S.C. 6293(e) and 6314(a)(4)(C))

2. Discussion

The Department’s examination of the ISO test procedure indicates that ISO Standard 13256–1 requires laboratory facilities and instrumentation and a level of effort similar to what ARI Standard 320 requires. In addition, ARI’s comments urging DOE to adopt ISO Standard 13256–1 demonstrate that DOE’s adoption of that standard has substantial support from industry. In addition, DOE did not receive any other comments concerning the adoption of ISO Standard 13256–1. Thus, the Department has determined that the ISO

standard apparently is not unduly burdensome to use. Considering the data provided in the ARI comments, which indicate that results obtained from tests under ISO Standard 13256-1 are comparable to those obtained under ARI Standard 320, the Department also concludes that the ISO standard meets the statutory requirement that a test procedure be "reasonably designed to produce test results which reflect energy efficiency."

3. Effect of Amended Test Procedures on Measured Energy Efficiency

As to rulemakings to amend test procedures, section 323(e) of EPCA, 42 U.S.C. 6293(e), provides that DOE shall determine whether the amended test procedure would alter measured energy efficiency of any covered product. If the amendment does alter measured efficiency, the Secretary must determine the average efficiency level under the new test procedure of products that minimally complied with the applicable energy conservation standard prior to the test procedure amendment, and must set the standard at that level. (42 U.S.C. 6293(e)(2)) In addition, any existing model of a product that complied with the previously applicable standard would be deemed to comply with the new standard. (42 U.S.C. 6293(e)(3)) These provisions prevent changes in a test procedure from indirectly altering the applicable Federal energy conservation standard. They also prevent products that complied with standards using the previous test procedure from being forced out of compliance by the new test procedure. The Department has determined that under the provisions of 42 U.S.C. 6293(e) that the Department's adoption here of ISO Standard 13256-1 would not alter the measured energy efficiency of water source heat pumps under the existing test procedure.

As discussed above, higher minimum efficiency levels for water source heat pumps went into effect under ASHRAE/IES Standard 90.1 on October 29, 2001, and as Federal requirements on October 29, 2003. ASHRAE adopted the ISO test procedure as of the former date, so that this test procedure would apply in determining compliance with the new standards. Further, the Department understands that the new standards were developed based on measurements using the ISO test procedure.

The new energy conservation standards that are in effect were developed using ISO Standard 13256-1, and ASHRAE clearly intended that the ISO test procedure be used to measure compliance with these standards. Thus, using ARI Standard 320 to determine

whether manufacturers are meeting the new standards would produce inaccurate results. Only ISO Standard 13256-1 can accurately implement the new standards.

Furthermore, even if today's amendments do change the energy efficiency rating of any model and would prevent it from complying with the current energy conservation standards, the standard for that model became more stringent on October 29, 2003, and today's amendments are designed to implement the new standard. This renders irrelevant the model's ability or inability to comply with the current or former standards based on efficiency determinations under the existing test procedure. Thus, a change resulting from today's amendments to the test procedure could simply mean that the product in question does not meet the new efficiency standard.

In conclusion, today's rule provides that ISO Standard 13256-1 will be the sole test procedure under EPCA for water source heat pumps. This requirement is directly set forth in new section 431.262. It is also reflected in new section 431.271, which prescribes energy conservation standards, by incorporation of 30 °C (86 °F) as the entering water temperature at which EER must be rated, in place of the 85 °F temperature that was included in Subpart Q of 10 CFR which is being eliminated in another final action published today.

C. Products Not Covered in This Rulemaking

1. Computer Room Air-Conditioners and Heat Pumps

Mr. B. Subherwal of BR Laboratories spoke in favor of covering computer room air conditioners under this rule. He advocated using ASHRAE Standard 127-88 for testing because computer room air-conditioners in field applications perform at different conditions than those specified in any ARI standard.

The Department's view remains that computer room air conditioners are not currently covered by the standards and test procedures prescribed and mandated by EPCA. The reasons supporting this view—the primary one being that Congress appears not to have intended to cover this type of equipment—were presented in detail in Section II of the NOPR. As also set forth in the NOPR, if some of the relevant circumstances were to change—if, for example, ASHRAE Standard 90.1 were to incorporate efficiency standards and test procedures for this equipment or

the equipment was to become widely used for conventional air conditioning applications—the Department might revisit this issue.

2. Equipment With a Variable-Speed Drive

Mitsubishi Electronics America, Inc., submitted a written comment dated October 20, 2000, which recommended that part load performance be considered in evaluating the efficiency of inverter-driven equipment because it rarely operates at full load (typically less than 1% of the time). (Mitsubishi, No. 4, at 1-2). The comment suggested a procedure presented in ARI Standard 550/590-1998, Appendix D, D3, to be used for evaluating an Integrated Part Load Value. Further, the letter contended that incorporating a procedure similar to that presented in ARI Standard 550/590-1998 would encourage manufacturers to incorporate this advanced technology into their product line, and this would improve National Energy Savings.

This comment essentially advocates that the Department establish efficiency standards and a performance descriptor that address part load performance of commercial air conditioning equipment. A similar comment was submitted to us earlier and is discussed in the NOPR. 65 FR 48831-3. As indicated there, with regard to efficiency standards the purpose of this rulemaking is to incorporate the requirements already imposed under EPCA (including any amendments by the Department to the standards established by EPACT). These requirements incorporate standards for part load performance only for small commercial, air-cooled package air-conditioning equipment having cooling capacity less than 65,000 Btu/h, which are included in today's rule. Therefore, Mitsubishi's suggestion that the Department prescribe efficiency standards for the part load performance of other air conditioning products is beyond the scope of this rulemaking. Nevertheless, as the Department recently stated when the Department addressed amendment of the standards established by EPACT, the Department will consider including integrated part load values in any prospective rulemaking for air conditioning equipment. 66 FR 3348.

III. Final Action

DOE is publishing this direct final rule in order to allow stakeholders an opportunity to comment on revisions to this rule that have not had prior proposal. The direct final action will be effective December 20, 2004, unless significant adverse or critical comments

are received by November 22, 2004. DOE views these revisions as noncontroversial and anticipates no significant adverse comments. However, in the event that significant adverse or critical comments are filed, DOE will withdraw the rule before the effective date. In the case of withdrawal of this action, the withdrawal will be announced by a subsequent **Federal Register** document. All public comments will then be addressed in a separate proposed rule which will be issued at a later date. Any parties interested in commenting on this rule should do so at this time. If no significant adverse comments are received, the public is advised that this rule will be effective December 20, 2004.

IV. Procedural Requirements

A. Review Under Executive Order 12866

The Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) has determined that today's regulatory action is not a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under the Executive Order.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of General Counsel's Web site: <http://www.gc.doe.gov>.

DOE reviewed today's rule under the provisions of the Regulatory Flexibility Act, and certified in the NPR that the proposed rule would not impose a significant economic impact on a substantial number of small entities. (65 FR 48828, 48833 (August 9, 2000)) We received no comments on this issue, and after considering the potential small entity impact of this direct final rule,

DOE affirms the certification that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review pursuant to 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act

This rulemaking will impose no new information or record keeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

D. Review Under the National Environmental Policy Act

DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and the Department's implementing regulations at 10 CFR part 1021. Specifically, this rule amends an existing rule without changing the environmental effect of the rule being amended, and, therefore, is covered by the Categorical Exclusion in paragraph A5 to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined today's rule and has determined that it does not preempt State law and does 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. No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. With respect to a proposed regulatory action that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector of \$100 million or more (adjusted annually for inflation), section 202 of the Act requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy (2 U.S.C. 1532(a),(b)). The Act also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a

proposed “significant intergovernmental mandate,” and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under the Act (62 FR 12820) (also available at <http://www.gc.doe.gov>). The rule published today does not contain any Federal mandate, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined pursuant to Executive Order 12630, “Governmental Actions and Interference with Constitutionally Protected Property Rights,” 53 FR 8859 (March 18, 1988) that this regulation would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB’s guidelines were published at 67 FR 8452 (February 22, 2002), and DOE’s guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today’s notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,” 66 FR 28355 (May

22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A “significant energy action” is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today’s regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and, therefore, is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

The Department stated in the NOPR the reasons why section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977, 15 U.S.C. 788, does not apply to the four ARI commercial standards incorporated into the proposed rule. The Department received no comments on this issue.

The rule published today incorporates updated versions of three of these ARI standards, as well as an ISO standard referenced in Standard 90.1 in place of the fourth ARI standard. The Department continues to adhere to the view expressed in the NOPR that Section 32 of the FEAA does not apply to these four standards. However, for equipment at or above 65,000 but less than 135,000 Btu per hour, the Department is adopting one of these ARI standards with modifications drawn from another one of these ARI standards DOE is incorporating in today’s rule. These modifications consist of test methods that EPCA currently requires manufacturers to use. (42 U.S.C. 6314(a)(4)(a)) The Department believes that Section 32 of the FEAA does not apply to its decision to require manufacturers to continue to use these test methods.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today’s rule prior to its effective date. The report will state that it has been determined that the rule is not a “major rule” as defined by 5 U.S.C. 804(2).

N. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today’s rule.

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Commercial products, Energy conservation, Incorporation by reference.

Issued in Washington, DC, on July 27, 2004.

David K. Garman,

Assistant Secretary, Energy Efficiency and Renewable Energy.

■ For the reasons set forth in the preamble, part 431 of Chapter II of title 10, Code of Federal Regulations, is amended, as set forth below:

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for Part 431 continues to read as follows:

Authority: 42 U.S.C. 6311–6316.

■ 2. Subpart F is added to read as follows:

Subpart F—Commercial Air Conditioners and Heat Pumps

Sec.

431.91 Purpose and scope.

431.92 Definitions concerning commercial air conditioners and heat pumps.

Test Procedures

431.95 Materials incorporated by reference.

431.96 Uniform test method for measurement of the energy efficiency of small and large commercial package air conditioning and heating equipment, packaged terminal air conditioners, and packaged terminal heat pumps.

Energy Efficiency Standards

431.97 Energy efficiency standards and their effective dates.

Subpart F—Commercial Air Conditioners and Heat Pumps

§ 431.91 Purpose and scope.

This subpart specifies test procedures and energy conservation standards for certain commercial air conditioners and heat pumps, pursuant to Part C of Title III of the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6311–6316.

§ 431.92 Definitions concerning commercial air conditioners and heat pumps.

The following definitions apply for purposes of this subpart F, and of subparts J through M of this part. Any words or terms not defined in this section or elsewhere in this part shall be defined as provided in 42 U.S.C. 6311.

Coefficient of Performance, or COP means the ratio of the produced cooling effect of an air conditioner or heat pump (or its produced heating effect, depending on the mode of operation) to its net work input, when both the cooling (or heating) effect and the net work input are expressed in identical units of measurement.

Energy Efficiency Ratio, or EER means the ratio of the produced cooling effect of an air conditioner or heat pump to its net work input, expressed in Btu/watt-hour.

Heating seasonal performance factor, or HSPF means the total heating output of a central air-conditioning heat pump during its normal annual usage period for heating, expressed in Btu's and divided by the total electric power input, expressed in watt-hours, during the same period.

Large commercial package air-conditioning and heating equipment means air-cooled, water-cooled, or evaporatively cooled electrically operated, unitary central air conditioners and central air-conditioning heat pumps for commercial application that are rated at or above 135,000 Btu per hour and below 240,000 Btu per hour (cooling capacity), and that are industrial equipment.

Packaged terminal air conditioner means a wall sleeve and a separate un-encased combination of heating and cooling assemblies specified by the builder and intended for mounting through the wall, and that is industrial equipment. It includes a prime source of refrigeration, separable outdoor louvers, forced ventilation, and heating availability by builder's choice of hot water, steam, or electricity.

Packaged terminal heat pump means a packaged terminal air conditioner that utilizes reverse cycle refrigeration as its prime heat source, that has a supplementary heat source available, with the choice of hot water, steam, or electric resistant heat, and that is industrial equipment.

Seasonal energy efficiency ratio or SEER means the total cooling output of a central air conditioner or central air-conditioning heat pump, expressed in

Btu's, during its normal annual usage period for cooling and divided by the total electric power input, expressed in watt-hours, during the same period.

Single package unit means any central air conditioner or central air-conditioning heat pump in which all the major assemblies are enclosed in one cabinet.

Small commercial package air-conditioning and heating equipment means air-cooled, water-cooled, evaporatively cooled, or water-source (not including ground water-source) electrically operated, unitary central air conditioners and central air-conditioning heat pumps for commercial application which are rated below 135,000 Btu per hour (cooling capacity), and which are industrial equipment.

Split system means any central air conditioner or central air conditioning heat pump in which one or more of the major assemblies are separate from the others.

Test Procedures

§ 431.95 Materials incorporated by reference.

(a) The Department incorporates by reference the following test procedures into subpart F of part 431. The Director of the Federal Register has approved the material listed in paragraph (b) of this section for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Any subsequent amendment to this material by the standard-setting organization will not affect the Department test procedures unless and until the Department amends its test procedures. The Department incorporates the material as it exists on the date of the approval and a notice of any change in the material will be published in the **Federal Register**.

(b) *List of test procedures incorporated by reference.*

(1) Air-Conditioning and Refrigeration Institute (ARI) Standard 210/240–2003 published in 2003, "Unitary Air-Conditioning and Air-Source Heat Pump Equipment," IBR approved for § 431.96.

(2) ARI Standard 340/360–2000 published in 2001, "Commercial and Industrial Unitary Air-Conditioning and Heat Pump Equipment," IBR approved for § 431.96.

(3) International Organization for Standardization (ISO) International Standard ISO 13256–1 published in 1998, "Water-source heat pumps—Testing and rating for performance—

Part 1: Water-to-air and brine-to-air heat pumps," IBR approved for § 431.96.

(4) ARI Standard 310/380–2004 (CSA–C744–04) published in 2004, "Standard for Packaged Terminal Air-Conditioners and Heat Pumps," IBR approved for § 431.96.

(c) *Availability of references.*

(1) *Inspection of test procedures.* You may inspect the test procedures incorporated by reference at:

(i) National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(ii) U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Hearings and Dockets, "Test Procedures and Efficiency Standards for Commercial Air Conditioners and Heat Pumps," Docket No. EE–RM/TP–99–460, 1000 Independence Avenue, SW., Washington, DC 20585.

(2) *Obtaining copies of test procedures.* You may obtain a copy of the ARI standards from the Air-Conditioning and Refrigeration Institute, 4301 North Fairfax Drive, Suite 425, Arlington, VA 22203, <http://www.ari.org/>. You can purchase a copy of the ISO Standard 13256–1 from the International Organization for Standardization, Case Postale 56, CH–1211, Geneva 20, Switzerland. <http://www.iso.ch/> or from the American National Standards Institute, 25 West 43rd Street, New York, New York 10036.

§ 431.96 Uniform test method for the measurement of energy efficiency of small and large commercial package air conditioning and heating equipment, packaged terminal air conditioners, and packaged terminal heat pumps.

(a) *Scope.* This section contains test procedures you must follow if, pursuant to EPCA, you are measuring the energy efficiency of any small or large commercial package air-conditioning and heating equipment, packaged terminal air conditioner or packaged terminal heat pump.

(b) *Testing and Calculations.* Determine the energy efficiency of each covered product by conducting the test procedure(s) listed in the rightmost column of Table 1 of this section or the two rightmost columns of Table 2 of this section, that apply to the energy efficiency descriptor for that product, category, and cooling capacity.

TABLE 1 TO § 431.96.—TEST PROCEDURES FOR CERTAIN SMALL COMMERCIAL PACKAGE AIR CONDITIONING AND HEATING EQUIPMENT (ALL WATER-SOURCE EQUIPMENT AND OTHER EQUIPMENT LESS THAN 65,000 BTU/H), FOR LARGE COMMERCIAL PACKAGE AIR CONDITIONING AND HEATING EQUIPMENT AND FOR PACKAGED TERMINAL AIR CONDITIONERS AND PACKAGED TERMINAL HEAT PUMPS

Product	Category	Cooling capacity	Energy efficiency descriptor	Use tests, conditions and procedures ¹ in
Small Commercial Packaged Air Conditioning and Heating Equipment	Air Cooled, 3 Phase, AC and HP	<65,000 Btu/h	SEER	ARI Standard 210/240–2003
			HSPF	ARI Standard 210/240–2003
	Water Cooled and Evaporatively Cooled AC	<65,000 Btu/h	EER	ARI Standard 210/240–2003
	Water-Source HP	<135,000 Btu/h	EER	ISO Standard 13256–1 (1998)
COP			ISO Standard 13256–1 (1998)	
Large Commercial Packaged Air Conditioning and Heating Equipment	Air Cooled AC and HP	≥135,000 Btu/h and <240,000 Btu/h.	EER	ARI Standard 340/360–2000
			COP	ARI Standard 340/360–2000
	Water Cooled AC	≥135,000 Btu/h and <240,000 Btu/h.	EER	ARI Standard 340/360–2000
	Evaporatively Cooled AC ..	≥135,000 Btu/h and <240,000 Btu/h.	EER	ARI Standard 340/360–2000
Packaged Terminal Air Conditioners and Heat Pumps	AC and HP	All	EER	ARI Standard 310/380–2004
	HP	All	COP	ARI Standard 310/380–2004

¹ Incorporated by reference, see § 431.95.

TABLE 2 TO § 431.96.—TEST PROCEDURES FOR SMALL COMMERCIAL PACKAGE AIR CONDITIONING AND HEATING EQUIPMENT ≥65,000 BTU/H AND <135,000 BTU/H (OTHER THAN WATER-SOURCE EQUIPMENT)

Category	Energy efficiency descriptor	Use tests, conditions and procedures ¹ in	With these additional stipulations ²
Air Cooled AC and HP.	EER COP	ARI Standard 340/360–2000.	<ol style="list-style-type: none"> Models with a desuperheater/water heating device: Establish Standard Ratings of units equipped with a refrigerant-to-water heat exchanger to heat domestic water (<i>i.e.</i>, a desuperheater), with the desuperheater not in operation. <i>Models Manufactured Without Indoor Air-Circulating Fans:</i> (a) Establish Standard Ratings of units which do not have indoor air circulating fans furnished as part of the model, <i>i.e.</i>, split systems with indoor coil alone, by subtracting from the total cooling capacity 1,250 Btu/h per 1,000 cfm [775 W/m³/s], and by adding the same amount to the heating capacity. Increase total power input for both heating and cooling by 365 W per 1,000 cfm [226 W/m³/s] of indoor air circulated. (b) Equipment which does not incorporate an indoor fan, but is rated in combination with a device employing a fan, shall be rated as described in 6.1.3.2a of 340/360–2000. For equipment of this class which is rated for general use to be applied to a variety of heating units, the indoor-coil airflow rate shall be (1) specified by the manufacturer in Standard Ratings, not to exceed 37.5 SCFM/1,000 Btu/h [0.06 m³/s per 1,000 W] of rated capacity, or (2) the airflow rate obtained through the indoor coil assembly when the pressure drop across the indoor coil assembly and the recommended enclosures and attachment means is not greater than 0.30 inch of water [75 Pa], whichever is less.

TABLE 2 TO § 431.96.—TEST PROCEDURES FOR SMALL COMMERCIAL PACKAGE AIR CONDITIONING AND HEATING EQUIPMENT ≥65,000 BTU/H AND <135,000 BTU/H (OTHER THAN WATER-SOURCE EQUIPMENT)—Continued

Category	Energy efficiency descriptor	Use tests, conditions and procedures ¹ in	With these additional stipulations ²
Water Cooled AC	EER	ARI Standard 340/360–2000.	3. <i>Models with Indoor Fans, Not Made for Use With Field Installed Duct Systems:</i> (a) Equipment with indoor fans not made for use with field installed duct systems (free discharge) shall be rated at the indoor-coil airflow rate delivered when operating at 0 inches of water [0 Pa] external pressure as specified by the manufacturer. (b) Test indoor air-moving equipment not intended for use with field installed duct systems (free discharge) at 0 inches of water [0 Pa] external pressure.
Evaporately Cooled AC.	EER	ARI Standard 340/360–2000.	4. <i>Water cooled models:</i> For Standard Ratings of water-cooled units add a total allowance for cooling tower fan motor and circulating water pump motor power inputs in the amount of 10.0 W per 1,000 Btu/h [34.1 W per 1,000 W] cooling capacity.

¹ Incorporated by reference, see § 431.95.
² The content of stipulations 1, 2(a), 2(b), 3(a), 3(b), and 4 is taken from Sections 2.2.5, 6.1, 6.1.3.3 (c), 6.1.3.3 (b), 6.1.3.6, and 6.1, respectively, of ARI Standard 210/240–2003.

Energy Efficiency Standards

§ 431.97 Energy efficiency standards and their effective dates.

Each commercial air conditioner or heat pump manufactured on or after

January 1, 1994 (except for large commercial package air-conditioning and heating equipment, for which the effective date is January 1, 1995) must meet the applicable minimum energy

efficiency standard level(s) set forth in Tables 1 and 2 of this section.

TABLE 1 TO § 431.97.—MINIMUM COOLING EFFICIENCY LEVELS

Product	Category	Cooling capacity	Sub-category	Efficiency level ¹		
				Products manufactured until October 29, 2003	Products manufactured on and after October 29, 2003	
Small Commercial Packaged Air Conditioning and Heating Equipment.	Air Cooled, 3 phase ..	<65,000 Btu/h	Split System	SEER = 10.0	SEER = 10.0.	
			Single Package	SEER = 9.7	SEER = 9.7.	
	Air Cooled	≥65,000 Btu/h and <135,000 Btu/h.	All	EER = 8.9	EER = 8.9.	
			Water Cooled Evaporatively Cooled and Water-Source.	AC	EER = 9.3	EER = 12.1.
				HP	EER = 9.3	EER = 11.2.
			≥17,000 Btu/h and <65,000 Btu/h.	AC	EER = 9.3	EER = 12.1.
				HP	EER = 9.3	EER = 12.0.
			≥65,000 Btu/h and <135,000 Btu/h.	AC	EER = 10.5	EER = 11.5. ²
	HP	EER = 10.5		EER = 12.0.		
	Large Commercial Packaged Air Conditioning and Heating Equipment.	Air Cooled	≥135,000 Btu/h and <240,000 Btu/h.	All	EER = 8.5	EER = 8.5.
Water-Cooled and Evaporatively Cooled.		≥135,000 and <240,000 Btu/h.	All	EER = 9.6	EER = 9.6. ³	

TABLE 1 TO § 431.97.—MINIMUM COOLING EFFICIENCY LEVELS—Continued

Product	Category	Cooling capacity	Sub-category	Efficiency level ¹	
				Products manufactured until October 29, 2003	Products manufactured on and after October 29, 2003
Packaged Terminal Air Conditioners and Heat Pumps.	All	<7,000 Btu/h	All	EER = 8.88	EER = 8.88.
		≥7,000 Btu/h and ≤15,000 Btu/h.		EER = 10.0 – (0.16 × capacity [in kBtu/h at 95°F outdoor dry-bulb temperature]).	EER = 10.0 – (0.16 × capacity [in kBtu/h at 95°F outdoor dry-bulb temperature]).
		>15,000 Btu/h		EER = 7.6	EER = 7.6.

¹ For equipment rated according to the ARI standards, all EER values must be rated at 95°F outdoor dry-bulb temperature for air-cooled products and evaporatively-cooled products and at 85°F entering water temperature for water-cooled products. For water-source heat pumps rated according to the ISO standard, EER must be rated at 30°C (86°F) entering water temperature.

² Deduct 0.2 from the required EER for units with heating sections other than electric resistance heat.

³ Effective 10/29/2004, the minimum value becomes EER = 11.0.

TABLE 2 TO § 431.97.—MINIMUM HEATING EFFICIENCY LEVELS

Product	Category	Cooling capacity	Sub-category	Efficiency level ¹	
				Products manufactured until October 29, 2003	Products manufactured on and after October 29, 2003
Small Commercial Packaged Air Conditioning and Heating Equipment.	Air Cooled, 3 Phase ..	<65,000 Btu/h	Split System	HSPF = 6.8	HSPF = 6.8.
			Single Package	HSPF = 6.6	HSPF = 6.6.
	Water-source	<135,000 Btu/h	Split System and Single Package.	COP = 3.8	COP = 4.2.
	Air Cooled	≥65,000 Btu/h and <135,000 Btu/h.	All	COP = 3.0	COP = 3.0.
Large Commercial Packaged Air Conditioning Package and Heating Equipment.	Air Cooled	≥135,000 Btu/h and <240,000 Btu/h.	Split System and Single Package.	COP = 2.9	COP = 2.9.
Packaged Terminal Heat Pumps.	All	All	All	COP = 1.3+(0.16 × the applicable minimum cooling EER prescribed in Table 1—Minimum Cooling Efficiency Levels).	COP = 1.3+(0.16 × the applicable minimum cooling EER prescribed in Table 1—Minimum Cooling Efficiency Levels).

¹ For units tested by ARI standards, all COP values must be rated at 47 °F outdoor dry-bulb temperature for air-cooled products, and at 70 °F entering water temperature for water-source heat pumps. For heat pumps tested by the ISO Standard 13256–1, the COP values must be obtained at the rating point with 20 °C (68 °F) entering water temperature.

[FR Doc. 04-17731 Filed 10-20-04; 8:45 am]

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DEPARTMENT OF ENERGY**Office of Energy Efficiency and Renewable Energy****10 CFR Part 431**

[Docket No. EE-RM/TP-99-480]

RIN 1904-AA95

Energy Efficiency Program for Certain Commercial and Industrial Equipment: Test Procedures and Efficiency Standards for Commercial Water Heaters, Hot Water Supply Boilers and Unfired Hot Water Storage Tanks**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.**ACTION:** Direct final rule.

SUMMARY: Pursuant to Part C of title III of the Energy Policy and Conservation Act (EPCA), the Department of Energy (DOE or the Department) promulgates a rule prescribing test procedures to rate the energy efficiency of commercial water heaters and hot water supply boilers. For these products and unfired hot water storage tanks, the rule also prescribes relevant definitions and recodifies existing energy conservation standards, so that they are located contiguous with the test procedures that DOE promulgates today.

EFFECTIVE DATE: This direct final rule is effective December 20, 2004, unless significant adverse or critical comments are received by November 22, 2004. If the effective date is delayed, a timely notice will be published in the **Federal Register**. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of December 20, 2004.

ADDRESSES: You may submit comments, identified by docket number EE-RM/TP-99-480 and/or RIN number 1904-AA95, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail:

CommWaterHeatersDirectFinalRuleComments@ee.doe.gov. Include EE-RM/TP-99-460 and/or RIN 1904-AA9, in the subject line of the message.

- Mail: Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J, Direct Final Rule for Test Procedures and Efficiency Standards For Commercial Water Heaters, Hot Water

Supply Boilers and Unfired Hot Water Storage Tanks; EE-RM/TP-99-480 and/or RIN 1904-AA95, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-2945. Please submit one signed paper original.

- Hand Delivery/Courier: Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Room 1J-018, 1000 Independence Avenue, SW., Washington, DC 20585.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking.

Docket: For access to the docket to read background documents or comments received, go to the U.S. Department of Energy, Forrestal Building, Room 1J-018 (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards-Jones at the above telephone number for additional information regarding visiting the Resource Room. Please note: the Department's Freedom of Information Reading Room (formerly Room 1E-190 at the Forrestal Building) is no longer housing rulemaking materials.

FOR FURTHER INFORMATION CONTACT:

Mohammed Khan, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121, (202) 586-7892, FAX (202) 586-4617, e-mail: Mohammed.Khan@ee.doe.gov or Francine Pinto, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, GC-72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7432, e-mail: Francine.Pinto@ee.doe.gov.

SUPPLEMENTARY INFORMATION: This direct final rule incorporates, by reference, into subpart G of part 431, test methods contained in an industry test standard referenced by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc. (ASHRAE) and the Illuminating Engineering Society of North America (IES) Standard 90.1 ("ASHRAE/IES Standard 90.1") for commercial water heaters and hot water supply boilers. The industry test standard is American National Standards Institute Standard Z21.10.3-1998 (ANSI Z21.10.3-1998), "Gas Water Heaters Volume III Storage Water Heaters, with Input Ratings Above 75,000 Btu per Hour, Circulating and

Instantaneous, ANSI Z21.10.3-1998, CSA 4.3-M98, and its Addenda, ANSI Z21.103a-2000, CSA 4.3a-M00." DOE is incorporating by reference the "Method of Test" subsections of sections 2.9 and 2.10 in ANSI Z21.10.3-1998, CSA 4.3-M98 and the sections referenced there, including sections 2.1.7, 2.3.3, 2.3.4, 2.30 and Figure 3.

Copies of these standards are available for review in the resource room of the Building Technologies Program, room 1J-018 at the U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards-Jones at (202) 586-2945, for additional information regarding visiting the resource room.

You can purchase copies of the ASHRAE Standard and the standard incorporated by reference from Global Engineering Documents, 15 Inverness Way East, Englewood, CO 80112, <http://global.ihs.com/>.

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I. Introduction

A. Authority

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions designed to improve energy efficiency of various products and equipment. Part B of title III (42 U.S.C. 6291–6309) provides for the “Energy Conservation Program for Consumer Products other than Automobiles.” Part C of Title III (42 U.S.C. 6311–6317) provides for a program similar to Part B which is entitled “Certain Industrial Equipment” and which includes commercial air conditioning equipment, packaged boilers, water heaters, and other types of commercial equipment.

DOE publishes today’s direct final rule pursuant to Part C which specifically provides for definitions, test procedures, labeling provisions, energy conservation standards, and authority to require information and reports from manufacturers. (See 42 U.S.C. 6311–6317) With regard to test procedures, Part C generally authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which reflect energy efficiency, energy use and estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6314)

With respect to some commercial equipment for which EPCA prescribes energy conservation standards under EPCA section 342, including water heating products, section 343(a)(4)(A) provides: “the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute or by the American Society of Heating, Refrigerating and Air Conditioning Engineers, as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992.” (42 U.S.C. 6314(a)(4)(A)) Further, if such an industry testing or rating procedure is amended, DOE must revise its test procedures to be consistent with the amendment, unless the Secretary determines, based on clear and convincing evidence, that to do so would not meet certain general requirements spelled out in the statute for test procedures. (42 U.S.C. 6314(a)(4)(B)) Before prescribing any test procedures for such equipment, the Secretary must publish them in the **Federal Register** and afford interested persons at least 45 days to present data,

views and arguments. (42 U.S.C. 6314(b)) Effective 360 days after a test procedure rule applicable to covered commercial equipment, such as water heaters, is prescribed, no manufacturer, distributor, retailer or private labeler may make any representation in writing or in broadcast advertisement respecting the energy consumption or cost of energy consumed by such equipment, unless it has been tested in accordance with the prescribed procedure and such representation fairly discloses the results of the testing. (42 U.S.C. 6314(d)) Finally, under the terms of Part C of title III of EPCA, the Secretary is authorized to require manufacturers of covered commercial equipment to submit information and reports for a variety of purposes, including ensuring compliance with requirements. (See 42 U.S.C. 6316(b))

B. Background

DOE began implementation of Part C of title III of EPCA by establishing 10 CFR part 431. Part 431 is entitled “Energy Efficiency Program for Certain Commercial and Industrial Equipment.” Eventually, part 431 will include commercial heating, air conditioning and water heating products. It will consist of: test procedures, Federal energy conservation standards, labeling, and certification and enforcement procedures. Today DOE proposes amendments to part 431 in order further to implement Part C of title III of EPCA.

As a first step in the process that led to today’s direct final rule, the Department convened public workshops on April 14 and 15, 1998, and October 18, 1998, to solicit views and information from interested parties to aid in developing proposed rules that would address test procedures, certification and enforcement procedures, and EPCA’s coverage for this equipment. The workshop discussions and comments focused on the following issues for commercial water heating products specifically:

- (1) The test procedure to incorporate by reference for testing commercial water heaters;
- (2) Proposed test procedures for testing unfired hot water storage tanks;
- (3) Definition and coverage of hot water supply boilers;
- (4) Coverage of instantaneous water heaters;
- (5) Coverage and test procedures for heat pump water heaters; and
- (6) Coverage of waste heat recovery water heaters.

After considering both oral and written comments the Department published a Notice of Proposed

Rulemaking and Public Hearing (“proposed rule” or “NOPR”) to implement the energy efficiency standards and test procedures mandated by EPCA for commercial water heaters, hot water supply boilers and unfired hot water storage tanks. 65 FR 48852 (August 9, 2000) The NOPR requested data, comments, and information regarding the proposed regulations. The Department held a public workshop/hearing (the “public hearing”) on September 20, 2000, to receive oral comments. The Department accepted written comments until October 23, 2000.

In formulating today’s direct final rule, the Department considered the comments received, and has incorporated recommendations where appropriate. The Department received comments with respect to the Department’s position as presented in the NOPR only as to (1) The definition and coverage of instantaneous water heaters and hot water supply boilers, (2) a test procedure for booster water heaters, (3) certain details of the test procedures for other water heaters and (4) unfired storage tank test procedures. These comments are discussed in Section II.

For water heaters and unfired hot water storage tanks, energy conservation standard levels were not at issue in these proceedings. The NOPR merely proposed to recodify into the Department’s regulations on efficiency requirements the standard levels that had been established in section 342(a) of EPCA for this equipment. For hot water supply boilers, in the NOPR the Department stated its intent to adopt the standard levels in Addendum n to ASHRAE/IES Standard 90.1–1989, which differ from the levels applicable to this equipment under section 342(a) of EPCA. Subsequent to issuance of the NOPR, in a separate proceeding, the Department promulgated a regulation (10 CFR 431 subpart Q) to adopt as Federal standards some of the efficiency levels contained in amendments to ASHRAE/IES Standard 90.1 for this water heating equipment. (66 FR 3336, 3356 (January 12, 2001)). These Federal standards became effective on October 29, 2003, replacing corresponding standards in EPCA.

C. Summary of the Direct Final Rule

Today’s rule incorporates the following for commercial water heating equipment: (1) Definitions, including some clarifications of EPCA’s coverage, (2) energy efficiency test procedures, and (3) energy conservation standards.

The definitions largely incorporate language from EPCA. In addition, the

rule specifically provides that instantaneous water heaters that heat water to 180°F or higher are covered as commercial equipment. And “hot water supply boiler” is defined as proposed in the NOPR, in terms of its physical features and how the manufacturer intends the equipment to be used.

The rule prescribes the sections of ANSI Standard Z21.10.3–1998 set forth above, with some minor modifications, as the prescribed testing methodologies for water heaters (including booster water heaters) and hot water supply boilers. (Until one year from the publication of this rule, however, manufacturers of hot water supply boilers with capacities of less than 10 gallons may use either this test procedure, or, if they comply with the efficiency standards for commercial packaged boilers as described below, the test procedure for such boilers.) Because a new Federal energy conservation standard, which is a design rather than a performance standard, recently went into effect for unfired hot water storage tanks, the Department has not adopted a test procedure for this equipment.

Today’s rule includes energy conservation standards so that they and the test procedures for commercial water heating equipment will be located contiguous to one another in DOE’s regulations. The standards are as follows: (1) For electric storage water heaters and gas instantaneous water heaters with capacities of less than 10 gallons the currently applicable minimum energy efficiency levels prescribed by section 342(a) of EPCA; (2) for hot water supply boilers with capacities of less than 10 gallons, the efficiency levels set forth in the NOPR; and (3) for the remaining commercial instantaneous water heaters and hot water supply boilers, for storage water heaters and for unfired hot water storage tanks, the new levels that became effective on October 29, 2003.¹ Until

¹ Subpart Q includes no amendments to the minimum efficiency levels prescribed in EPCA for electric storage water heaters and for gas-fired instantaneous water heaters with capacities less than 10 gallons, and prescribed in Addendum n to ASHRAE/IES Standard 90.1–1989 for hot water supply boilers with such capacities. Hence, today’s rule incorporates these efficiency levels. The Department has under review the minimum levels for the latter two products, and previously decided not to adopt an amended level for electric storage water heaters. See 66 FR at 3350, 3352, and 3356. Furthermore, today’s rule includes no standby loss standards for electric instantaneous water heaters that have storage capacity. EPCA appears to prescribe no standards for this product, and hence the Department proposed none in the NOPR. Nevertheless, ASHRAE/IES Standard 90.1–1999 contained amended standard levels for electric resistance water heaters greater than 12 kW, which apply to both electric storage and electric instantaneous water heaters, and the Department is

one year from publication of this rule, hot water supply boilers with capacities of less than 10 gallons may comply with either the efficiency standards prescribed for them in this rule or with the standards prescribed for commercial packaged boilers.

Finally, because the Department believes that EPCA neither prescribes nor mandates efficiency standards or test procedures for waste heat recovery water heaters, today’s direct final rule does not cover this equipment. This rule also does not provide a test procedure for commercial heat pump water heaters. The Department understands that ASHRAE has published a new standard (ANSI/ASHRAE 118.1–2003) which prescribes a method of test for commercial heat pump water heaters. The Department will evaluate whether to adopt it in the future.

II. Discussion

A. General

Representatives of eight organizations, comprising trade associations (the American Gas Association and the Gas Appliance Manufacturers Association (GAMA)), manufacturers (A.O. Smith Water Products Co. (A.O. Smith) and Bock Water Heaters), private research/consulting entities (the Gas Technology Institute, Arthur D. Little, Inc., and BR Laboratories, Inc.), and a State government energy agency (the California Energy Commission (CEC)), attended the public hearing on September 20, 2000. The American Society of Testing and Materials (ASTM) did not attend the public hearing but submitted written comments. GAMA and CEC also submitted written statements in advance of the hearing, and GAMA submitted written comments after the hearing.

The following discusses issues on which comments were presented during and after the public hearing.

B. Commercial Instantaneous Water Heaters and Hot Water Supply Boilers—Definitions and Scope of Coverage

1. Instantaneous Water Heaters

In the DOE test procedure for residential water heaters, Appendix E to Subpart B of 10 CFR Part 430, the definition of gas fired instantaneous water heaters excludes equipment designed to heat water to 180 °F or higher, or with storage volumes of two gallons or more. During the workshops held prior to the issuance of the NOPR, GAMA stated that such products are not designed or marketed for consumer/

obligated to consider and will consider whether to adopt those levels for the instantaneous products.

residential applications, regardless of their input ratings, and that they should be subject to the energy efficiency standards that apply to commercial water heaters. 65 FR 48854.

The Department stated in the preamble to the NOPR that the Department concurs that these products are generally distributed for commercial or industrial use, and rarely if ever for use by individual consumers. 65 FR 48855. In addition, the NOPR’s proposed definition of “instantaneous water heater” stated that this product must be “a commercial HVAC & WH product.” 65 FR 48864. DOE defined the latter term, in a related NOPR, 64 FR 69598, 69610 (December 13, 1999), by reference to section 340(1) of EPCA, which in essence provides that a product is covered as a commercial product under the statute if it is distributed for commercial or industrial use, and not to any significant extent for personal or individual use. Thus, the NOPR’s proposed test procedures and energy conservation standards for “instantaneous water heaters,” 65 FR 48864 and 48866, would implicitly apply to all instantaneous water heaters that heat water to temperatures of 180 °F and higher.

During the public hearing, however, GAMA claimed that the NOPR addressed this issue inadequately. (GAMA, Tr. 118–119²) GAMA indicated that given the exclusion of these products from DOE’s test procedure for consumer products, the Department should specifically include this product in its definitions for commercial equipment.

As indicated above, the Department intends to cover all commercial instantaneous water heaters in today’s direct final rule. DOE clarifies this point in the direct final rule by adding to the definition of instantaneous water heater language that specifically includes products that raise water temperature to 180 °F or higher, and by substituting for “commercial HVAC & WH product” the term “industrial equipment.” This term is defined in section 340(2) of EPCA as including only equipment distributed to a significant extent for commercial or industrial use, and not for personal or individual use. See 42 U.S.C. 6311(2). The Department is also incorporating EPCA’s definition of “industrial equipment” elsewhere into 10 CFR 431 so that it is more readily available to users of the rule.

² “Tr.” followed by a number or numbers, refers to a page or pages in the transcript of the September 20, 2000, public hearing in this matter.

2. Hot Water Supply Boilers

The Department explained in detail in the preamble of the NOPR its intention to adopt amendments to ASHRAE/IES Standard 90.1–1989 (contained in Addendum n to the Standard) with respect to hot water supply boilers, a type of packaged boiler that is used for service water heating. These amendments prescribed for hot water supply boilers the energy efficiency standards and test procedures that applied to commercial instantaneous water heaters under both ASHRAE/IES Standard 90.1–1989 and EPCA. The Department proposed to adopt these amendments with limited modifications necessary to adapt them for use under EPCA. Such modifications consist primarily of defining “hot water supply boiler” in terms of the intrinsic characteristics of such a boiler, as well as the way the manufacturer markets the product. Further, the Department stated in the preamble to the NOPR that if a boiler is manufactured so that it can be used as either a hot water supply boiler or a hydronic heating boiler, it would have to meet the energy efficiency standards for, and be tested as, both types of products. Finally, the Department proposed that these requirements would become effective 60 days after the direct final rule is promulgated.

The following discussion addresses the issues commenters raised as to the requirements for hot water supply boilers, relating to which equipment is covered and to the effective date of the requirements.

a. Definition—Use and Nature of the Equipment

Pursuant to Addendum n, ASHRAE/IES Standard 90.1 states that a hot water supply boiler is “a boiler used to heat water for purposes other than space heating,” and applies the energy efficiency requirements specified for commercial instantaneous water heaters to hot water supply boilers used solely for heating potable water. The limited modifications the Department proposed in the NOPR for purposes of adopting Addendum n as a Federal requirement included defining certain equipment as a hot water supply boiler based on the equipment’s features and how it is marketed, not how it is used. GAMA commented that DOE should limit its requirements for hot water supply boilers based on how products are actually used. The Department should adopt language identical to that in Addendum n to ASHRAE/IES Standard

90.1–1989. (GAMA, No. 4 and No. 5 at p. 2)³

The Department explained in the NOPR that it did not intend to adopt the provisions of Addendum n exactly as written because they apply to equipment, indeed to a unit of equipment, based on how it is used. EPCA imposes requirements on equipment as manufactured. The Department pointed out that basing requirements for boilers on how they will be used would be untenable for manufacturers, and unenforceable, because manufacturers cannot know how a purchaser will use a particular unit of equipment. The Department stated, and continues to believe, that the proposed definition of hot water supply boiler in terms of physical features that are a necessary part of the equipment, and of how the manufacturer intends that the equipment be used, implements the intent of Addendum n to apply requirements for commercial water heaters to boilers that provide service water heating. GAMA’s comments address neither the reasons the Department set forth in the NOPR for declining to adopt the language of Addendum n nor the specific provisions the Department proposed in an effort to adhere to Addendum n as closely as possible. Thus, the Department is not adopting GAMA’s suggestion that the direct final rule contain language identical to Addendum n.

Accordingly, DOE adopts in today’s direct final rule the approach proposed in the NOPR.

b. Definition—Maximum Input Rating

In the NOPR the Department proposed to define hot water supply boiler, in part, as a packaged boiler with an input rating from 300,000 Btu/hr to 12,500,000 Btu/hr. CEC commented that this rule should not exclude from coverage hot water supply boilers with inputs greater than 12,500,000 Btu/hr. (CEC, No. 2FF at p. 2) This element of the proposed definition is taken verbatim from the delineation of this equipment in ASHRAE/IES Standard 90.1 and does not mean that equipment with inputs greater than 12,500,000 Btu/hr are excluded from coverage under EPCA. Rather, any packaged boiler having an input greater than 12,500,000 Btu/hr, and otherwise having the

³ A notation in the form “GAMA, No. 5 at p. 2” identifies a written comment the Department received in this rulemaking subsequent to issuance of the NOPR. This notation refers to a comment (1) by GAMA, (2) in document number 5 in the docket in this matter, and (3) appearing at page 2 of document number 5. A notation without a page reference means that the comment appeared on the only page of a one page document.

characteristics of a “hot water supply boiler,” is covered by the provisions for packaged boilers.

c. Effective Date of Requirements

The Department proposed that Addendum n’s test procedures (ANSI Z21.10.3) and efficiency standards for hot water supply boilers would become effective as Federal requirements 60 days after publication of this rule, because the Department believed that manufacturers were already following the provisions of Addendum n (65 FR 48858). GAMA pointed out, however, that “manufacturers have not had their hot water supply boilers tested for compliance with the requirements of Addendum n because * * * to our knowledge, there are few, if any * * * jurisdictions * * * that have adopted and are enforcing Addendum n.” GAMA further stated that “manufacturers could not be certain that DOE would adopt the Addendum n requirements as Federal standards because (1) it was not clear that hot water supply boilers would be deemed a Federally-covered product, since there is no mention of hot water supply boilers in EPACT; and (2) Addendum n is a requirement applicable to a specific application rather than to all products of a given type.” (GAMA, No. 5 at pp. 1–2) Consequently, GAMA advocated that our adoption of the Addendum n requirements for hot water supply boilers become effective two years, rather than 60 days, after publication of this rule.

Since publication of the NOPR, this issue has narrowed somewhat. In another rulemaking, the Department adopted as Federal standards for hot water supply boilers with capacities equal to or greater than 10 gallons the efficiency levels prescribed in amendments to ASHRAE/IES Standard 90.1 for instantaneous water heaters. 66 FR at 3356. The Department adopted these standards in January 2001, and they apply to products manufactured on or after October, 29, 2003. For these products, therefore, no issue currently exists as to the effective date of efficiency standards. Still at issue, however, are the effective dates for (1) the test procedures that Addendum n prescribes for these larger capacity hot water supply boilers, and (2) both the test procedures and standards that Addendum n prescribes for hot water supply boilers with a capacity of less than 10 gallons.

As to the test procedures for the larger capacity hot water supply boilers, the Department will adhere to the approach proposed in the NOPR. Effective 60 days after publication of today’s rule, the

mandatory test procedure under EPCA for these products will become ANSI Z21.10.3, the test procedure prescribed for instantaneous water heaters. As just indicated, since October 29, 2003, these larger capacity hot water supply boilers have been subject to the same standards as water heaters, a requirement the Department adopted in January 2001. To assure compliance with these standards, DOE would expect manufacturers to have already begun determining the thermal efficiency and standby losses of these hot water supply boilers, using the ANSI test procedures or similar methods. And whether or not manufacturers are already using such testing methods, they have had over two years to prepare to use them. Moreover, a prescribed test procedure should be in place as soon as possible to permit uniform, accurate assessments of compliance with these standards. Therefore, the Department believes it is reasonable and necessary to provide that the new test procedure for hot water supply boilers with capacities equal to or greater than 10 gallons will become effective 60 days after publication of this rule.

As to hot water supply boilers with capacities of less than 10 gallons, the Department will not adhere to its proposed 60-day effective date. Instead, today's direct final rule provides that the new standards and test procedures applicable to these hot water supply boilers will become mandatory one year after publication of this rule. The Department believes this amount of lead time is warranted in light of the information GAMA provided as to the lack of compliance with Addendum n, and the time manufacturers may need to design and manufacture these smaller capacity hot water supply boilers to comply with the thermal efficiency standard that these products will now be required to meet. The Department recognizes that this is less than the two-year effective date requested by GAMA from publication of today's rule. But DOE believes the one-year effective date is reasonable for both manufacturers and purchasers for three reasons. First, the larger capacity hot water supply boilers are already subject to standards that use the thermal efficiency descriptor, and manufacturers either have begun or will shortly begin using the ANSI Z21.10.3 test procedure to measure compliance with these standards. Therefore, manufacturers will have experience in using the new descriptor and test procedure for hot water supply boilers and, for the smaller products, will need less lead time than advocated by GAMA. Second, from the

standpoint of purchasers, and even manufacturers, a single approach should become mandatory for all hot water supply boilers as soon as possible so as to eliminate any confusion and inefficiency that might result from using different metrics to rate similar products. And third, as recognized by GAMA, manufacturers have been on notice since publication of the NOPR that the Department intended to apply to hot water supply boilers the efficiency requirements for instantaneous water heaters.

DOE also notes that the smaller capacity hot water supply boilers would not be exempt from Federal efficiency standards during the period before the new requirements become effective for them. Rather they would still be subject to the requirements for commercial packaged boilers.

Today's direct final rule will, however, allow products manufactured before such effective date to comply with the new requirements, reflecting the approach proposed in the NOPR for products manufactured before such requirements become mandatory. (65 FR at 48866) Specifically, hot water supply boilers with capacities of less than 10 gallons, manufactured subsequent to October 28, 2003, and within one year of publication of this rule, could meet either the requirements adopted for these products in today's rule or the applicable requirements for packaged boilers.

C. Commercial Water Heaters and Hot Water Supply Boilers—Test Procedures for the Measurement of Energy Efficiency

1. Gas-Fired Water Heaters

In the NOPR DOE stated its intention to incorporate by reference certain sections of ANSI Z21.10.3–1998 as the test procedure for commercial, gas-fired water heaters. None of the comments DOE received objected to this proposal, except in certain limited respects discussed below. Therefore, in today's direct final rule DOE is adopting the proposed test procedure for gas-fired water heaters, but with a minor modification concerning standby loss testing as described in section II–C–3 below.

2. Booster Water Heaters

Booster water heaters are typically designed to take in water that is already heated by a service water heater and “boost” the temperature even higher, raising already hot water (110 to 140 °F) up to a 180 °F or higher. They are typically used for commercial

dishwashing.⁴ CEC advocated that the Department reference a recently approved ASTM test procedure for booster water heaters, indicating that this procedure is more appropriate for such equipment than ANSI Z21.10.3. (CEC, No. 2FF at p. 2, Tr. 118) Opposing this suggestion, GAMA asserted that with respect to gas water heaters the ASTM procedure would be redundant to the ANSI Z21.10.3 procedures that the Department is adopting in this rulemaking. (GAMA, Tr. 120)

The ASTM test procedure that CEC proposed for adoption is not referenced by ASHRAE/IES Standard 90.1. Nor has evidence been presented that this test procedure validly measures compliance with the applicable efficiency standards mandated by EPCA. See Tr. 125–27. Furthermore, as indicated above, there is dispute as to whether the ASTM procedure is needed to test booster water heaters, in place of the procedure referenced in Standard 90.1, ANSI Z21.10.3.

DOE has only limited authority to decline to adopt a test procedure referenced by ASHRAE/IES Standard 90.1 (42 U.S.C. 6314(a)) and the record does not clearly establish either that the ANSI test procedure is unsuitable for testing booster water heaters, or that the ASTM procedure is appropriate for use under the standard set forth in 42 U.S.C. 6314(a). Therefore, the Department is not prepared to determine that the ANSI procedure for this equipment should not be adopted, or to conclude that the ASTM procedure would meet the standards of 42 U.S.C. 6314(a)(4)(C). Accordingly, the Department is not adopting the ASTM test procedure, and the ANSI procedure will govern the testing of booster water heaters covered by EPCA. To the extent a manufacturer of a booster water heater, however, believes the product cannot be tested under ANSI Z21.10.3, or that the test procedure provides materially inaccurate comparative data, DOE's regulations will allow the manufacturer to ask DOE to waive the ANSI test procedures for one or more particular basic models and permit it to use the ASTM procedure instead.

⁴ In the NOPR, the Department indicated in effect that all instantaneous water heaters with storage volumes greater than two gallons and capable of heating water to temperatures of 180 °F or higher are booster water heaters. (65 FR 48854–55). At the public hearing GAMA pointed out, however, that such instantaneous water heaters are not necessarily booster water heaters, and that the latter are a recently developed product specifically designed for use with commercial dishwashers, although in the past conventional commercial water heaters had been modified and installed to provide booster water heating. (Tr. 118–120).

The Department is aware that ANSI updated Z21.10.3–1998 by issuing ANSI Z21.10.3–2001, and that the only change to the efficiency testing portions of the test procedure is that they provide methods specifically for testing booster water heaters. DOE will evaluate this latest version and decide whether to adopt it in the future.

3. Standby Loss Test Procedure

In the NOPR the Department stated its intention to incorporate by reference section 2.10 of ANSI Z21.10.3–1998 as the standby loss test procedure for commercial water heaters and hot water supply boilers, with certain additional stipulations. DOE also pointed out that versions of ANSI Z21.10.3 prior to 1998 called for the standby loss test to terminate 48 hours after the initiation of data collection unless the water heater is in the heating mode at that time, in which case the test would continue until a “cutout” occurs (*i.e.*, the thermostat acts to shut off the burner). Under ANSI Z21.10.3–1998, the standby loss test continues until the first cutout occurs after 24 hours from the time that data collection is initiated.

GAMA commented that the change was made to shorten the test procedure, but after its adoption manufacturers became aware that some water heaters, particularly certain new designs, do not experience this cutout until several days beyond the end of the 24 hours, well beyond the end of the 48 hour time period. According to GAMA, this can make the test quite long and burdensome. It suggested that DOE adopt the referenced test procedure with a modification that limits the duration of the standby loss test to the earlier of the first cutout that occurs after 24 hours from the time of initiation of data collection or the end of 48 hours from the initiation of data collection, as described above. (GAMA, No. 2EE at p. 4, Tr. 131–36, 137) CEC agreed with GAMA’s proposal, characterizing it as a minor modification. (CEC, Tr. 136, 138)

The Department concurs in the need for the modification suggested by GAMA and CEC. The Department believes that the evidence in the record is clear and convincing that without the 48 hour termination provision, the standby loss test procedure in ANSI Z21.10.3–1998 can pose an undue burden on manufacturers, and therefore this modification meets the applicable EPCA requirements for test procedures. Consequently, this rule will incorporate section 2.10 of ANSI Z21.10.3–1998 with the added requirement that the standby loss test will continue until the earlier of either, (1) the first cutout following 24 hours from the initiation of

data collection, or (2) 48 hours from the initiation of data collection if the water heater is not in the heating mode at that time.

Finally, the Department believes GAMA is correct in stating that this modification would not alter the test results that would otherwise be produced under ANSI Z21.10.3–1998. (GAMA, Tr. at 135–36) To the extent, however, that a change in the test results is caused by limiting the duration of the standby loss test procedure to 48 hours, such change would simply tend to provide the same results as would have been obtained using previous versions of the ANSI Z21.10.3. This would realize DOE’s original intent that adoption of the 1998 version of the test procedure not alter standby loss measurements. 65 FR 48859.

The Department also notes that the measured standby loss using ANSI Z21.10.3 (percent standby loss per hour) must be converted to a quantity (Btu/hour) that is consistent with the energy efficiency standards listed in Section 431.110, so that manufacturers can determine whether their products comply with the applicable standard. Therefore, to provide a uniform method for determining compliance, the Department is stipulating the following standard conversion formula as part of today’s rule:

$$SL \text{ (Btu per hour)} = S \text{ (\% per hour)} \times 8.25 \text{ (Btu/gal-F)} \times \text{Measured Volume (gal)} \times 70 \text{ (degrees F)}$$

The term “S (% per hour)” in this formula represents the standby loss as measured using ANSI Z21.10.3–1998. Since DOE has not previously proposed a conversion formula, DOE is publishing today’s direct final rule to provide stakeholders an opportunity to comment on this issue.

4. Oil-Fired Water Heaters

In the NOPR, the Department set forth its intention to adopt ANSI Z21.10.3–1998, with the adaptations specified for testing oil-fired water heaters in footnote e to Table 11.1 of ASHRAE/IES Standard 90.1–1989 Addendum n, as the EPCA test procedure for this product. A.O. Smith asserted, however, that one of the adaptations—that the burner rate be adjusted so that fuel pump pressure would lie within ± 1 percent of the manufacturer’s specification—is unrealistic. (A.O. Smith, No. 3 at p. 1, Tr. 145–146) It recommended that instead the Department require the pump pressure to be within ± 10 percent of the manufacturer’s specification.

Just as the fuel pump establishes the pressure at which fuel is delivered to

the burner of an oil-fired water heater, the gas pressure regulator serves that function on a gas-fired water heater. ANSI Z21.10.3–1998 requires that, during the test of a gas-fired water heater, the outlet pressure for the gas pressure regulator must be within ± 10 percent of that recommended by the manufacturer. Requiring that the pump pressure be within this range during the test of an oil-fired appliance, as recommended by A.O. Smith, would appropriately allow the same magnitude of tolerance for the fuel pressure in this type of equipment as the test procedure already specifies for a gas-fired appliance. DOE believes that this requirement would not affect the test results. Furthermore, DOE agrees with A.O. Smith that the ± 1 percent tolerance would be very difficult to achieve.

In sum, DOE believes the evidence in the record is clear and convincing that maintaining this tolerance for the fuel pump pressure in testing the efficiency of oil-fired water heaters would pose an undue burden on manufacturers. Therefore, today’s direct final rule requires instead that the pressure be at a level of ± 10 percent of the manufacturer’s specification for the equipment. DOE has determined that this tolerance level meets the requirements of 42 U.S.C. 6314(a)(2).

5. Electric Water Heaters

In the NOPR, DOE set forth its intent to adopt ANSI Z21.10.3–1998, with the adaptations specified for testing electric water heaters in footnote e to Table 11.1 of ASHRAE/IES Standard 90.1–1989 Addendum n, as the EPCA test procedure for this equipment. A.O. Smith asserted, however, that one of the adaptations—that the electrical supply voltage be maintained within ± 1 percent of the center of the voltage range specified on the water heater nameplate—is unnecessary and would require costly equipment. (A.O. Smith, No. 3 at p. 1, Tr. 140) A.O. Smith recommended that instead the Department require the electrical supply voltage to be maintained within ± 5 percent of the nameplate specification.

This change would affect maintenance of the electrical supply but not the tolerance for measurement of electric energy consumed, since the test procedure would continue to require that such measurement be within a 1 percent tolerance. Thus, the change would not detract from the rigor of the test procedure. DOE also agrees with A.O. Smith that acceptance of its recommendation would not affect the test results and would ease the burden of testing this equipment.

For these reasons, DOE believes the evidence in the record is clear and convincing that maintaining this ± 1 percent supply voltage tolerance in the test procedure for electric water heaters would pose an undue burden on manufacturers. Therefore, today's direct final rule requires instead that the supply voltage be maintained at a level of ± 5 percent of the center of the voltage range specified on the nameplate. DOE has determined that this tolerance level meets the requirements of 42 U.S.C. 6314(a)(2).

D. Commercial Unfired Hot Water Storage Tanks

Since ASHRAE/IES Standard 90.1 referenced no test procedure for hot water storage tanks as of the time EPCACT was enacted, none was prescribed by statute. (42 U.S.C. 6314(a)(4)(A)) The Department proposed in the NOPR, therefore, to require that unfired hot water storage tanks having a storage capacity of 140 gallons or less be tested for heat loss according to a test procedure presented in the NOPR.

Commenters expressed many concerns about the proposed test procedure. (e.g., A.O. Smith, No. 3 at p. 2, Tr. 149, 157–160; CEC, Tr. 156, 163) However, this issue, and the concerns expressed in the comments, are now moot. The Department subsequently adopted, in another rulemaking, a requirement that unfired hot water storage tanks be insulated to at least R12.5, and it went into effect as a Federal standard on October 29, 2003, replacing the 6.5 Btu/hr per ft² maximum heat loss requirement. 66 FR at 3356. Certain of the commenters had recommended that the Department adopt this requirement instead of its proposed test procedure. (GAMA, No. 2EE at p. 2, Tr. 151; AO Smith, No. 3 at p. 2) Given the adoption of this new standard, and the fact that a heat loss requirement is no longer in place for unfired hot water storage tanks, no need exists for a DOE test procedure to measure heat loss for this product. Moreover, ASHRAE/IES Standard 90.1–1999 prescribes no test procedure for determining compliance with the new R12.5 insulation requirement, which is a design rather than a performance standard, and DOE believes none is necessary.

For these reasons, today's direct final rule does not include a test procedure for unfired storage tanks.

E. Effect of Amended Test Procedure on Measured Energy Efficiency

As to rulemakings to amend test procedures, section 323(e) of EPCA, 42 U.S.C. 6293(e), provides that DOE shall

determine whether the amended test procedure would alter the measured energy efficiency or measured energy use of any covered product as determined under the existing test procedure. If the amendment does alter such measured efficiency or energy use, the Secretary must determine the average efficiency or energy use level under the new test procedure of products that minimally complied with the applicable energy conservation standard prior to the test procedure amendment, and must set the standard at that level. (42 U.S.C. 6293(e)(2)) In addition, any existing model of a product that complied with the previously applicable standard would be deemed to comply with the new standard. (42 U.S.C. 6293(e)(3)) These provisions prevent changes in a test procedure from indirectly altering the applicable Federal energy conservation standard. They also prevent products that complied with standards using the previous test procedure from being forced out of compliance by the new test procedure.

EPCA provides that the DOE test procedures for commercial water heating products shall be those industry test procedures recognized by ASHRAE and referenced in ASHRAE Standard 90.1 and in effect on June 30, 1992. 42 U.S.C. 6341(a)(4)(A) For water heaters, the version of ASHRAE Standard 90.1 in effect on June 30, 1992, references the following: (1) For gas water heaters, ANSI Z21.10.3–1990, (2) for oil water heaters, ANSI Z21.10.3–1990, with certain modifications, and (3) for electric products, the standby loss provisions of ANSI Z21.10.3–1990 with certain modifications. From 1992 through 1998, ANSI issued six updated versions of Z21.10.3–1990, but only the 1998 version changed the energy efficiency and energy use testing provisions.⁵ The direct final rule adopts the relevant provisions of Z21.10.3–98 (including its changes to the test methods) as the test procedure for these products, along with the modifications just referred to for oil and electric products, and four additional changes to these test procedures. The portions of ANSI Z21.10.3–1998 that were contained in Z21.10.3–1990, as well as

⁵ The ANSI Z21.10.3 test procedure provides a method for measuring thermal efficiency and a method for measuring standby loss, and both of these metrics are included in the standards for water heaters. The Department believes that, within the meaning of section 323(e) of EPCA, the thermal efficiency test method determines the “measured energy efficiency” of water heaters, and the standby loss test method determines the “measured energy use.” DOE refers here to the former as energy efficiency testing provisions, and the latter as energy use testing provisions.

the modifications for oil and electric products, were all referenced in ASHRAE 90.1–1989 and in effect on June 30, 1992. Therefore, the statute itself sanctions the adoption of these provisions, and their adoption is not a change or amendment to the existing “required” test procedure for purposes of 42 U.S.C. 6293(e) when that section refers to an “amended test procedure.” In addition, of the changes to the test method that were incorporated in Z21.10.3–1998, and the four additional changes that DOE is including in this direct final rule, none would affect measured efficiency and only certain of the changes to the standby loss test in Z21.10.3 might affect measured energy use as determined under the previously existing test procedure. But DOE believes that any such effect on standby loss measurements would be de minimus. Therefore, DOE will not take further action under 42 U.S.C. 6293(e) with regard to these changes.

One of the changes in Z21.10.3–1998 to the standby loss test, for example, is specification of a lower tank water temperature. This reduction in tank water temperature allows for less heat energy loss to the surroundings and thus could affect standby loss. However, the equation that is used to calculate standby loss (as a percent per hour) effectively compensates for any possible affect on standby loss that a change in tank temperature could otherwise have. The change in tank temperature does not affect the measure of standby loss, and consequently does not alter measured energy use, as determined under the previously existing test procedure. Therefore, DOE will not take further action under 42 U.S.C. 6293(e) with regard to this change.

Another test procedure amendment—one of the Department's four additional changes to the test method—relates to the duration requirement for the standby loss test. As discussed in Section II.C.3 of this Direct Final Rule, the Department is adopting the standby loss test method in ANSI Z21.10.3–1998 with an added provision limiting the duration of that test. The Department believes that this modification would not alter the standby loss test results that would otherwise be produced under ANSI Z21.10.3–1998 or the previous version of this test method. Hence, this modification also does not alter measured energy use.

With respect to hot water supply boilers, this direct final rule prescribes ANSI Z21.10.3 as the required test procedure, as DOE proposed in the NOPR. 65 FR 48865. This represents a change in the applicable test procedure for hot water supply boilers, because as

of June 30, 1992, ASHRAE 90.1 required a manufacturer to use one of the five test procedures for boilers that were referenced in 90.1. Furthermore, on January 12, 2001, DOE adopted new standards as Federal requirements for hot water supply boilers with capacities equal to or greater than 10 gallons. 66 FR 3336, 3356. In today's rule, the Department is adopting new standards for the smaller hot water supply boilers. These new standards change the metric used to measure the efficiency of this equipment from combustion efficiency to thermal efficiency. In addition, for larger equipment the new standards include a standby loss metric. Even if today's test procedure amendment does change the energy efficiency or energy use rating of any model of this equipment and would cause it not to comply with the current energy conservation standard, the standard for hot water supply boilers is now changed. As a result, the new standard will supersede the current standard and render irrelevant the ability or inability of any model to comply with the former standard based on determinations under the existing test procedure. Thus, any alteration in measured efficiency or energy use resulting from today's amendment to the test procedure would merely mean that the equipment in question does not meet the new standard.

III. Final Action

DOE is publishing this direct final rule in order to allow stakeholders an opportunity to comment on revisions to this rule that have not had prior proposal. The direct final action will be effective December 20, 2004, unless significant adverse or critical comments are received by November 22, 2004. DOE views these revisions as noncontroversial and anticipates no significant adverse comments. However, in the event that significant adverse or critical comments are filed, DOE will withdraw the rule before the effective date. In the case of withdrawal of this action, the withdrawal will be announced by a subsequent **Federal Register** document. All public comments will then be addressed in a separate proposed rule which will be issued at a later date. Any parties interested in commenting on this rule should do so at this time. If no significant adverse comments are received, the public is advised that this rule will be effective December 20, 2004.

IV. Procedural Requirements

A. Review Under Executive Order 12866

The Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) has determined that today's regulatory action is not a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under the Executive Order.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of General Counsel's Web site: <http://www.gc.doe.gov>.

DOE reviewed today's rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003, and certified in the NOPR that the proposed rule would not impose a significant economic impact on a substantial number of small entities. (64 FR 69597) DOE received no comments on this issue, and after considering the potential small entity impact of this direct final rule, DOE affirms the certification that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review pursuant to 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act

This rulemaking will impose no new information or recordkeeping requirements. Accordingly, OMB clearance is not required under the

Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

D. Review Under the National Environmental Policy Act

DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and the Department's implementing regulations at 10 CFR part 1021. Specifically, this rule amends an existing rule without changing the environmental effect of the rule being amended, and, therefore, is covered by the Categorical Exclusion in paragraph A5 to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined today's rule and has determined that it does not preempt State law and does 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. No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general

standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. With respect to a proposed regulatory action that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector of \$100 million or more (adjusted annually for inflation), section 202 of the Act requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy (2 U.S.C. 1532(a),(b)). The Act also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under the Act (62 FR 12820) (also available at <http://www.gc.doe.gov>). The rule published today does not contain any Federal mandate, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined pursuant to Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 18, 1988), that this regulation would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note), provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice of direct final rulemaking under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of

OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and, therefore, is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under Section 301 of the Department of Energy Organization Act (Pub. L. 95-91), the Department must comply with Section 32 of the Federal Energy Administration Act of 1974 (FEAA), as amended by the Federal Energy Administration Authorization Act of 1977. 15 U.S.C. 788. The Department stated in the NOPR the reasons why section 32 does not apply to the commercial standards incorporated into the proposed rule, except for its proposed test procedure for unfired hot water storage tanks. The Department received no comments on this issue.

The rule published today does not include the test procedure for unfired hot water storage tanks, although it does incorporate the other standards that the NOPR proposed for incorporation. The Department continues to adhere to the view expressed in the NOPR that section 32 of the FEAA does not apply to these standards.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

N. Approval by the Office of the Secretary

The Secretary of Energy has approved publication of today's rule.

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Commercial products, Energy conservation, Incorporation by reference.

Issued in Washington, DC, on July 27, 2004.

David K. Garman,

Assistant Secretary, Energy Efficiency and Renewable Energy.

■ For the reasons set forth in the preamble, part 431 of Chapter II of Title

10, Code of Federal Regulations is amended as set forth below:

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for Part 431 continues to read as follows:

Authority: 42 U.S.C. 6311–6316.

■ 2. Subpart G is added to read as follows:

Subpart G—Commercial Water Heaters, Hot Water Supply Boilers and Unfired Hot Water Storage Tanks

Sec.

431.101 Purpose and scope.

431.102 Definitions concerning commercial water heaters, hot water supply boilers, and unfired hot water storage tanks.

Test Procedures

431.105 Materials incorporated by reference.

431.106 Uniform test method for the measurement of energy efficiency of commercial water heaters and hot water supply boilers (other than commercial heat pump water heaters).

431.107 Uniform test method for the measurement of energy efficiency of commercial heat pump water heaters [Reserved].

Energy Conservation Standards

431.110 Energy conservation standards and their effective dates.

Subpart G—Commercial Water Heaters, Hot Water Supply Boilers and Unfired Hot Water Storage Tanks

§ 431.101 Purpose and scope.

This subpart contains energy conservation requirements for certain commercial water heaters, hot water supply boilers and unfired hot water storage tanks, pursuant to Part C of Title III of the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6311–6316.

§ 431.102 Definitions concerning commercial water heaters, hot water supply boilers, and unfired hot water storage tanks.

The following definitions apply for purposes of this subpart G, and of subparts J through M of this part. Any words or terms not defined in this section or elsewhere in this part shall be defined as provided in section 340 of the Act, 42 U.S.C. 6311.

ASTM-D-2156-80 means the test standard published in 1980 by the American Society of Testing and Measurements and titled Method for Smoke Density in Flue Gases from Burning Distillate Fuels.

Hot water supply boiler means a packaged boiler that is industrial equipment and that,

(1) Has an input rating from 300,000 Btu/hr to 12,500,000 Btu/hr and of at least 4,000 Btu/hr per gallon of stored water,

(2) Is suitable for heating potable water, and

(3) Meets either or both of the following conditions:

(i) It has the temperature and pressure controls necessary for heating potable water for purposes other than space heating, or

(ii) The manufacturer's product literature, product markings, product marketing, or product installation and operation instructions indicate that the boiler's intended uses include heating potable water for purposes other than space heating.

Instantaneous water heater means a water heater that has an input rating not less than 4,000 Btu/hr per gallon of stored water, and that is industrial equipment, including products meeting this description that are designed to heat water to temperatures of 180 °F or higher.

Packaged boiler means a boiler that is shipped complete with heating equipment, mechanical draft equipment and automatic controls; usually shipped in one or more sections and does not include a boiler that is custom designed and field constructed. If the boiler is shipped in more than one section, the sections may be produced by more than one manufacturer, and may be originated or shipped at different times and from more than one location.

R-value means the thermal resistance of insulating material as determined based on ASTM Standard Test Method C177-97 or C518-91 and expressed in (°F·ft²·h/Btu).

Standby loss means the average hourly energy required to maintain the stored water temperature, expressed as applicable either (1) as a percentage (per hour) of the heat content of the stored water and determined by the formula for S given in Section 2.10 of ANSI Z21.10.3-1998, denoted by the term "S," or (2) in Btu per hour based on a 70° F temperature differential between stored water and the ambient temperature, denoted by the term "SL."

Storage water heater means a water heater that heats and stores water within the appliance at a thermostatically controlled temperature for delivery on demand and that is industrial equipment. Such term does not include units with an input rating of 4,000 Btu/hr or more per gallon of stored water.

Tank surface area means, for the purpose of determining portions of a

tank requiring insulation, those areas of a storage tank, including hand holes and manholes, in its uninsulated or pre-insulated state, that do not have pipe penetrations or tank supports attached.

Thermal efficiency for an instantaneous water heater, a storage water heater or a hot water supply boiler means the ratio of the heat transferred to the water flowing through the water heater to the amount of energy consumed by the water heater as measured during the thermal efficiency test procedure prescribed in this subpart.

Unfired hot water storage tank means a tank used to store water that is heated externally, and that is industrial equipment.

Test Procedures

§ 431.105 Materials incorporated by reference.

(a) The Department incorporates by reference the following test procedures into Subpart G of Part 431. The Director of the *Federal Register* has approved the material listed in paragraph (b) of this section for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Any subsequent amendment to this material by the standard-setting organization will not affect the Department test procedures unless and until the Department amends its test procedures. The Department incorporates the material as it exists on the date of the approval and a notice of any change in the material will be published in the **Federal Register**.

(b) *Test procedure incorporated by reference.* American National Standards Institute (ANSI) Standard: "Gas Water Heaters, Volume III, Storage Water Heaters with Input Ratings above 75,000 Btu per Hour, Circulating and Instantaneous, Z21.10.3-1998, CSA 4.3-M98, and its Addenda, ANSI Z21.10.3a-2000, CSA 4.3a-M00," IBR approved for § 431.105. The Department is incorporating by reference the "Method of Test" subsections of sections 2.9 and 2.10 in ANSI Z21.10.3-1998, CSA 4.3-M98, and the sections referenced there, including sections 2.1.7, 2.3.3, 2.3.4, 2.30 and Figure 3.

(c) *Availability of references.*—(1) *Inspection of test procedures.* The test procedures incorporated by reference are available for inspection at:

(i) National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(ii) U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Hearings and Dockets, "Test Procedures and Efficiency Standards for Commercial Water Heaters, Hot Water Supply Boilers, and Unfired Hot Water Storage Tanks," Docket No. EE-RM/TP-99-480, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

(2) *Obtaining copies of Standards.* Anyone can purchase a copy of the standard incorporated by reference from Global Engineering Documents, 15 Inverness Way West, Englewood, CO 80112, or <http://global.ihs.com/>, or <http://webstore.ansi.org/ansidocstore/>.

(d) *Reference standards.*—(1) *General.* The standards listed in this paragraph are referred to in the Department test

procedures in this subpart, but they are not incorporated by reference. These sources are given here for information and guidance.

(2) *List of References.* (i) ASTM Standard Test Method C518-91, "Standard Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Heat Flow Meter Apparatus."

(ii) ASTM Standard Test Method C177-97, "Standard Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Guarded-Hot-Plate Apparatus."

(iii) ASTM Standard Test Method D2156-80, "Method for Smoke Density in Flue Gases from Burning Distillate Fuels."

§ 431.106 Uniform test method for the measurement of energy efficiency of commercial water heaters and hot water supply boilers (other than commercial heat pump water heaters).

(a) *Scope.* This section covers the test procedures you must follow if, pursuant to EPCA, you are measuring the thermal efficiency or standby loss, or both, of a storage or instantaneous water heater or hot water supply boiler (other than a commercial heat pump water heater).

(b) *Testing and Calculations.* Determine the energy efficiency of each covered product by conducting the test procedure(s), set forth in the two rightmost columns of the following table, that apply to the energy efficiency descriptor(s) for that product:

Product	Energy efficiency descriptor	Use test setup, equipment and procedures in subsection labeled "Method of Test" of	With these additional stipulations
Gas-fired Storage and Instantaneous Water Heaters and Hot Water Supply Boilers*.	Thermal Efficiency	ANSI Z21.10.3-1998, § 2.9**	A. For all products, the duration of the standby loss test shall be until whichever of the following occurs first after you begin to measure the fuel and/or electric consumption: (1) The first cutout after 24 hours or (2) 48 hours, if the water heater is not in the heating mode at that time. B. For oil and gas products, the standby loss in Btu per hour must be calculated as follows: $SL \text{ (Btu per hour)} = S \text{ (\% per hour)} \times 8.25 \text{ (Btu/gal-F)} \times \text{Measured Volume (gal)} \times 70 \text{ (degrees F)}$. C. For oil-fired products, apply the following in conducting the thermal efficiency and standby loss tests: (1) Venting Requirements—Connect a vertical length of flue pipe to the flue gas outlet of sufficient height so as to meet the minimum draft specified by the manufacturer. (2) Oil Supply—Adjust the burner rate so that: (a) The hourly Btu input rate lies within ±2 percent of the manufacturer's specified input rate, (b) the CO ₂ reading shows the value specified by the manufacturer, (c) smoke in the flue does not exceed No. 1 smoke as measured by the procedure in ASTM-D-2156-80, and (d) fuel pump pressure lies within ±10 percent of manufacturer's specifications. D. For electric products, apply the following in conducting the standby loss test: (1) Assume that the thermal efficiency (Et) of electric water heaters with immersed heating elements is 98 percent. (2) Maintain the electrical supply voltage to within ±5 percent of the center of the voltage range specified on the water heater nameplate. (3) If the set up includes multiple adjustable thermostats, set the highest one first to yield a maximum water temperature in the specified range as measured by the top-most tank thermocouple. Then set the lower thermostat(s) to yield a maximum mean tank temperature within the specified range.
	Standby Loss	ANSI Z21.10.3-1998, § 2.10**.	
Oil-fired Storage and Instantaneous Water Heaters and Hot Water Supply Boilers*.	Thermal Efficiency	ANSI Z21.10.3-1998, § 2.9**	
	Standby Loss	ANSI Z21.10.3-1998, § 2.10**.	
Electric Storage and Instantaneous Water Heaters.	Standby Loss	ANSI Z21.10.3-1998, § 2.10**.	

*As to hot water supply boilers with a capacity of less than 10 gallons, these test methods become mandatory on October 21, 2005. Prior to that time, you may use for these products either (1) these test methods if you rate the product for thermal efficiency, or (2) the test methods in Subpart E if you rate the product for combustion efficiency as a commercial packaged boiler.

**Incorporated by reference, see § 431.105.

§ 431.107 Uniform test method for the measurement of energy efficiency of commercial heat pump water heaters [Reserved].

Energy Conservation Standards

§ 431.110 Energy conservation standards and their effective dates.

Each commercial storage water heater, instantaneous water heater, unfired hot water storage tank and hot water supply boiler ¹ must meet the applicable energy conservation standard level(s) as follows:

Product	Size	Energy conservation standard ^a (products manufactured on and after October 29, 2003) ^b	
		Minimum thermal efficiency	Maximum standby loss ^c
Electric storage water heaters	All	N/A	0.30 + 27/V _m (%/hr)
Gas-fired storage water heaters	≤155,000 Btu/hr	80%	Q/800 + 110(V _r) ^{1/2} (Btu/hr)
	>155,000 Btu/hr	80%	Q/800 + 110(V _r) ^{1/2} (Btu/hr)
Oil-fired storage water heaters	≤155,000 Btu/hr	78%	Q/800 + 110(V _r) ^{1/2} (Btu/hr)
	>155,000 Btu/hr	78%	Q/800 + 110(V _r) ^{1/2} (Btu/hr)
Gas-fired instantaneous water heaters and hot water supply boilers.	<10 gal	80%	N/A
	≥10 gal	80%	Q/800 + 110(V _r) ^{1/2} (Btu/hr)
Oil-fired instantaneous water heaters and hot water supply boilers.	<10 gal	80%	N/A
	≥10 gal	78%	Q/800 + 110(V _r) ^{1/2} (Btu/hr)

Product	Size	Minimum thermal insulation
Unfired hot water storage tank	All	R-12.5

^a V_m is the measured storage volume and V_r is the rated volume, both in gallons. Q is the nameplate input rate in Btu/hr.
^b For hot water supply boilers with a capacity of less than 10 gallons: (1) the standards are mandatory for products manufactured on and after [Insert date one year after date the rule is published], and (2) products manufactured prior to that date, and on or after October 23, 2003, must meet either the standards listed in this table or the applicable standards in Subpart E of this Part for a “commercial packaged boiler.”
^c Water heaters and hot water supply boilers having more than 140 gallons of storage capacity need not meet the standby loss requirement if (1) the tank surface area is thermally insulated to R-12.5 or more, (2) a standing pilot light is not used and (3) for gas or oil-fired storage water heaters, they have a fire damper or fan assisted combustion.

[FR Doc. 04-17732 Filed 10-20-04; 8:45 am]

BILLING CODE 6450-01-P

¹ Any packaged boiler that provides service water, that meets the definition of “commercial packaged boiler” in subpart E of this part, but does not meet the definition of “hot water supply boiler” in subpart G, must meet the requirements that apply to it under subpart E.



Federal Register

**Thursday,
October 21, 2004**

Part III

The President

**Proclamation 7834—National Character
Counts Week, 2004**

Presidential Documents

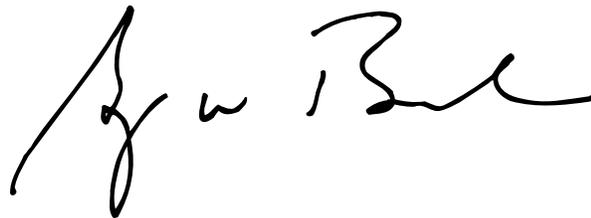
Title 3—**Proclamation 7834 of October 18, 2004****The President****National Character Counts Week, 2004****By the President of the United States of America****A Proclamation**

Individuals have the power to do much good, and great societies are built by knowing the difference between right and wrong. People of character strengthen our country through their daily actions. To help children fulfill their potential and build a more hopeful future for our Nation, we must continue to encourage and support the character development of our young people and support the institutions that give direction and purpose: our families, our schools, and our faith-based and community organizations.

Americans of all ages continue to inspire others with their compassion and decency by giving their time to faith-based and community organizations and bringing hope to others at home and around the world. The Senior Corps has more than 500,000 caring souls serving in its programs; the Peace Corps has grown to its highest number of volunteers in 28 years; and AmeriCorps will grow by 50 percent to 75,000 members this year. Almost two million students volunteer each year through the Learn and Serve America programs, which incorporate community service as a vital part of education. In addition, more than 1,300 communities have formed Citizen Corps Councils; over 10,000 communities have registered Neighborhood Watch programs; more than 27,000 Americans are serving in the Medical Reserve Corps; over 52,000 citizens have completed Community Emergency Response Team training; and there are more than 68,000 volunteers in the Volunteers in Police Service program. The true strength of America lies in the hearts and souls of its citizens, and these volunteers are making our country better and stronger.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 17 through October 23, 2004, as National Character Counts Week. I call upon public officials, educators, librarians, parents, students, and all Americans to observe this week with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of October, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-ninth.



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- Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO Access at <http://www.gpoaccess.gov/plaws/index.html>. Some laws may not yet be available.
- H.R. 4011/P.L. 108-333**
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- H.R. 4567/P.L. 108-334**
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- H.R. 4850/P.L. 108-335**
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- S. 551/P.L. 108-336**
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- S. 1421/P.L. 108-337**
Alaska Native Allotment Subdivision Act (Oct. 18, 2004; 118 Stat. 1357)
- S. 1537/P.L. 108-338**
To direct the Secretary of Agriculture to convey to the New Hope Cemetery Association certain land in the State of Arkansas for use as a cemetery. (Oct. 18, 2004; 118 Stat. 1359)
- S. 1663/P.L. 108-339**
To replace certain Coastal Barrier Resources System maps. (Oct. 18, 2004; 118 Stat. 1361)
- S. 1687/P.L. 108-340**
Manhattan Project National Historical Park Study Act (Oct. 18, 2004; 118 Stat. 1362)
- S. 1814/P.L. 108-341**
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- S. 2052/P.L. 108-342**
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Tapoco Project Licensing Act of 2004 (Oct. 18, 2004; 118 Stat. 1372)
- S. 2363/P.L. 108-344**
To revise and extend the Boys and Girls Clubs of

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-741-6043. This list is also available online at http://www.archives.gov/federal_register/public_laws/public_laws.html.

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America. (Oct. 18, 2004; 118 Stat. 1376)

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To redesignate the Ridges Basin Reservoir, Colorado, as Lake Nighthorse. (Oct. 18, 2004; 118 Stat. 1378)

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