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Contents

Federal Register
Vol. 69, No. 139
Wednesday, July 21, 2004

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

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 69, No. 139
Wednesday, July 21, 2004

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 02–121–4]

Mexican Fruit Fly; Removal of Regulated Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Mexican fruit fly regulations by removing a portion of Los Angeles County, CA, from the list of regulated areas and removing restrictions on the interstate movement of regulated articles from that area. That action was necessary to relieve restrictions that were no longer necessary to prevent the spread of the Mexican fruit fly into noninfested areas of the United States.

DATES: The interim rule became effective on August 26, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Burnett, Operations Officer, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737–1236; (301) 734–6553.

SUPPLEMENTARY INFORMATION:

Background

The Mexican fruit fly regulations, contained in 7 CFR 301.64 through 301.64–10 (referred to below as the regulations), were established to prevent the spread of the Mexican fruit fly to noninfested areas of the United States. The regulations impose restrictions on the interstate movement of regulated articles from the regulated areas.

In an interim rule effective on August 26, 2003, and published in the **Federal Register** on August 29, 2003 (68 FR 51876–51877, Docket No. 02–121–3), we amended the regulations in § 301.64–4 by removing a portion of Los Angeles County, CA, from the list of regulated areas based on our determination that the Mexican fruit fly had been eradicated from those areas. Upon the effective date of our August 2003 interim rule, there were no longer any areas in California designated as regulated areas because of the Mexican fruit fly.

Comments on the interim rule were required to be received on or before October 28, 2003. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 68 FR 51876–51877 on August 29, 2003.

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

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

Done in Washington, DC, this 15th day of July 2004.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–16542 Filed 7–20–04; 8:45 am]

BILLING CODE 3410–34–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 613, 614, and 618

RIN 3052–AC06

Eligibility and Scope of Financing; Loan Policies and Operations; General Provisions; Credit and Related Services

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA, we, our) issues this final rule amending regulations governing domestic and international lending, certain intra-Farm Credit System (FCS or System) consent requirements concerning similar entity participation transactions, provisions of general financing agreements (GFAs), and related services.

DATES: *Effective Date:* This regulation will be effective 30 days after publication in the **Federal Register** during which time either or both Houses of Congress are in session. We will publish a notice of the effective date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Dale Aultman, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498; TTY (703) 883–4434;

or

James Morris, Senior Counsel, Office of the General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–2020.

SUPPLEMENTARY INFORMATION:

I. Objectives

The primary objectives of the final rule are to conform our regulations to statutory amendments to the Farm Credit Act of 1971, as amended (Act), and to reduce regulatory burden imposed on System institutions, while helping ensure compliance with the Act and FCA regulations. We expect the rule to improve the flow of credit to System customers, make similar entity participation transactions less burdensome, and help ensure compliance with the Act and FCA regulations.

II. Background

On May 21, 2003, we published a proposed regulation for public comment. (*See* 68 FR 27757.) As discussed in the proposed rule's

preamble, we are amending our rules to conform our regulations to the Act, as amended by the Farm Security and Rural Investment Act (Pub. L. 107–171) (2002 Farm Bill or FSRIA); address public comments concerning regulatory burden; [1] and help ensure that FCS association lending complies with the Act and our regulations.

III. Comments

We received comments on the proposed rule from the Farm Credit Council (Council), four Farm Credit Banks (FCBs), and an agricultural credit bank. In general, commenters expressed support for our efforts to reduce regulatory burden and conform our regulations to the Act. However, the Council and some FCBs asked for clarification or expressed concern about our proposal to help ensure that FCS association lending complies with the Act and our regulations. Another FCB requested that we eliminate the proposal.

After carefully considering the comments, we adopt the final rule as proposed with clarification of § 614.4125(a), regarding the compliance of FCS association lending with the Act and our regulations.

IV. FCA's Section-by-Section Response to Comments

A. Domestic Title III Lending

In response to our earlier regulatory burden solicitation, CoBank, ACB (CoBank) requested that we amend § 613.3100 concerning financing for domestic borrowers and asked that we amend § 613.3100(c)(2) concerning financing certain activities for which financing might not be available under the Rural Electrification Act. In commenting on our proposed rule, CoBank acknowledged our efforts to reduce regulatory burden by providing the clarifications sought. In addition, the Council stated that the System commends the FCA for responding to CoBank's request for clarification of authorities and reducing regulatory burden. No other comments were received on these proposed amendments. Accordingly, we adopt the proposed amendments at §§ 613.3100(b)(2)(ii), 613.3100(c)(1)(v), and 613.3100(c)(2) as final.

[1] On August 18, 1998, we published a document in the **Federal Register** inviting the public to identify existing FCA regulations and policies that impose unnecessary burdens on the System. *See* 63 FR 44176.

Subpart B—Financing for Banks Operating Under Title III of the Farm Credit Act

Sections 613.3100(b)(2)(ii) and 613.3100(c)(1)(v)—Domestic Lending

In our final rule we clarify that a bank operating under title III may finance a subsidiary or other entity in which eligible cooperatives or certain eligible utilities have an ownership interest. As amended, § 613.3100(b)(2)(ii) clarifies that a title III bank may provide limited financing to a subsidiary or other entity in which an eligible cooperative has an ownership interest. As amended, § 613.3100(c)(1)(v) clarifies that a title III bank may provide limited financing to a subsidiary or other entity in which certain eligible utilities have an ownership interest. If the eligible cooperative or eligible utility owns less than 50 percent of the entity, then the financing provided may not exceed the percentage of ownership attributable to the eligible cooperative or utility, multiplied by the value of the total assets of such entity.

Section 613.3100(c)(2)—Purposes for Financing Electric and Telecommunication Utilities

In our final rule we clarify that a bank for cooperatives (BC) or agricultural credit bank (ACB) may provide financing for subsidiaries of cooperatives or other entities that are eligible to borrow under § 613.3100(c)(1)(ii) for energy-related or public utility-related purposes even if such purposes would be ineligible for financing by the Rural Utilities Service (RUS) or the Rural Telephone Bank (RTB). The legislative history of the Act clearly demonstrates that Congress intended for BCs and ACBs to provide financing for certain limited "non act" purposes.[2] We amend this section to clarify that a subsidiary that is eligible to borrow under § 613.3100(c)(1)(iii) may also obtain financing for energy-related or public utility-related purposes that cannot be financed by the lenders referred to in § 613.3100(c)(1)(ii). Operation of a licensed cable television utility is one example of such purpose.

B. Conforming FCA Regulations To Reflect Recent Amendments to the Act

FSRIA amended section 3.7 of the Act to authorize a bank operating under title III of the Act to finance certain international transactions involving "agricultural supplies," and amended sections 3.1(11)(B) and 4.18A of the Act so that one type of FCS institution no longer needs approval from another type of FCS institution when it participates with a non-FCS lender in certain loans to a similar entity. We proposed amendments to §§ 613.3200 and 613.3300(d) to reflect these statutory changes. In its comment on the proposed rule, the Council stated that the System supports the action taken by FCA to amend its regulations to reflect the changes to the Act made by the FSRIA and urged their enactment. No other comments were received on these proposed amendments. Accordingly, we adopt the proposed amendments to §§ 613.3200 and 613.3300(d) as final.

Section 613.3200(a)—International Lending

In our final rule we conform our regulations to changes in section 3.7 of the Act made by FSRIA that authorize a bank operating under title III of the Act to finance certain international transactions involving "agricultural supplies." We amend § 613.3200(a) by adding a definition of "agricultural supply." The definition of "agricultural supply" in § 613.3200(a)(1) includes a farm supply, agriculture-related processing equipment, agriculture-related machinery, and other capital goods related to the storage or handling of agricultural commodities or products. The term "farm supply," which is included in the new definition of "agricultural supply," is defined in § 613.3200(a)(2).

Subpart C—Similar Entity Authority Under Sections 3.1(11)(B) and 4.18A of the Act

Section 613.3300(d)—Participations and Other Interests in Loans to Similar Entities

In our final rule we amend our regulations to conform them to changes FSRIA made in the Act regarding similar entity transactions.[3] FCS institutions are no longer required to obtain the approvals required by former § 613.3300(d). Although the FSRIA removed the statutory provisions that were the basis of the § 613.3300(d) approval requirements, it did not remove the statutory requirement that a bank operating under title III not participate in a loan to a similar entity under section 3.1 if the similar entity has a loan or loan commitment outstanding with an FCB or association, unless agreed to by the FCB or

[2] "Non act" purpose means a purpose that is ineligible for financing by the RUS or the RTB as described in § 613.3100(c)(1)(ii).

[3] "Similar entity" means a party that is ineligible for a loan from a Farm Credit bank or association, but has operations that are functionally similar to the activities of eligible borrowers in that a majority of its income is derived from, or a majority of its assets are invested in, the conduct of activities that are performed by eligible borrowers.

association. Therefore, while we delete former § 613.3300(d) to reflect the elimination of other statutory approval requirements, we add a new section to reflect this statutory requirement. New § 613.3300(d) requires a bank operating under title III to obtain the agreement of an FCB or association in order to participate in a loan to a similar entity under title III if the similar entity has a loan or a loan commitment outstanding with the FCB or association. Because all FCBs have transferred their direct lending authority to their associations, this provision currently requires consent from associations only.

C. Ensure Loan Making Complies With the Act and FCA Regulations

During examinations of some System institutions, we have identified loans that fail to comply with various requirements of the Act and our regulations. The Act provides FCA broad authorities and remedies with respect to such "ineligible" loans. For example, FCA may require a direct lender association to divest itself of the loan. In appropriate cases, FCA may use its cease and desist or civil money penalty authorities. However, a review of GFAs between FCBs and the ACB and their direct lender associations has revealed that, while most GFAs address ineligible loans in some fashion, they do not all expressly prohibit funding ineligible loans.

We proposed an amendment to § 614.4125(a) that, without in any way limiting our other authorities or remedies under the Act, would mandate that the GFA between the funding bank and the direct lender association require that the amount of financing available be based solely on loans that comply with the Act and FCA regulations.

We received several comments on the proposal. The Council and three FCBs asked for clarification of the word "solely" in our proposal and noted that GFAs calculate available funding on the basis of other assets such as farmer notes, purchase money mortgages, acquired property, and leases in addition to loans. In the final rule, we rephrase the regulation to clarify that the regulatory requirement concerning GFA provisions was not meant to imply that the GFA cannot include certain assets other than loans in calculating available financing.

The Council and an FCB noted that some GFAs do not provide 100-percent credit for all loans, and asked us to clarify that any reduction to the borrowing base for an eligible loan should not exceed the amount of credit given. We clarify in the final rule that if FCA determines that a loan is ineligible, then the amount of financing available must be recalculated without that ineligible loan.

The Council and an FCB asked for clarification and expressed concern whether "minor" or "technical"[4] credit administration errors could be interpreted by FCA as not complying with the Act or FCA regulations, necessitating recalculation of the GFA. For those reasons, another FCB requested that we eliminate this proposal. The intent of this rule is not to eliminate loans with credit administration errors from the amount of financing available to an association. Our final rule clarifies our intent to address ineligible loans. For example, a loan would be ineligible if it violated the requirements in part 613 of our regulations or the first lien, loan-to-value, or lending and leasing limit requirements of part 614 of our regulations.

Subpart C—Bank/Association Lending Relationship

Section 614.4125(a)—Funding and Discount Relationships Between Farm Credit Banks or Agricultural Credit Banks and Direct Lender Associations

The final rule modifies the language proposed in order to provide appropriate clarification. The final rule amends § 614.4125(a) so that each GFA must require that the amount of financing available to a direct lender association not be based on loans that are ineligible under the Act and our regulations. Furthermore, if financing under a GFA is based on a loan that we determine is ineligible under the Act and our regulations, then the amount of financing available must be recalculated without that ineligible loan.

We reiterate that the new regulatory requirements with respect to GFAs' treatment of ineligible loans do not limit in any way FCA's remedies or actions with respect to loans that do not comply with FCA regulations or with the Act in any other respect. Nor does the addition of new regulatory requirements with respect to GFAs' treatment of ineligible loans limit, in any way, FCA's remedies or actions with respect to other types of assets held by FCS institutions that fail to comply with FCA regulations or with the Act.

D. Related Services

In response to our earlier regulatory burden solicitation discussed in Section III above, CoBank requested clarification that it has the same authority to provide related services under title I of the Act as FCBs and the same authority to provide related services under title III of the Act as BCs. We proposed regulations in §§ 618.8000(b) and 618.8005(c) to provide that clarification.[5] In commenting on our proposed rule, CoBank acknowledged our efforts to reduce regulatory burden by providing the clarifications sought. In addition, the Council stated that the System commends the FCA for responding to CoBank's request for clarification of authorities and reducing regulatory burden. No other comments were received on these proposed amendments. Accordingly, we adopt the proposed amendments to §§ 618.8000(b) and 618.8005(a) and (c) as final.

Subpart A—Related Services

Section 618.8000(b)—Definitions and Sections 618.8005(a) and (c)—Eligibility

In our final rule we revise §§ 618.8000(b) and 618.8005(c) to clarify that ACBs have the same authority to offer related services under title III of the Act as BCs, and the same authority to offer related services under title I of the Act as FCBs. In § 618.8000(b) we delete the phrase, "on-farm, aquatic, or cooperative operations" in order to eliminate any possible confusion about limitations on related services offerings under title III. Similarly, in § 618.8005(c) we delete the phrase, "appropriate to cooperative operations of." In § 618.8005(a) we add the phrase "appropriate to on-farm and aquatic operations" to the existing paragraph, in order to reflect the statutory limitation on related services offered under title I.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 613

Advertising, Aged, Agriculture, Banks, banking, Civil rights, Credit, Fair housing, Marital status discrimination, Religious discrimination, Rural areas, Sex discrimination, Signs and symbols.

[4] Examples cited included minor effective interest rate disclosure errors or borrowers that did not receive timely interest rate change notices.

[5] The proposed regulation did not affect our authorized related services list discussed at part 618, subpart A, of our regulations.

12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 618

Agriculture, Archives and records, Banks, banking, Insurance, Reporting and recordkeeping requirements, Rural areas, Technical assistance.

■ For the reasons stated in the preamble, parts 613, 614, and 618 of chapter VI, title 12 of the Code of Federal Regulations are amended as follows:

PART 613—ELIGIBILITY AND SCOPE OF FINANCING

■ 1. The authority citation for part 613 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.9, 1.10, 1.11, 2.2, 2.4, 2.12, 3.1, 3.7, 3.8, 3.22, 4.18A, 4.25, 4.26, 4.27, 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2017, 2018, 2019, 2073, 2075, 2093, 2122, 2128, 2129, 2143, 2206a, 2211, 2212, 2213, 2243, 2252).

Subpart B—Financing for Banks Operating Under Title III of the Farm Credit Act

■ 2. Amend § 613.3100 by revising paragraphs (b)(2)(ii), (c)(1)(v), and (c)(2) to read as follows:

§ 613.3100 Domestic lending.

* * * * *

(b) * * *

(2) * * *

(ii) Any legal entity in which an eligible cooperative (or a subsidiary or other entity in which an eligible cooperative has an ownership interest) has an ownership interest, *provided that* if the percentage of ownership attributable to the eligible cooperative is less than 50 percent, financing may not exceed the percentage of ownership attributable to the eligible cooperative multiplied by the value of the total assets of such entity; or

* * * * *

(c) * * *

(1) * * *

(v) Any legal entity in which an eligible utility under paragraph (c)(1)(ii) of this section (or a subsidiary or other entity in which an eligible utility under paragraph (c)(1)(ii) has an ownership interest) has an ownership interest, *provided that* if the percentage of ownership attributable to the eligible utility is less than 50 percent, financing may not exceed the percentage of ownership attributable to the eligible utility multiplied by the value of the total assets of such entity.

(2) *Purposes for financing.* A bank for cooperatives or agricultural credit bank may extend credit to entities that are eligible to borrow under paragraph (c)(1) of this section in order to provide electric or telecommunication services in a rural area. A subsidiary that is eligible to borrow under paragraph (c)(1)(iii) of this section may also obtain financing from a bank for cooperatives or agricultural credit bank for energy-related or public utility-related purposes that cannot be financed by the lenders referred to in paragraph (c)(1)(ii), including, without limitation, financing to operate a licensed cable television utility.

* * * * *

■ 3. Amend § 613.3200 as follows:

■ a. Revise paragraph (a); and

■ b. Remove the words "farm supplies" and add in their place, the words "agricultural supplies" each place they appear in paragraphs (b) introductory text, (c) introductory text, and (c)(1).

§ 613.3200 International lending.

(a) *Definitions.* For the purpose of this section only, the following definitions apply:

(1) *Agricultural supply* includes:

(i) A farm supply; and

(ii) Agriculture-related processing equipment, agriculture-related machinery, and other capital goods related to the storage or handling of agricultural commodities or products.

(2) *Farm supply* refers to an input that is used in a farming or ranching operation.

* * * * *

Subpart C—Similar Entity Authority Under Sections 3.1(11)(B) and 4.18A of the Act

■ 4. Revise § 613.3300(d) to read as follows:

§ 613.3300 Participations and other interests in loans to similar entities.

* * * * *

(d) *Approval by other Farm Credit System institutions.* A bank for cooperatives or agricultural credit bank may not participate in a loan to a similar entity under title III of the Act if the similar entity has a loan or loan commitment outstanding with a Farm Credit Bank or an association chartered under the Act, unless agreed to by the Farm Credit Bank or association.

PART 614—LOAN POLICIES AND OPERATIONS

■ 5. The authority citation for part 614 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279c–1, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart C—Bank/Association Lending Relationship

■ 6. Amend § 614.4125(a) by adding a second and third sentence to read as follows:

§ 614.4125 Funding and discount relationships between Farm Credit Banks or agricultural credit banks and direct lender associations.

(a) * * * Each general financing agreement must require that the amount of financing available to a direct lender association not be based on loans that are ineligible under the Act and the regulations in this chapter. If financing under a general financing agreement is based on a loan that FCA determines is ineligible under the Act and the regulations in this chapter, then the amount of financing available must be recalculated without that ineligible loan.

* * * * *

PART 618—GENERAL PROVISIONS

■ 7. The authority citation for part 618 continues to read as follows:

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.4, 2.5, 2.12, 3.1, 3.7, 4.12, 4.13A, 4.25, 4.29, 5.9, 5.10, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2019, 2020, 2073, 2075, 2076, 2093, 2122, 2128, 2183, 2200, 2211, 2218, 2243, 2244, 2252).

Subpart A—Related Services

■ 8. Amend § 618.8000(b) by revising the first sentence to read as follows:

§ 618.8000 Definitions.

* * * * *

(b) *Related service* means any service or type of activity provided by a System bank or association that is appropriate to the recipient's operations, including control of related financial matters.

* * *

* * * * *

§ 618.8005 [Amended]

■ 9. Amend § 618.8005 by:

■ a. Adding the phrase "appropriate to on-farm and aquatic operations" after the word "services" in paragraph (a); and
■ b. Removing the phrase "appropriate to cooperative operations of" and adding in its place, the word "to" in paragraph (c).

Dated: July 15, 2004.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 04–16553 Filed 7–20–04; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice: 4767]

RIN 1400–AB49

Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended—Elimination of Crew List Visas

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule adopts as final the Department's interim final regulations regarding the elimination of crew list visas.

DATES: The interim final rule became effective June 16, 2004. This rule is adopted as a final rule as of July 21, 2004.

ADDRESSES: You may view this rule online at *http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ron Acker, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520–0106, (202) 663–1205 or e-mail *ackerrl@state.gov.*

SUPPLEMENTARY INFORMATION: On December 13, 2002, the Department published a rule (67 FR 76711) proposing to eliminate crew list visas. After review of comments to the proposed rule, on March 18, 2004, the Department published an interim final rule which allowed a final comment period until May 17, 2004, followed by a 30 day period for further Department review of comments. The Department is now making final the interim final rule.

DHS has authorized this regulation pursuant to the Memorandum of Understanding Between the Secretaries of State and Homeland Security Concerning Implementation of Section 428 of the Homeland Security Act of 2002. The requirements of 22 CFR 41.42 are being removed in coordination with the removal of similar requirements by DHS in its corresponding regulations.

What Are the Statutory Authorities Pertaining to the Crew List Visa?

Authority for the issuance of a crew list visa is derived from sections 101(a)(15)(D) and 221(f) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(D) and 1201(f), respectively. Section 101(a)(15)(D) exempts aliens serving in good faith as crewmen on board a vessel (other than a fishing vessel having its home port or an operating base in the United States, unless temporarily landing in Guam), or aircraft from being deemed immigrants. Section 221(f), permits an alien to enter the United States on the basis of a crew manifest that has been visaed by a consular officer. However, the latter section does not require a consular officer to visa a crew manifest and it authorizes the officer to deny admission to any individual alien whose name appears on a visaed crew manifest. Further, according to the wording of section 221(f) the use of the visaed crew list appears to have been intended principally as a temporary or emergency measure to be used only until such time as it becomes practicable to issue individual documents to each member of a vessel's or aircraft's crew.

Why Has the Department Eliminated the Crew List Visa?

The Department has eliminated the crew list visa for security reasons. Since the September 11, 2001 attacks, the Department has reviewed its regulations to ensure that every effort is being made to screen out undesirable aliens. By eliminating the crew list visa, the Department will ensure that each crewmember entering the United States is be required to complete the nonimmigrant visa application forms, submit a valid passport and undergo an interview and background checks. Additionally, the Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub. L. 107–173) requires that all visas issued after October 26, 2004 have a biometric indicator. This means crew list visas would necessarily be eliminated by that date.

Did the Department Solicit Comments to the Interim Final Rule?

The Department did solicit comments, and 18 were received. This is in addition to the 82 comments received earlier to the proposed rule. The text of most of the comments was identical. Other letters expressed the same views. The substance of the comments was similar to comments made previously to the proposed rule. A summary of the comments received and the Department's responses follows.

Most of the commenters expressed disappointment that the United States issued the interim final rule despite opposition from the majority of commenters. They referred to the special circumstances of seafarers, which often made it difficult for them to know an exact itinerary in advance. The also mentioned the hardship for seafarers of the waiting time to receive a U.S. visa. Most commenters referred to proposed ILO Convention No. 185 and expressed the hope that the U.S. would have encouraged widespread ratification of this convention by providing more favorable treatment to holders of the seafarers identity document proposed by this convention. Previous commenters have remarked that the proposed ID could serve as a substitute for a passport and that its security features would make crew list visas more secure, even in the absence of consular interviews of all crew members, which is typical when crew list visas are issued. While the Department recognizes that a seafarer's ID containing biometrics could be useful, it is likely to take years for such a document to be developed and adopted widely. Further, one of the principal reasons for requiring individual visas is the need, for security purposes, for a consular officer to personally interview each applicant. Adoption of the new ID card will not address the need for interviews.

Regarding difficulties for crewmen obtaining individual visas caused by last-minute scheduling, the Department recognizes the problem, but continues to believe that the security of the U.S. demands individual crew visas despite the dislocations that the requirement may cause initially. Nevertheless, the Department hopes that shipping companies and unions will encourage their employees and members to obtain visas where there is a reasonable possibility that a crewman may be required to enter the U. S. at any time. The visa, once obtained, and depending upon bilateral reciprocity for like documents held by U.S. seamen, will generally be valid for up to five years. Therefore, once individual crew visas are obtained and used generally by seamen working for companies that ship to the U.S., there should be reasonable certainty that most of the crew will be able to enter the U.S. on short notice.

How Did This Rule Amend the Department's Regulations?

This rule removed the Department's regulations at 22 CFR 41.42 that establish the crew list visa. By doing so, all crewmembers seeking to enter the United States in that capacity are required to apply for individual crew visas.

Regulatory Findings

Administrative Procedure Act

The Department is publishing this rule as a final rule, after a 60-day provision for post-promulgation public comments and review, based on the "good cause" exceptions set forth at 5 U.S.C. 553(b)(3)(B) and 553(d)(3). It is dictated by the necessity to ensure that every effort is being made to screen out undesirable aliens; additionally, the Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub. L. 107–173) requires that all visas issued after October 26, 2004 have a biometric indicator, which means crew list visas would necessarily be eliminated by that date.

Regulatory Flexibility Act/Executive Order 13272: Small Business

These changes to the regulations are hereby certified as not expected to have a significant effect on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

The Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign based companies in domestic and import markets.

The Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UFMA), Public Law 104–4; 109 Stat. 48; 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of $100 million or more by State, local, or tribal governments, or by the private sector. This rule does not result in any such expenditure nor will it significantly or uniquely affect small governments.

Executive Order 13132: Federalism

The Department finds that this regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Nor does the rule have federalism implications warranting the application of Executive Orders No. 12372 and No. 13132.

Executive Order 12866: Regulatory Review

The Department of State considers this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. The Department submitted the interim rule to the Office of Management and Budget for its review and there is no change in the final rule.

Executive Order 12988: Civil Justice Reform

The Department has reviewed the proposed regulations in light of sections 3(a) and 3(b)(2) of Executive Order No. 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

The Paperwork Reduction Act of 1995

This rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

List of Subjects in 22 CFR Part 41

Aliens, Nonimmigrants, Passports, Visas.

In view of the foregoing, the interim final rule that amended 22 CFR Part 41 published on March 18, 2004 (69 FR 12797) is adopted as final.

Dated: June 10, 2004.

Maura Harty,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 04–16468 Filed 7–20–04; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD13–04–034]

RIN 1625–AA08

Special Local Regulations; Annual Kennewick, WA, Columbia Unlimited Hydroplane Races

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is restricting general navigation and anchorage on the Columbia River by establishing a special local regulation. The Captain of the Port, Portland, is taking this action to safeguard individuals from safety hazards associated with hydroplanes operating at a high rate of speed. Entry into the area established is prohibited unless authorized by the Captain of the Port.

DATES: This rule is effective from 6 a.m. on July 23, 2004, until 9 p.m. (P.d.t.) on July 25, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [CGD 13–04–034] and are available for inspection or copying at the U.S. Coast Guard MSO/Group Portland, 6767 N. Basin Ave, Portland, Oregon 97217 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Belen Audirsch, c/o Captain of the Port Portland, 6767 N. Basin Ave, Portland, OR 97217 at 503–240–9320.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing a NPRM would be contrary to public interest since immediate action is necessary to ensure the safety of vessels and spectators gathering in the vicinity of the hydroplane races. If normal notice and comment procedures were followed, this rule would not become effective until after the dates of the event. For this reason, following normal rulemaking procedures in this case would be impracticable and contrary to the public interest. A final rule was published establishing this special local regulation in 1985

(CGD13–85–06, 50 FR 25071). A direct final rule was published in 1996 amending the rule published in 1985 to clarify the effective dates of the event and to revise the boundaries of the regulated area. This temporary final rule is required to again revise the size of the regulated area and to increase the length of time affected by the regulation.

Background and Purpose

The Coast Guard is restricting general navigation and anchorage to allow for safe execution of the hydroplane races. This regulation will be enforced from 6 a.m. (P.d.t.) until 9 p.m. (P.d.t.) on July 23, 24, and 25, 2004. The restriction on general navigation and anchorage is necessary to protect spectators from hazards associated with hydroplanes operating at high rates of speed. This special local regulation will be enforced by representatives of the Captain of the Port, Portland, Oregon. The Captain of the Port may be assisted by other federal and local agencies.

Discussion of Rule

This rule, for safety concerns, will control personnel and individual movements in a regulated area surrounding the Columbia Cup Unlimited Hydroplane Races. Entry into this zone is prohibited unless authorized by the Captain of the Port, Portland or his designated representative. Coast Guard personnel will enforce this special local regulation. The Captain of the Port may be assisted by other federal and local agencies.

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. The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under the regulatory policies and procedures of DHS is unnecessary.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the designated area at the corresponding time as drafted in this rule. This special local regulation will not have a significant economic impact on a substantial number of small entities for the following reasons. Traffic will be allowed to pass through the zone between race heats with the permission of the Captain of the Port or his designated representatives on scene, if safe to do so. Because the impacts of this rule are expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612) that this rule will 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 that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their regulatory actions not specifically required by law. 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. Although this rule does not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. 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.

Technical Standards

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

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(h) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. From 6 a.m. on July 23, 2004, until 9 p.m. on July 25, 2004, temporarily suspend 33 CFR 100.1303 and add temporary § 100.T13–001 to read as follows:

§ 100.T13–001 Special Local Regulations; Annual Kennewick, Washington, Columbia Unlimited Hydroplane Races.

(a) This section is effective from 6 a.m. on July 23, until 9 p.m. on July 25, 2004.

(b) This section will be enforced from 6 a.m. until 9 p.m. each day it is effective, unless sooner cancelled by the Patrol Commander.

(c) This section restricts general navigation and anchorage during the hours it is enforced, on all waters of the Columbia River bounded by two lines drawn shore to shore; the first line running between position 46°14′50″ N, 119°10′23″ W and position 46°13′39″ N, 119°10′34″ W; and the second line running between position 46°13′36″ N, 119°07′38″ W and position 46°13′10″ N, 119°07′49″ W. [Datum: NAD 83]. Entry into this zone is a violation of regulations and may result in penalty action under the provisions of 33 CFR 100.35.

(d) When deemed appropriate, the Coast Guard may establish a patrol consisting of active and auxiliary Coast Guard personnel and vessels in the area described in paragraph (c) of this section. The patrol shall be under the direction of a Coast Guard officer or petty officer designated as Coast Guard Patrol Commander. The Patrol Commander is empowered to forbid and control the movement of vessels in the area described in paragraph (c) of this section.

(e) The Patrol Commander may authorize vessels to be underway in the area described in paragraph (c) of this section during the hours this regulation is enforced. All vessels permitted to be underway in the controlled area (other than racing or official vessels) shall do so only at speeds which will create minimum wake consistent with maintaining steerageway, and not to exceed seven (7) miles per hour. This speed limit may be adjusted at the discretion of the Patrol Commander to enhance the level of safety.

(f) A succession of sharp, short signals by whistle, siren, or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the patrol vessel personnel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

Dated: July 14, 2004.

Jeffrey M. Garrett,

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

[FR Doc. 04–16645 Filed 7–19–04; 10:58 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA287–0458; FRL–7781–9]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District .

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on March 22, 2004 and concern volatile organic compound (VOC) and ammonia (NH3) emissions from composting and related activities. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on August 20, 2004.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours by appointment. You can inspect copies of the submitted SIP revisions by appointment at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765–4182.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, EPA Region IX, at

either (415) 947–4111, or *wamsley.jerry@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

I. Proposed Action

On March 22, 2004 (69 FR 13272 and 69 FR 13225), EPA proposed to approve the following rules into the California SIP.

Local agency	Rule #	Rule title	Adopted	Submitted
SCAQMD	1133	Composting and Related Operations—General Administrative Requirements.	01/10/03	06/05/03
SCAQMD	1133.1	Chipping and Grinding Activities	01/10/03	06/05/03
SCAQMD	1133.2	Emission Reductions From Co-Composting Operations	01/10/03	06/05/03

We proposed to approve these rules because we determined that they complied with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received a comment from the following party.

1. Bob Engel; electronic mail dated April 14, 2004. The comment is summarized below.

Comment: Mr. Engel opposed our approval action because the SCAQMD rules did not consider the cumulative good composting does for the environment. He then cited several of EPA's internet Web sites related to waste reduction, recycling, and their relationship to greenhouse gases. Finally, Mr. Engel suggested that EPA did not consider the effect of no action by SCAQMD.

EPA Response: To review, SCAQMD 1133, 1133.1, and 1133.2 are concerned with reducing VOC and NH3 emissions from composting that contribute to ground-level ozone and secondary particulate matter. Mr. Engel's comments do not address directly these primary objectives of Rules 1133, 1133.1, and 1133.2. Instead, the comments ask EPA to consider not approving the rules because of their supposed detrimental effect on the composting industry. In the discussion that follows, we review briefly SCAQMD supporting documents concerning these issues.

As part of their rule development effort, SCAQMD did a technology review of the composting industry and assessed the cost-effectiveness of Rules 1133, 1133.1, and 1133.2. Depending on the compliance scenario chosen, the combined cost-effectiveness per ton of VOC and NH3 reduced ranged from $6487 to $15,373; figures relatively consistent with other SCAQMD regulations. SCAQMD estimated that these compliance costs ranged from $0.004 to $0.25 per month when passed on to air basin households.

In December 2002, SCAQMD did a Final Environmental Assessment (EA) as part of their compliance with the California Environmental Quality Act (CEQA). SCAQMD's determined that Rules 1133, 1133.1, and 1133.2 had no significant environmental impacts requiring mitigation. The EA reviewed potential impacts on air quality, energy, water quality, geology, and solid/hazardous waste, as well as, other required topics. Regarding impacts on solid waste disposal, SCAQMD found that composting facilities are neither expected to close, nor to divert composting feedstock to landfills due to Rules 1133, 1133.1, and 1133.2.

In sum, the rules' compliance costs are consistent with other SCAQMD regulations and the rules are predicted to have no negative environmental impacts across multiple issue areas including solid waste disposal. Given these conclusions and the air quality improvement expected due to VOC and NH3 emission reductions, we assert that that the rules most likely result in a net benefit to the environment beyond that suggested by a no action alternative.

III. EPA Action

No comments were submitted that change our assessment that the submitted rules comply with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving these rules into the California SIP.

IV. Statutory and Executive Order Reviews

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

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

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus

standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 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 in 40 CFR Part 52

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

Dated: June 17, 2004.

Nancy Lindsay,

Acting Regional Administrator, Region IX.

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(316)(i)(D) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(316) * * *

(i) * * *

(D) South Coast Air Quality Management District.

(*1*) Rule 1133 adopted on January 10, 2003; Rule 1133.1 adopted on January 10, 2003; and, Rule 1133.2 adopted on January 10, 2003.

* * * * *

[FR Doc. 04–16570 Filed 7–20–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC–2025, MD–3064, VA–5052; DC052–7007, MD143–3102, VA129–5065; FRC–7790–5]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Maryland; Virginia; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: EPA is taking final action to remove codification of certain State Implementation Plan (SIP) approvals vacated by United States Court of Appeals for the District of Columbia Circuit and remanded to EPA. EPA is also concurrently vacating an indefinite stay, which EPA had issued pending completion of judicial review, of a conditional approval promulgated on April 17, 2003. These revisions relate to the 1-hour ozone attainment demonstration and the 1996–1999 rate-of-progress (ROP) plans for the Metropolitan Washington DC ozone nonattainment area (the Washington area) submitted by the District of Columbia's Department of Health (DoH), by the Maryland Department of the Environment (MDE) and by the Virginia Department of Environmental Quality (VADEQ), including enforceable commitments submitted by the District of Columbia, Virginia and Maryland as part of the 1-hour attainment demonstration. EPA is correcting the codification of the approval of these revisions in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on August 20, 2004.

In addition, EPA is vacating the stay on 40 CFR 52.473, 52.1072(e) and 52.2450(b), effective August 20, 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.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814–2179, or by e-mail at *cripps.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What Previous Action Had Been Taken on These SIP Revisions?

A. January 3, 2001 Approval

On January 3, 2001 (66 FR 586), the EPA approved the 1996–1999 ROP plans, an attainment date extension and the attainment demonstrations for the Washington, DC area. On July 2, 2002, the United States Courts of Appeals for the District of Columbia Circuit (the Circuit Court) vacated our January 3, 2001, approval of the attainment demonstration, 1996–1999 ROP plan and extension of the attainment date. *See Sierra Club* v. *Whitman*, 294 F.3d 155, 163 (D.C. Cir. 2002).

B. April 17, 2003 Conditional Approval

In response to the Circuit Court's July 2002 ruling, on January 24, 2003, the EPA published a final action (68 FR 3410) determining that the Washington area failed to attain the serious ozone nonattainment deadline of November 15, 1999, and reclassified the Washington area to severe ozone nonattainment by operation of law.

On February 3, 2003, the EPA published a notice of proposed rulemaking (68 FR 5246) regarding the SIP revisions covered by the vacated January 3, 2001, final rule. On April 17, 2003 (68 FR 19106), EPA conditionally approved these same SIP revisions. On February 3, 2004, the Circuit Court issued an opinion to vacate our conditional approval of the attainment demonstration, and ROP plan. See *Sierra Club* v. *EPA*, 356 F.3d at 302–04 (D.C. Cir. 2004).

On March 19, 2004, the Sierra Club filed a "Petition for Panel Rehearing" requesting the Circuit Court to reconsider one issue addressed in a footnote of the opinion. This issue was

not related to vacatur of the conditional approval.

On April 15, 2004 (69 FR 19937), EPA indefinitely stayed, pending completion of judicial review, a conditional approval promulgated on April 17, 2003 in response to the March 19, 2004, petition for rehearing. In the preamble to that rule, EPA stated that EPA would lift the stay and/or vacate the conditional approval after the issuance of the mandate by the Circuit Court in a manner consistent with any order the Court may issue in *Sierra Club* v. *EPA*. See 69 FR at 19138, April 15, 2004.

On April 16, 2004, Circuit Court issued an order slightly revising the February 3, 2004, opinion to address the petition for rehearing and leaving its decision to vacate and remand the conditional approval to EPA intact. On April 23, 2004, the Circuit Court issued its mandate thereby relinquishing jurisdiction over this matter and remanding it to EPA.

II. What Action Is EPA Taking Today?

A. Actions Regarding the January 3, 2001, Final Rule (66 FR 586)

EPA is vacating the January 3, 2001 final rule (66 FR 586) by amending 40 CFR part 52 to remove codification of certain plan approvals that the United States Court of Appeals for the District of Columbia Circuit vacated and remanded to EPA. The intended effect of this action would be to remove and reserve the following in 40 CFR part 52:

(1) In subpart J—District of Columbia: § 52.475 "Extensions," and paragraphs (b) and (c) in § 52.476 "Control strategy and rate-of-progress plan: ozone;"

(2) In subpart V—Maryland: paragraph (a) in § 52.1078 "Extensions," and paragraphs (e) and (g) in § 52.1076 "Control strategy plans for attainment and rate-of-progress: Ozone;" and,

(3) In subpart VV,—Virginia: § 52.2429 "Extensions," and paragraphs (c) and (d) in § 52.2428 "Control Strategy: Carbon monoxide and ozone."

B. Actions Regarding the April 17, 2003, Final Rule (68 FR 19106)

EPA is vacating the April 17, 2003 final rule (68 FR 19106) by amending 40 CFR part 52 to remove codification of certain plan approvals for which the United States Court of Appeals for the District of Columbia Circuit vacated our final action. The intended effect of this action would be to: remove and reserve in 40 CFR part 52:

(1) Remove and reserve § 52.473 "Conditional approval" in 40 CFR part 52, subpart J;

(2) Remove and reserve paragraph (e) in § 52.1072 "Conditional approval" in 40 CFR part 52, subpart V; and,

(3) Remove and reserve paragraph (b) in § 52.2450 "Conditional approval" in 40 CFR part 52, subpart VV.

C. Stay of the Conditional Approval

Because EPA is vacating the actions which EPA stayed on April 15, 2004 (69 FR 19937), the need for the stay has become moot. Concurrently with vacating the April 17, 2003 final rule, EPA is vacating this April 15, 2004 final rule that imposed the stay on 40 CFR 52.473, 40 CFR 52.1072(e) and 40 CFR 52.2450(b). Because EPA is vacating the underlying rules—40 CFR 52.473, 40 CFR 52.1072(e) and 40 CFR 52.2450(b)—that were stayed indefinitely on April 15, 2004, EPA must vacate the April 15, 2004 stay rather than lift this stay.

III. Final Action

A. District of Columbia

EPA is amending 40 CFR part 52 to remove the codification of certain plan approvals that the United States Court of Appeals for the District of Columbia Circuit vacated and remanded to EPA. EPA is removing and reserving the following sections or paragraphs in 40 CFR part 52, subpart J:

(1) § 52.475 Extensions;

(2) Paragraphs (b) and (c) in § 52.476 Control strategy and rate-of-progress plan: ozone; and,

(3) § 52.473 Conditional Approval;

B. State of Maryland

EPA is amending 40 CFR part 52 to remove the codification of certain plan approvals that the United States Court of Appeals for the District of Columbia Circuit vacated and remanded to EPA. EPA is removing and reserving the following paragraphs in 40 CFR part 52, subpart V:

(1) Paragraph (a) in § 52.1078 Extensions;

(2) Paragraphs (e) and (g) in § 52.1076 Control strategy plans for attainment and rate-of-progress: Ozone; and,

(3) Paragraph (e) in § 52.1073 Approval Status.

C. Commonwealth of Virginia

EPA is amending 40 CFR part 52 to remove the codification of certain plan approvals that the United States Court of Appeals for the District of Columbia Circuit vacated and remanded to EPA. EPA is removing and reserving the following sections or paragraphs in 40 CFR part 52, subpart VV:

(1) § 52.2429 Extensions;

(2) Paragraphs (c) and (d) in § 52.2428 Control Strategy: Carbon monoxide and ozone; and,

(3) Paragraph (b) in § 52.2450 Conditional Approval.

D. Vacating of the Stay on 40 CFR 52.473, 40 CFR 52.1072(e) and 40 CFR 52.2450(b)

Because EPA is vacating 40 CFR 52.473, 40 CFR 52.1072(e) and 40 CFR 52.2450(b) EPA is vacating the stay, which was promulgated on April 15, 2004 on 40 CFR 52.473, 40 CFR 52.1072(e) and 40 CFR 52.2450(b).

IV. Basis for Exception From Notice and Comment Rulemaking

Section 553(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting those portions of 40 CFR part 52 that were stricken when the Circuit Court vacated our January 3, 2001 approvals and our April 17, 2003 conditional approvals and mooted the need to continue the April 15, 2004 stay of the April 17, 2003 conditional approvals. EPA believes that notice and comment procedures would serve no purpose because this action is a nondiscretionary ministerial action necessitated by the Circuit Court orders vacating the January 3, 2001 approvals and our April 17, 2003 conditional approvals and by the subsequent mooting the need to continue the April 15, 2004 stay of the April 17, 2003 conditional approvals. We find that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

V. 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 is taken pursuant to a decision of the United States Court of Appeals for the District of Columbia Circuit and merely reflects the Circuit Court's action in vacating EPA's rules approving pre-existing state requirements. The vacated final rules merely approved state law as meeting Federal requirements and imposed no

additional requirements beyond those imposed by state law. The Circuit Court's action does not change or negate the pre-existing state requirements, impose any new requirements on sources, including small entities, nor impose any additional enforceable duty beyond that previously required and it does not contain any unfunded mandate or significantly or uniquely affect small governments. Under these circumstances, correcting the approval status in 40 CFR part 532 of these State implementation plans does not impose any new requirements on sources, including small entities. 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 merely implements the Circuit Court's order vacating EPA's approvals and conditional approvals, it does not impose any additional enforceable duty beyond that previously required and 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).

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 merely reflects the Circuit Court's decision, removing EPA's approval or conditional approval, it 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 rule merely implements the Circuit Court's orders vacating EPA's approvals and conditional approvals of 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.

This technical correction action does not involve technical standards; 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**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

B. 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 September 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 to vacate certain approvals of SIP revisions submitted by the District of Columbia, Maryland and Virginia may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: July 13, 2004.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart J—District of Columbia

§ 52.475 [Removed]

■ 2. Section 52.475 is removed and reserved.

§ 52.476 [Amended]

■ 3. Section 52.476 is amended by removing and reserving paragraphs (b) and (c).

Subpart V—Maryland

§ 52.1076 [Amended]

■ 4. Section 52.1076 is amended by removing and reserving paragraphs (e) and (g).

§ 52.1078 [Amended]

■ 5. Section 52.1078 is amended by removing and reserving paragraph (a).

Subpart VV—Virginia

§ 52.2428 [Amended]

■ 6. Section 52.2428 is amended by removing and reserving paragraphs (c) and (d).

§ 52.2429 [Removed]

■ 7. Section 52.2429 is removed and reserved.

[FR Doc. 04–16569 Filed 7–20–04; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[PA209–4302; FRL–7781–3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Hazelwood SO_2 Nonattainment and the Monongahela River Valley Unclassifiable Areas to Attainment and Approval of the Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. These revisions include a

regulation change to the allowable sulfur oxide emission limits for fuel burning equipment, and a modeled demonstration of attainment of the national ambient air quality standards (NAAQS) for sulfur dioxide (SO_2) in the Hazelwood nonattainment area and the Monongahela River Valley unclassifiable area, located in the Allegheny Air Basin in Allegheny County, Pennsylvania. In addition, EPA is redesignating these areas to attainment of the NAAQS for SO_2, and approving a combined maintenance plan for both areas as a SIP revision. These SIP revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) on behalf of the Allegheny County Health Department (ACHD). This action is being taken in accordance with the Clean Air Act (CAA).

DATES: This final rule is effective on August 20, 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, the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105, and the Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

FOR FURTHER INFORMATION CONTACT: Ellen Wentworth, (215) 814–2034, or by e-mail at *wentworth.ellen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On April 2, 2004 (69 FR 17374), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania on behalf of the ACHD. The NPR proposed approval of a regulation change to the allowable sulfur oxide emission limits for fuel burning equipment, and a modeled demonstration of attainment of the NAAQS for SO_2 in the Hazelwood nonattainment area and the Monongahela River Valley unclassifiable area, located in the Allegheny Air Basin in Allegheny County. In addition the NPR also proposed to redesignate these areas to attainment of the NAAQS for SO_2, and to approve a combined maintenance plan for both areas as a SIP revision. The formal SIP revision was submitted by PADEP on behalf of the ACHD on August 15, 2003. The specific details of the regulatory change to the allowable sulfur oxide emission for limits for fuel burning equipment, the modeled demonstration of attainment of the NAAQS for SO_2 for the Hazelwood and Monongahela River Valley areas in Allegheny County, and the redesignation and maintenance plan for these areas, as well as EPA's rationale for its proposed action were all provided in the April 2, 2004 NPR and will not be restated here. No comments were submitted to EPA on that NPR.

II. Final Action

EPA is approving SIP revisions submitted on August 15, 2003 by the Commonwealth of Pennsylvania on behalf of the ACHD. These SIP revisions include a regulation change to the allowable sulfur oxide emission limits for fuel burning equipment, and a modeled demonstration of attainment of the NAAQS for SO_2 in the Hazelwood nonattainment and the Monongahela River Valley unclassifiable areas located in the Allegheny Air Basin, in Allegheny County, Pennsylvania. In addition, EPA is approving the redesignation of these areas to attainment of the NAAQS for SO_2, and approving a combined maintenance plan for both areas as a SIP revision.

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 September 20, 2004. Filing a petition for reconsideration by the Administrator of this final rule, which approves a regulation change to the allowable sulfur oxide emission limits for fuel burning equipment, a modeled demonstration of attainment, and the redesignation and associated maintenance plan for the Hazelwood and Monongahela River Valley areas in Allegheny County, Pennsylvania, 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, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: June 24, 2004.

Donald S. Welsh,

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 NN—Pennsylvania

■ 2. Section 52.2020 is amended by adding paragraph (c)(216) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(216) Revisions to the Allegheny portion of the Pennsylvania State Implementation Plan (SIP) submitted on August 15, 2003 by the Pennsylvania Department of Environmental Protection consisting of a regulatory change to Article XXI, section 2104.03, Sulfur Oxide Emissions, a modeled demonstration of attainment of the national ambient air quality standards (NAAQS) for SO_2 in the Hazelwood and Monongahela River Valley areas of Allegheny County, and the SO_2 Maintenance Plan for these areas associated with their redesignation to attainment:

(i) Incorporation by reference.

(A) Letter of August 15, 2003 from the Pennsylvania Department of Environmental Protection transmitting a regulatory change to the allowable sulfur oxide emission limits for fuel burning equipment, a modeled demonstration of attainment, and the maintenance plan for the Hazelwood and Monongahela River Valley areas of Allegheny County, Pennsylvania.

(B) Maintenance Plan for Sulfur Dioxide for Southwestern Pennsylvania, Parts I through V, and Appendices A and B, dated August 2001, and effective July 10, 2003.

(C) Revisions to section 2104.03 of Article XXI, Rules and Regulations of the Allegheny County Health, effective July 10, 2003.

(ii) Additional Material.

(A) Remainder of the August 15, 2003 State submittal pertaining to the revisions listed in paragraph (c)(216)(i) of this section.

(B) Additional material submitted by the Pennsylvania Department of Environmental Protection on February 12, 2004, which consists of minor clarifications to the Summary and Responses document from the public hearing, and a letter dated February 6, 1992 which was referenced but not included in the August 15, 2003 SIP revision submittal.

■ 3. Section 52.2033 is amended by adding paragraph (c) to read as follows:

§ 52.2033 Control strategy: Sulfur oxides

* * * * *

(c) EPA approves the attainment demonstration State Implementation Plan for the Hazelwood and Monongahela River Valley areas of the Allegheny County Air Basin in Allegheny County, submitted by the Pennsylvania Department of Environmental Protection on August 15, 2003.

PART 81—[AMENDED]

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

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

Subpart C—Section 107 Attainment Status Designations

■ 2. In § 81.339, the table for "Pennsylvania—SO_2" is amended by revising the entry for the Allegheny County Air Basin to read as follows:

§ 81.339 Pennsylvania

PENNSYLVANIA—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * * * *	*	*	*	*
V. Southwest Pennsylvania Intrastate AQCR:				
* * * * *	*	*	*	*
(B) Allegheny County Air Basin:				
(1) The areas within a two-mile radius of the Hazelwood monitor				X
(2) That portion of Allegheny County within an eight-mile radius of the Duquesne Golf Association Club House in West Mifflin excluding the nonattainment area (#1)				X
* * * * *	*	*	*	*

* * * * *

[FR Doc. 04–16568 Filed 7–20–04; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0141; FRL–7364–1]

Acequinocyl; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of acequinocyl, 2-(acetyloxy)-3-dodecyl-1,4-naphthalenedione, and its metabolite, 2-dodecyl-3-hydroxy-1,4-naphthoquinone, expressed as acequinocyl equivalents in or on almond; almond, hulls; apple, wet pomace; citrus, oil; fat and liver of cattle, goat, horse, and sheep; fruit, citrus, group 10; fruit, pome, group 11; pistachio; and strawberry. Arvesta Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective July 21, 2004. Objections and requests for hearings must be received on or before September 20, 2004.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket ID number OPP–2004–0141. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket/*. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 South Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Marilyn Mautz, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 305–6785; e-mail address:*mautz.marilyn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

In addition to using EDOCKET (*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available on E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background and Statutory Findings

In the **Federal Register** of February 25, 2004 (69 FR 8645) (FRL–7344–7), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PP 2F6440 and 3F6596) by Arvesta Corporation, 100 First St., Suite 1700, San Francisco, CA 94105. That notice included a summary of the petitions prepared by Arvesta Corporation, the registrant. There were no comments received in response to the notice of filing.

The petitions requested that 40 CFR part 180 be amended by establishing tolerances for combined residues of the insecticide acequinocyl, 3-dodecyl-1,4-dihydro-1,4-dioxo-2-naphthyl acetate, and its metabolite, 2-dodecyl-3-hydroxy-1,4-naphthoquinone (acequinocyl-OH), expressed as acequinocyl equivalents, in or on the listed commodities as follows:

PP 2F6440: Fruit, pome group at 0.4 parts per million (ppm); apple, wet pomace at1.0 ppm; fruit, citrus, group at 0.3 ppm; orange, oil at 30 ppm; almond and pistachio at 0.01 ppm; almond, hulls at 1.5 ppm; cattle, meat and kidney at 0.01 ppm; cattle, liver and fat at 0.02 ppm; and milk at 0.01 ppm.

PP 3F6595: Strawberries at 0.4 ppm

The petition, PP 2F6440, was subsequently amended to: Increase the tolerances for almond and pistachio from 0.01 ppm to 0.02 ppm; increase the tolerance for almond hulls from 1.5 ppm to 2.0 ppm; to decrease the tolerance for citrus fruit group from 0.3 ppm to 0.20 ppm; add separate tolerances for fat and liver of goat, horse and sheep; withdraw the proposed tolerances for milk, and meat and kidney of cattle; and to correct the terms for certain commodities as summarized in the Table 1 of this unit.

The almond and pistachio tolerances were increased to account for the combined limit of quantification (LOQ) of the residue analytical method for the parent and its metabolite. The LOQ for each one is 0.01 ppm in/on each plant and livestock commodity, with the exception of citrus oil, where the LOQ for each one is 0.5 ppm. The withdrawal of the proposed milk, kidney and meat commodities and the addition of other livestock commodities are based on the results of the submitted cattle feeding study.

In addition, the chemical name is corrected from 3-dodecyl-1,4-dihydro-1,4-dioxo-2-naphthyl acetate to 2-(acetyloxy)-3-dodecyl-1,4-naphthalenedione to be consistent with the nomenclature used in the *Chemical Abstracts Chemical Substance Index*, published by the American Chemical Society.

TABLE 1.—TOLERANCE SUMMARY

Commodity	Proposed tolerance (in ppm)	Amended (in ppm)	Correct commodity term
Almond	0.01	0.02	
Almond, hulls	1.5	2.0	
Apple, wet pomace	1.0		
Cattle, fat	0.02		
Cattle, kidney	0.01	Withdrawn	
Cattle, liver	0.02		
Cattle, meat	0.01	Withdrawn	
Fruit, citrus, group	0.3	0.20	Fruit, citrus, group 10
Fruit, pome group	0.4	0.40	Fruit, pome, group 11
Goat, fat		0.02	
Goat, liver		0.02	
Horse, fat		0.02	
Horse, liver		0.02	
Milk	0.01	Withdrawn	
Orange, oil	30		Citrus, oil
Pistachio	0.01	0.02	
Sheep, fat		0.02	
Sheep, liver		0.02	
Strawberries	0.4	0.40	Strawberry

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for tolerances for combined residues of acequinocyl and its metabolite, acequincyl-OH, on almond, pistachio, and the liver and fat of cattle, horse, goat, and sheep at 0.02 ppm; almond hulls at 2.0 ppm; wet apple pomace at 1.0 ppm; citrus fruit crop group 10 at 0.20 ppm; citrus oil at 30 ppm; and pome fruit crop group 11 and strawberry at 0.40 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

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

TABLE 2.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study type	Results
870.3100	90-Day oral toxicity—rodents; mouse	NOAEL = Male/Female (M/F); 16/21 milligrams/kilogram/day (mg/kg/day) LOAEL = M/F; 81/100 mg/kg/day based on hepatocyte vacuolation
870.3100	90-Day oral toxicity—rodents; rat	NOAEL = M/F; 30.4/32.2 mg/kg/day LOAEL = M/F; 119.5/129.2 mg/kg/day based on increased prothrombin times in males and increased activated partial thromboplastin times in both sexes
870.3150	90-Day oral toxicity—nonrodents	NOAEL = M/F; 40/40 mg/kg/day LOAEL = M/F; 160/160 mg/kg/day based on decreased body weight gains and reduced food efficiencies in males and for female beagle dogs based on increased platelet counts
870.3200	21/28-Day dermal toxicity	Systemic NOAEL = 200 mg/kg/day Systemic LOAEL = 1,000 mg/kg/day based on increased clotting factor times Dermal NOAEL= 1,000 mg/kg/day Dermal LOAEL not established
870.3700	Prenatal developmental—rodents	Maternal NOAEL = 150 mg/kg/day Maternal LOAEL = 500 mg/kg/day based on signs of internal hemorrhage and increased incidence of clinical signs (pale eyes, piloerection, red vaginal discharge) Developmental NOAEL = 500 mg/kg/day Developmental LOAEL = 750 mg/kg/day based on increased resorptions
870.3700	Prenatal developmental—nonrodents	Maternal NOAEL = 60 mg/kg/day Maternal LOAEL = 120 mg/kg/day based on treatment-related clinical signs leading to premature sacrifice (hematuria, reduced fecal output, body weight loss, and reduced food consumption) and gross necropsy findings (pale lungs and liver, hemorrhaging uterus, fluid in the cecum, fur in the stomach, blood stained vaginal opening, blood-stained urinary bladder contents/urine, and hair loss) Developmental NOAEL = 60 mg/kg/day Developmental LOAEL =120 mg/kg/day based on increased number of complete resorptions
870.3800	Reproduction and fertility effects	Parental/Systemic NOAEL = M/F; 7.3/134 mg/kg/day Parental/Systemic LOAEL = Males; 58.9 mg/kg/day based on increased incidences of hemorrhagic effects in F_1 males. Parental/Systemic LOAEL was not established for females Reproductive NOAEL = M/F; 124/136 mg/kg/day Reproductive LOAEL = was not established Offspring NOAEL = M/F; 7.3/8.7 mg/kg/day Offspring LOAEL = M/F; 58.9/69.2 mg/kg/day based on hemorrhagic effects, swollen body parts, protruding eyes, clinical signs, delay in pupil development, and increased mortality post weaning
870.4100	Chronic toxicity—dogs	NOAEL = M/F; 80/80 mg/kg/day LOAEL = M/F; 320/320 mg/kg/day based on premature sacrifice (inappetence, body weight loss)
870.4300	Combined chronic/carcinogenicity—rats	NOAEL = M/F; 2.25/46.20 mg/kg/day LOAEL = M/F; 9.02/93.56 mg/kg/day based on enlarged eyeballs in male and female rats (coagulopathy) No evidence of carcinogenicity
870.4300	Combined chronic/carcinogenicity—mouse	NOAEL = M/F; 2.7/3.5 mg/kg/day LOAEL = M/F; 7.0/8.7 mg/kg/day based on clinical chemistry and microscopic non-neoplastic lesions (brown pigmented cells and perivascular inflammatory cells in liver) No evidence of carcinogenicity
870.5100	Gene mutation	There was no evidence of induced mutant colonies over background
870.5300	Gene mutation	There was no clear evidence of biologically significant induction of mutant colonies over background
870.5375	Chromosome aberration	There was no evidence of chromosome aberrations induced over background
870.5395	Mammalian erythrocyte micronucleus test in mice	There was no statistically significant increase in the frequency of micronucleated polychromatic erythrocytes in mouse bone marrow at any dose or harvest time

TABLE 2.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study type	Results
870.7485	Metabolism and pharmacokinetics	Acequinocyl exhibits marginal absorption, relatively rapid and complete excretion primarily via the bile and feces, and undergoes nearly complete metabolism to hydrolysis products and a glucuronide conjugate. There was no evidence for selective tissue accumulation or sequestration of acequinocyl or its metabolites in rats
870.7600	Dermal penetration	Percent of dose absorbed decreased with exposure concentration indicating that saturation of absorption at/or about the high dose. Absorption at 168 hours was 12.23%, 19.75%, and 14.77% for the 0.1, 0.01, and 0.001 mg/centimeter squared (cm^2 dose groups, respectively

B. Toxicological Endpoints

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

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

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

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

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

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

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

Exposure scenario	Dose used in risk assessment, interspecies and intraspecies and any iraditional UF	Special FQPA SF and level of concern for risk assessment	Study and toxicological effects
Acute dietary	Not applicable	None	An endpoint of concern attributable to a single dose was not identified. An aRfD was not established

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

Exposure scenario	Dose used in risk assessment, interspecies and intraspecies and any iraditional UF	Special FQPA SF and level of concern for risk assessment	Study and toxicological effects
Chronic dietary (all populations)	NOAEL = 2.7 UF = 100X cRfD = 0.027	FQPA SF = 1X [1] cPAD = 0.027	18-month carcinogenicity study in mice; LOAEL = 7.0 mg/kg/day based on clinical chemistry and microscopic nonneoplastic lesions (brown pigmented cells and perivascular inflammatory cells in liver)

NOTE: UF = uncertainty factor; FQPA SF = special FQPA safety factor; NOAEL = no observed adverse effect level; LOAEL = lowest observed adverse effect level; PAD = population adjusted dose (c = chronic) RfD = reference dose.
[1] cPAD = cRfD÷FQPA SF.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* There are no tolerances established for residues of acequinocyl. Risk assessments were conducted by EPA to assess dietary exposures from acequinocyl in food as follows:

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

An acute exposure assessment is unnecessary because no such effect was seen in the submitted studies.

ii. *Chronic exposure.* In conducting the chronic dietary risk assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Tolerance-level residues, DEEM™ ver. 7.76 default processing factors, and 100 percent crop treated (%CT) data were used in the chronic dietary assessment.

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

The Agency uses the FQPA Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) to produce estimates of pesticide concentrations in an index reservoir. The Screening Ground Water (SCI-GROW) model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. Both FIRST and PRZM/EXAMS incorporate an index reservoir environment, and both models include a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

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

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

Based on the PRZM/EXAMS and SCI-GROW models, the EECs of acequinocyl for chronic exposures are estimated to be 0.24 parts per billion (ppb) for surface water and 0.003 ppb for ground water.

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

Acequinocyl is not registered for use on any sites that would result in residential exposure.

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

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

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* There is no evidence of increased susceptibility of rat or rabbit fetuses to *in utero* exposure to acequinocyl. And, there is no qualitative and/or quantitative evidence of increased susceptibility to acequinocyl following pre/postnatal exposure in a 2-generation reproduction study in rats. There is no concern for developmental neurotoxicity resulting from exposure to acequinocyl; a DNT study is not required.

There is an apparent qualitative increase in susceptibility in the rat and rabbit developmental studies as indicated by increases in resorptions that occurred at the same or higher dose that caused maternal toxicity, but the concern is low since:

- The fetal effects were noted in the presence of maternal toxicity.
- There are no residual uncertainties for pre- and/or postnatal toxicity since the database is complete.

Effects that could be indicative of neurotoxicity were shown in two studies, the 2-generation reproduction study and the subchronic rat oral toxicity study. In the 2-generation reproduction study, significant reduction in startle response in F2 pups was observed in high-dose groups (58.9/69.2 mg/kg/day and 111.2/133.5 mg/kg/day). In the subchronic rat oral toxicity study, neurotoxicity signs such as decreased motor activity, piloerection, and hunched posture were noted at the high dose 252.7/286.0 mg/kg/day.The concern is low since:

- EPA considered these effects as secondary as they were observed at very high doses.
- Other functional development tests (such as pupillary reflex test at 21 days post partum, an open field exploration test at 35–48 days post partum and a water-maze test with a learning phase and a memory phase at 35–48 days post partum) that were performed on pups did not show significant differences as compared to control values even at the highest dosage level.
- Acequinocyl is a known Vitamin K antagonist; neurotoxic compounds of similar structure were not identified.

3. *Conclusion.* There is a complete toxicity database for acequinocyl and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures.

In evaluating whether to retain the 10X SF to protect infants and children or to select a different safety factor, EPA considered the following factors:

i. There are no special concerns regarding pre- or postnatal toxicity exposure.

ii. The exposure databases (food and drinking water) are complete and/or employ conservative assumptions.

iii. There is no residential exposure.

iv. The risk assessments cover or approximate all the metabolites and degradates of concern.

v. The assessments do not underestimate the potential risk for infants and children.

vi. The toxicity database is complete.

Therefore, it is concluded that 1X is adequate to protect infants and children.

E. Aggregate Risks and Determination of Safety

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

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

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

1. *Acute risk.* Acequinocyl is not expected to pose an acute risk because no acute effects were observed in the submitted studies.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to acequinocyl from food will utilize 4.2% of the cPAD for the U.S. population, 14% of the cPAD for all infants less than 1 year old, and 23 % of the cPAD for children 1-2 years old. There are no residential uses for acequinocyl that result in chronic residential exposure to acequinocyl. In addition, there is potential for chronic dietary exposure to acequinocyl in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 4 of this unit:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO ACEQUINOCYL

Population subgroup	cPAD mg/kg/day	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.027	4.2	0.24	0.003	910
All infants ≤1year old	0.027	14	0.24	0.003	230
Children 1–2 years old	0.027	23	0.24	0.003	210
Children 3–5 years old	0.027	15	0.24	0.003	230
Children 6– 12 years old	0.027	6.5	0.24	0.003	250
Youth 13–19 years old	0.027	3.2	0.24	0.003	780
Adults 20–49 years old	0.027	2.1	0.24	0.003	920
Females 13–19 years old	0.027	2.3	0.24	0.003	790
Adults 50+ yeas old	0.027	2.4	0.24	0.003	920

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

Acequinocyl is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

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

Acequinocyl is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population.* Acequinocyl is classified as not likely to be carcinogenic to humans and thus is not expected to pose a cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Method validation data support the following two plant methods and a livestock method: A high-performance liquid chromatography (HPLC)/mass spectrometry (MS)/MS method (Morse Laboratories Method #Meth–133, revision #3) for determining residues of acequinocyl and acequinocyl-OH in/on fruit commodities; an HPLC/MS/MS method (Morse Laboratories Method #Meth–135) for determining residues of acequinocyl and acequinocyl-OH in/on almonds hulls and nut meats; and an HPLC/MS/MS method (Morse Laboratories Method #Meth–139, Revision #2) for determining residues of acequinocyl and acequinocyl-OH in fat, milk, meat, and meat-by-products.

Methods #Meth–135 and #Meth–133, Revision #3 have each undergone successful independent laboratory validation (ILV) trials. An ILV is not required for Method #Meth–139, Revision#2 because the aforementioned ILV's should be sufficient to cover this method based on the similarity of all three methods.

Based on the available method validation data, these methods are adequate for collecting residue data in/on livestock commodities, milk, pome and citrus fruit commodities, strawberries, and tree nuts. Additional confirmatory methods for plants and livestock and specificity testing of the analytical enforcement methods for plants and livestock are required as conditions of registration. The validated, LOQ for both acequinocyl and acequinocyl-OH is 0.01 ppm in/on each plant and livestock commodity, with the exception of citrus oil. The LOQ for each analyte in citrus oil is 0.5 ppm.

The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

There are no established or proposed Codex, Canadian, or Mexican maximum residue limits (MRLs) for acequinocyl.

C. Conditions

The following information must be submitted as conditions for product registration related to these tolerances: the registrant will be required to submit additional confirmatory enforcement analytical methods and specificity testing for plants and livestock; a confined rotational crop study; and a new livestock storage stability study.

V. Conclusion

Therefore, the tolerances are established for combined residues of acequinocyl and its metabolite 2-dodecyl-3-hydroxy-1,4-naphthoquinone expressed as acequinocyl equivalents, in or on almond, pistachio, and fat and liver of cattle, goat, horse and sheep at 0.02 ppm; on almond hulls at 2.0 ppm; wet apple pomace at 1.0 ppm; fruit, citrus, group 10 at 0.2 ppm; citrus oil at 30 ppm; and fruit, pome, group 11 and strawberry at 0.40 ppm.

VI. Objections and Hearing Requests

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

section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2004–0141in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 20, 2004.

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

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th Street NW, Washington, DC. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 5646255–.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2004–0141, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that

have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: July 1, 2004.

James Jones,

Director, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.599 is added to subpart C to read as follows:

§ 180.599 Acequinocyl; tolerances for residues.

(a) *General.* Tolerances for combined residues of the insecticide acequinocyl, 2-(acetyloxy)-3-dodecyl-1,4-naphthalenedione, and its metabolite, 2-dodecyl-3-hydroxy-1,4-naphthoquinone, expressed as acequinocyl equivalents in or on the following commodities:

Commodity	Parts per million
Almond	0.02
Almond, hulls	2.0
Apple, wet pomace	1.0
Cattle, fat	0.02
Cattle, liver	0.02
Citrus, oil	30
Fruit, citrus, group 10	0.20
Fruit, pome, group 11	0.40
Goat, fat	0.02
Goat, liver	0.02
Horse, fat	0.02
Horse, liver	0.02
Pistachio	0.02
Sheep, fat	0.02
Sheep, liver	0.02
Strawberry	0.40

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

(c) *Tolerances with regional registrations.* [Reserved]

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

[FR Doc. 04–16213 Filed 7–20–04; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–2059; MB Docket No. 02–124; RM–10446]

Radio Broadcasting Services; Amboy, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of KHWY, Inc., allots Channel 237A at Amboy, California, as the community's first local FM service. Channel 237A can be allotted to Amboy, California, in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.4 km (4.6 miles) northeast of Amboy. The coordinates for Channel 237A at Amboy, California, are 34–26–00 North Latitude and 115–40–52 West Longitude. The Mexican government has concurred in this allotment. A filing window for Channel 237A at Amboy, California, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order.

DATES: Effective August 23, 2004.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–124, adopted June 30, 2004, and released July 8, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *www.bcpiweb.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Amboy, Channel 237A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–16612 Filed 7–20–04; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–2054; MM Docket No. 02–136; RM–10458, RM–10663, RM–10667, RM–10668]

Radio Broadcasting Services; Aberdeen, WA, Arlington, OR, Astoria, OR, Bellingham, WA, College Place, WA, Coos Bay, OR, Covington, WA, Forks, WA, Fossil, OR, Gladstone, OR, Hermiston, OR, Hoquiam, WA, Ilwaco, WA, Kent, WA, Long Beach, WA, Manzanita, OR, Moro, OR, Portland, OR, Shoreline, WA, Springfield-Eugene, OR, Tillamook, OR, The Dalles, OR, Trout Lake, WA, Walla Walla, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to Counterproposals in this proceeding filed by New Northwest Broadcasters LLC and jointly filed by Triple Bogey, this document grants multiple channel substitutions, channel allotments and changes of community of license in Oregon and Washington. Specifically, this document substitutes Channel 226C3 for Channel 225C1 at Astoria, Oregon, reallots Channel 226C3 to Gladstone, Oregon, and modifies the Station KAST–FM license to specify operation on Channel 226C3 at Gladstone. *See* 67 FR 42216, June 21, 2002. In order to accommodate the Channel 226C3 allotment at Gladstone, this document substitutes Channel 230C2 for Channel 229C at Portland, Oregon, and modifies the Station KPDQ license to specify operation on Channel 230C2. *See* **SUPPLEMENTARY INFORMATION.**

DATES: Effective August 24, 2004.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Report and Order* in MM Docket No.02–136 adopted July 7, 2004, and released July 9, 2004. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160, or *www.BCPIWEB.com*. The Commission will send either a copy or abstract of this *Report and Order* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

This document also substitutes Channel 227C for Channel 226C at Springfield-Eugene, Oregon, and modifies the license of Station KKNU to specify operation on Channel 227C. In order to accommodate Channel 230C2 at Portland, it substitutes Channel 232C3 for Channel 231C3 at Tillamook, Oregon, and modifies the Station KTIL license to specify operation on Channel 232C3. In order to accommodate Channel 232C3 at Tillamook, this document substitutes Channel 224A for Channel 232A at Long Beach, Washington, and modifies the Station KAQX license to specify operation on Channel 224A. This document allots Channel 228C3 to Manzanita, Oregon, and Channel 259A to Ilwaco, Washington. This document also substitutes Channel 283C3 for Channel 283C at The Dalles, Oregon, reallotts Channel 283C3 to Covington, Oregon, and modifies the Station KMCQ license to specify Covington as the community of license. This document allots Channel 261C2 to Arlington, Oregon, Channel 283C2 to Moro, Oregon, and Channel 236A to Trout Lake, Washington. Finally, this document denies proposals filed by Two Hearts Communications, LLC and Triple Bogey, LLC. The reference coordinates for the Channel 230C2 allotment at Portland, Oregon, are 45–30–58 and 122–43–59. The reference coordinates for the Channel 227C allotment at Springfield-Eugene, Oregon, are 44–00–04 and 123–06–45. The reference coordinates for the Channel 225A allotment at Coos Bay, Oregon, are 43–21–15 and 124–14–34. The reference coordinates for the Channel 232C3 allotment at Tillamook, Oregon, are 45–27–59 and 123–55–11. The reference coordinates for the Channel 224A allotment at Long Beach, Washington, are 46–18–51 and 124–03–07. The reference coordinates for the Channel 228C3 allotment at Manzanita, Oregon, are 45–41–05 and 123–54–38. The reference coordinates for the Channel 259A allotment at Ilwaco, Washington, are 46–18–32 and 124–02–31. The reference coordinates for the Channel 283C3 allotment at Covington, Washington, are 47–12–02 and 112–00–27. The reference coordinates for the Channel 261C2 allotment at Arlington, Oregon, are 45–43–01 and 120–11–59. The reference coordinates for the Channel 283C2 allotment at Moro, Oregon, are 45–29–03 and 120–43–48. The reference coordinates for Channel 236A at Trout Lake, Washington, are 46–03–10 and 121–33–47.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Arlington, Channel 261C2, by removing Astoria, Channel 225C1, by removing Channel 228A and adding Channel 225A at Coos Bay, by adding Covington, Channel 283C3, by adding Gladstone, Channel 226C3, by adding Manzanita, Channel 228C3, by adding Moro, Channel 283C1, by removing Channel 229C and adding Channel 230C2 at Portland, by removing Channel 226C and adding Channel 227C at Springfield-Eugene, by removing Channel 283C at The Dalles, by removing Channel 231C3 and adding Channel 232C3 at Tillamook.

■ 3. Section 73.202(b), the Table of FM Allotments, under Washington, is amended by adding Channel 259A at Ilwaco, by removing Channel 232A and adding Channel 224A at Long Beach, by adding Trout Lake, Channel 236A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–16603 Filed 7–20–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 071504A]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Atlantic bluefin tuna retention limit adjustment.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (BFT) General category daily retention limit should be adjusted in order to allow for maximum utilization of the General category June through August time-period subquota. Therefore, NMFS increases the daily retention limit to two large medium or giant BFT through August 31, 2004. This action is being taken to provide increased opportunities to harvest the time-period General category quota.

DATES: Effective July 19, 2004 through August 31, 2004.

FOR FURTHER INFORMATION CONTACT: Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, and General category effort controls (including time-period subquotas and restricted fishing days (RFDs)) are specified annually under the procedures identified at 50 CFR 635.23(a) and 635.27(a). NMFS is in the process of establishing the 2004 annual BFT quota specifications. Consistent with the requirements of the fishery management plan and implementing regulations, it is anticipated that time period subquotas will be established for the General category at levels similar to past years.

Adjustment of Daily Retention Limit

Under § 635.23 (a)(4), NMFS may increase or decrease the General category daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel to allow for maximum utilization of the quota for BFT. Based on a review of dealer reports, daily landing trends, available quota, and the availability of BFT on the fishing grounds, NMFS has determined that an increase of the daily retention limit for the remainder of the June through August time-period is appropriate and necessary. Current catch rates in the General category amount to approximately 0.5 metric tons (mt) or two fish per day. Based on this current General category landings rate the June through August subquota will not be filled in the remaining fishing days prior to the end of August, thus resulting in an excessive quota rollover to the September time-period subquota. This data is similar to low landings rates at this time last year when it was also determined that the daily retention should be increased. Experience in prior years has shown that the retention limit increase had positive impacts on the fishery and favorable public response, if done expeditiously. Therefore, NMFS adjusts the General category daily retention limit through August 31 to two large medium or giant BFT per vessel.

The intent of this adjustment is to allow for maximum utilization by General category participants of the subquota for the June through August time-period (specified under 50 CFR 635.27(a)), to help achieve optimum yield in the General category fishery, to collect a broad range of data for stock monitoring purposes, and to be consistent with the objectives of the HMS FMP.

Closures or subsequent adjustments to the daily retention limit, if any, will be published in the **Federal Register.** In addition, owners/operators may call the Atlantic Tunas Information Line at (888) 872–8862 or (978) 281–9305 for updates on quota monitoring and retention limit adjustments.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action. Catch rates for the 2004 BFT season have been extremely low to date and at the current rate of landings it is not possible that the available quota will be harvested by August 31, 2004. NMFS has recently become aware of a slight increase of BFT available on the fishing grounds. This slight increase in abundance provides the potential to increase landings rates if General category participants are authorized to harvest two BFT. Delay in increasing the retention limits would adversely affect those General category vessels that would otherwise have an opportunity to harvest more than one BFT per day and would further exacerbate the problem of excessive quota rollovers. Large amounts of unharvested quota may have negative social and economic impacts to U.S. fishermen that depend upon catching the available quota within the time periods designated in the HMS FMP. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, and because this action relieves a restriction (i.e., allows the retention of more fish), there is also good cause under 5 U.S.C. 553(d) to waive the delay in effectiveness normally required for this action.

This action is being taken under 50 CFR 635.23(a)(4) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: July 15, 2004.

John H. Dunnigan,

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

[FR Doc. 04–16578 Filed 7–16–04; 2:43 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 040112010–4114–02; I.D. 061004C]

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Georges Bank (GB) Cod Hook Sector (Sector) Operations Plan

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

ACTION: Notification of Approval of Sector Operations Plan and Allocation of GB Cod Total Allowable Catch (TAC).

SUMMARY: NMFS announces approval of an Operations Plan and Sector Contract titled "Georges Bank Cod Hook Sector Operations Plan and Agreement" (Sector Agreement), and the associated allocation of GB cod, consistent with regulations implementing Amendment 13 to the NE Multispecies Fishery

Management Plan (FMP). The intent is to allow regulated harvest of groundfish by the Sector, consistent with the objectives of the FMP.

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

SUPPLEMENTARY INFORMATION: The final rule implementing Amendment 13 to the FMP authorized the allocation of up to 20 percent of the annual GB cod TAC to the GB Cod Hook Sector. NMFS provided interested parties an opportunity to comment on the proposed Sector Agreement through notification published in the **Federal Register** on June 21, 2004 (69 FR 34335); additional background and details of the Sector Agreement are contained in that notification and are not repeated here. One comment was received, which urged conservative fishery management, but which was not specifically directed to the proposed Sector Agreement.

After consideration of the proposed Sector Agreement and the comment received, NMFS has concluded that the Sector Agreement, which contains the Sector Contract and Operations Plan, is consistent with the goals of the FMP and other applicable law and is in compliance with the regulations governing the development and operation of a sector as specified under 50 CFR 648.87.

There are 58 members of the approved Sector. As specified in Amendment 13, the Sector's allocation of GB cod has been determined by dividing the sum of the total landings of GB cod by the Sector members for the fishing years 1996 through 2001 (when fishing with jigs, demersal longline, or handgear), by the sum of the total accumulated landings of GB cod harvested by all NE multispecies vessels for the same time period. Based on the landings history of the 58 Sector members, the approved Sector TAC of GB cod is 371 mt, which is 12.587 percent of the total GB cod TAC. Letters of Authorization will be issued to each member of the Sector exempting them, conditional upon their compliance with the Sector Agreement, from the GB cod possession restrictions and the requirements of the Gulf of Maine trip limit exemption program, limits on the number of hooks, and the GB Seasonal Closure Area, as specified in §§ 648.86(b), 648.80(a)(4)(v), and 648.81(g), respectively.

Classification

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

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

Dated: July 15, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–16586 Filed 7–20–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031125292–4061–02; I.D. 071604A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2004 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 17, 2004, through 2400 hrs, A.l.t., December 31, 2004.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–2778.

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

The 2004 TAC specified for Pacific ocean perch in the Western Regulatory Area of the GOA is 2,520 metric tons (mt) as established by the 2004 harvest specifications for groundfish of the GOA (69 FR 9261, February 27, 2004).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2004 TAC for Pacific ocean perch in the Western Regulatory Area will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,170 mt, and is setting aside the remaining 350 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Regulatory Area of the GOA.

Classification

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

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

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

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

Dated: July 16, 2004.

John H. Dunnigan,

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

[FR Doc. 04–16581 Filed 7–16–04; 2:43 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031125292–4061–02; I.D. 071604B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the West Yakutat District of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the West Yakutat District of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2004 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 16, 2004, through 2400 hrs, A.l.t., December 31, 2004.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–2778.

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

The 2004 TAC specified for Pacific ocean perch in the West Yakutat District of the GOA is 830 metric tons (mt) as established by the 2004 harvest specifications for groundfish of the GOA (69 FR 9261, February 27, 2004).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2004 TAC for Pacific ocean perch in the West Yakutat District will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 780 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the West Yakutat District of the GOA.

Classification

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

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

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

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

Dated: July 16, 2004.

John H. Dunnigan,

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

[FR Doc. 04–16580 Filed 7–16–04; 2:43 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031124287–4060–02; I.D. 071604C]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Western Aleutian District of the Bering Sea and Aleutian Islands

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2004 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 16, 2004, through 2400 hrs, A.l.t., December 31, 2004.

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

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

The 2004 TAC specified for Pacific ocean perch in the Western Aleutian District of the BSAI is 4,798 metric tons (mt) as established by the 2004 harvest specifications for groundfish of the BSAI (69 FR 9242, February 27, 2004).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2004 TAC for Pacific ocean perch in the Western Aleutian District will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 4,000 mt, and is setting aside the remaining 798 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Aleutian District of the BSAI.

Classification

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

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

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

Authority: 6 U.S.C. 1801 *et seq.*

Dated: July 16, 2004.

John H. Dunnigan,

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

[FR Doc. 04–16579 Filed 7–16–04; 2:43 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 139
Wednesday, July 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1030

[Docket No. AO–361–A39; DA–04–03]

Milk in the Upper Midwest Marketing Area; Delay of Hearing Date

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; notice of hearing delay.

SUMMARY: The Agricultural Marketing Service is delaying the hearing date for the proposed rule that appeared in the **Federal Register** of June 23, 2004 (69 FR 34963), which gave notice of a public hearing being held to consider proposals that would amend certain provisions of the Upper Midwest milk marketing order. The hearing scheduled to begin July 19, 2004, has been delayed until Monday, August 16, 2004. The hearing must be completed by or adjourned by noon on Friday, August 20, 2004. To expedite the hearing process, the presiding Administrative Law Judge requests that the statements of all witnesses be exchanged with known participants on or before August 13, 2004.

DATES: The hearing will convene at 1 p.m. on Monday, August 16, 2004.

ADDRESSES: The hearing will be held at the Sofitel Minneapolis Hotel (I–494 and Highway 100), 5601 West 78th Street, Bloomington, Minnesota 55439; (952) 835–1900.

FOR FURTHER INFORMATION CONTACT: Gino Tosi, Marketing Specialist, Order Formulation and Enforcement, USDA/AMS/Dairy Programs, Room 2971-Stop 0231, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 690–1366, e-mail address: *Gino.Tosi@usda.gov.*

SUPPLEMENTARY INFORMATION: In the proposed rule beginning on page 34963 of the **Federal Register** for Wednesday, June 23, 2004, the hearing date in the first and second column on page 34963 is changed in both the **DATES** and **SUPPLEMENTARY INFORMATION** sections to read as follows:

DATES: The hearing will convene at 1 p.m. on Monday, August 16, 2004.

SUPPLEMENTARY INFORMATION:

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the Sofitel Minneapolis Hotel (I–494 and Highway 100), 5601 West 78th Street, Bloomington, Minnesota 55439; (952) 835–1900, beginning at 1 p.m., on Monday, August 16, 2004, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Upper Midwest milk marketing area. The hearing is delayed at the request of some of the proponents of the proposed amendments to allow for more time to prepare for the hearing.

Authority: 7 U.S.C. 601–674.

Dated: July 14, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–16485 Filed 7–20–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 2 and 3

[Docket No. 98–106–5]

RIN 0579–AB69

Animal Welfare; Regulations and Standards for Birds, Rats, and Mice

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: We are extending the comment period for our advance notice of proposed rulemaking regarding several changes we are considering to the Animal Welfare Act (AWA) regulations to help promote the humane handling, care, treatment, and transportation of birds, rats, and mice not specifically excluded from coverage under the AWA. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments that we receive on or before November 1, 2004.

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

- Webform: The preferred method is to use the webform located at *http://comments.aphis.usda.gov.* This webform is designed to allow commenters to associate each of their comments with the issues identified in the advance notice, and to allow APHIS to more easily analyze the comments received regarding each issue.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 98–106–4, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 98–106–4.
- E-mail: Address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 98–106–4" on the subject line.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

Reading Room: You may read any comments that we receive on Docket No. 98–106–4 in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

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

FOR FURTHER INFORMATION CONTACT: Dr. Jerry DePoyster, Senior Veterinary Medical Officer, Animal Care, APHIS,

4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7586.

SUPPLEMENTARY INFORMATION: On June 4, 2004, we published in the **Federal Register** (69 FR 31537–31541, Docket No. 98–106–4) an advance notice of proposed rulemaking regarding several changes we are considering to the Animal Welfare Act (AWA) regulations in 9 CFR parts 2 and 3 to help promote the humane handling, care, treatment, and transportation of birds, rats, and mice not specifically excluded from coverage under the AWA.

Comments on the advance notice of proposed rulemaking were required to be received on or before August 3, 2004. We are extending the comment period on Docket No. 98–106–4 for an additional 90 days. This action will allow interested persons additional time to prepare and submit comments.

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

Done in Washington, DC, this 15th day of July, 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–16541 Filed 7–20–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2004–17774; Airspace Docket No. 04–ACE–32]

RIN 2120–AA66

Proposed Modification of Restricted Areas 3601A and 3601B; Brookville, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise Restricted Areas 3601A (R–3601A) and 3601B (R–3601B), at Brookville, KS. Currently, R–3601 A and B are laterally adjacent to each other and have different ceilings. This action proposes to combine their lateral boundaries, divide the combined area vertically instead of laterally, and expand the vertical limits to flight level 230 (FL230). The lower portion of the combined area (surface to FL180) would be re-designated as R–3601A and the upper portion (FL180 to FL230) as R–3601B. Additionally, this action proposes to change the using agency from "Commander, Kansas ANG, McConnell AFB, KS" to "Air National Guard, 184th Air Refueling Wing, Detachment 1, Smoky Hill ANG Range, Salina, KS." These modifications are proposed to fulfill new United States Air Force (USAF) requirements for high altitude release bomb training for fighter aircraft and medium-to-high altitude release bomb training for bombers.

DATES: Comments must be received on or before September 7, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify "FAA Docket No. FAA–2004–17774 and Airspace Docket No. 04–ACE–32," at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules, Office of System Operations and Safety, ATO–R, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA–2004–17774 and Airspace Docket No. 04–ACE–32) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2004–17774 and Airspace Docket No. 04–ACE–32." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the **Federal Register**'s webpage at *http://www.gpo.access.gov/fr/index.html.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person at the Dockets Office (*see* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Central Region Headquarters, 901 Locust, Kansas City, MO 64106–2641.

Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

History

On May 21, 2003, the USAF requested that the FAA take action to revise R–3601A and R–3601B. R–3601A and R–3601B are currently located adjacent to each other laterally and have different ceilings (FL180 and 6,500 feet above mean sea level (MSL), respectively). Specifically, the requested action would combine the current lateral boundaries of R–3601A and B, divide the combined area vertically instead of laterally, and expand the vertical limits to FL230. The lower portion of the combined area (surface to FL180) would be re-designated as R–3601A and the upper portion (FL180 to FL230) as R–3601B. The net result of the requested action would be to expand the vertical limits of the restricted area airspace from FL180 to FL230 over the area currently designated as R–3601A and from 6,500 feet MSL to FL230 over the area currently designated as R–3601B. The USAF indicated that the modifications are needed to fulfill new USAF requirements for high altitude release bomb training for fighter aircraft and

medium-to-high altitude release bomb training for bombers. The current altitude structure is not sufficient to meet these new training requirements. Additionally, the USAF requested that the FAA take action to change the using agency of the modified R–3601A and R–3601B from "Commander, Kansas ANG, McConnell AFB, KS" to "Air National Guard, 184th Air Refueling Wing, Detachment 1, Smoky Hill ANG Range, Salina, KS."

The Proposal

In response to a request from the USAF, the FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 73 (part 73) to revise R–3601A and R–3601B. Specifically, this action proposes to modify R–3601A and R–3601B by combining their lateral boundaries, subdividing the combined area vertically (instead of laterally), and expanding the vertical limits to FL230. The lower portion of the combined area (surface to FL180) would be re-designated as R–3601A and the upper portion (FL180 to FL230) as R–3601B. Additionally, this action proposes to change the using agency of the modified R–3601A and R–3601B from "Commander, Kansas ANG, McConnell AFB, KS" to "Air National Guard, 184th Air Refueling Wing, Detachment 1, Smoky Hill ANG Range, Salina, KS." The additional airspace is required to fulfill new USAF training requirements. Specifically, the new training requirements call for practicing the release of bombs from higher altitudes than are currently available within the existing restricted areas.

Section 73.36 of part 73 was republished in FAA Order 7400.8L, Special Use Airspace, dated October 7, 2003.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed 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, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subjected to an environmental analysis in accordance with FAA Order 1050.1E, Procedures for Handling Environmental Impacts, prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

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

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

§ 73.36 [Amended]

2. § 73.36 is amended as follows:

* * * * *

R–3601A Brookville, KS [Amended]

By removing the current boundaries, designated altitudes, and using agency and substituting the following:

Boundaries. Beginning at lat. 38°45′20″ N., long. 97°46′01″ W.; to lat. 38°39′45″ N., long. 97°46′01″ W.; then southwest along the Missouri Pacific Railroad Track; to lat. 38°38′20″ N., long. 97°47′31″ W.; to lat. 38°38′20″ N., long. 97°50′01″ W.; to lat. 38°35′00″ N., long. 97°50′01″ W.; to lat. 38°35′00″ N., long. 97°56′01″ W.; to lat. 38°45′20″ N., long. 97°56′01″ W.; to the point of beginning.

Designated altitudes. Surface to but not including FL180.

Using Agency. Air National Guard, 184th Air Refueling Wing, Detachment 1, Smoky Hill ANG Range, Salina, KS.

* * * * *

R–3601B Brookville, KS [Amended]

By removing the current boundaries, designated altitudes, and using agency and substituting the following:

Boundaries. Beginning at lat. 38°45′20″ N., long. 97°46′01″ W.; to lat. 38°39′45″ N., long. 97°46′01″ W.; then southwest along the Missouri Pacific Railroad Track; to lat. 38°38′20″ N., long. 97°47′31″ W.; to lat. 38°38′20″ N., long. 97°50′01″ W.; to lat. 38°35′00″ N., long. 97°50′01″ W.; to lat. 38°35′00″ N., long. 97°56′01″ W.; to lat. 38°45′20″ N., long. 97°56′01″ W.; to the point of beginning.

Designated altitudes. FL180 to FL230.

Using Agency. Air National Guard, 184th Air Refueling Wing, Detachment 1, Smoky Hill ANG Range, Salina, KS.

* * * * *

Issued in Washington, DC, July 12, 2004.

Reginald C. Matthews,

Manager, Airspace and Rules.

[FR Doc. 04–16521 Filed 7–20–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 243

[Docket No. OST–1997–2198]

RIN 2105–AC62

Withdrawal of Advance Notice of Proposed Rulemaking; Domestic Passenger Manifest Information

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Withdrawal of advance notice of proposed rulemaking (ANPRM)

SUMMARY: The Department withdraws the ANPRM published in the **Federal Register** of March 13, 1997, concerning operational and cost issues related to U.S. air carriers collecting basic information (*e.g.*, full name, date of birth and/or social security number, emergency contact and telephone number) from passengers traveling on flights within the United States. The Department believes that the difficulties that originally motivated the information-collection requirements in the ANPRM are now being successfully dealt with by air carriers and others in the notification process. The Department is unaware of continuing notification difficulties on domestic flights.

FOR FURTHER INFORMATION CONTACT: Dennis Marvich, Office of International Transportation and Trade, DOT, (202) 366–9545; or, for legal questions, Joanne Petrie, Office of General Counsel, DOT, (202) 366–9306.

SUPPLEMENTARY INFORMATION: On March 13, 1997 (62 FR 11789), the Office of the Secretary (OST) published an ANPRM requesting public comment concerning operational and cost issues related to U.S. air carriers collecting basic information (*e.g.*, full name, date of birth and/or social security number, emergency contact and telephone number) from passengers traveling on flights within the United States.

Background

This Advance Notice of Proposed Rulemaking (ANPRM) was issued on March 13, 1997, in order to collect information to determine what, if any, regulatory actions might be required by the Department to ensure the quick and proper notification of the families of victims of aviation disasters. The request for comments was prompted, in part, by a recommendation of the White House Commission on Security and Safety and, in large measure, by the need at that time to remedy past

difficulties in this area, the most prominent of which up to then had been the difficulties in the aftermath of aviation disasters to immediately know who was on the flight and respond to the inquiries of families of victims that telephone airlines to seek information on whether or not a family member was on the flight.

In the ANPRM, the Department said that having an accurate list of the passengers that are on the flight—even without collecting data on emergency contacts—could allow air carriers to respond accurately and compassionately to such inquiries. The Department also noted that a broad examination of providing better treatment of families in the aftermath of an aviation disaster was the subject of a task force required by the Aviation Disaster Family Assistance Act of 1996 and that enhanced notification to families of victims is one aspect of that overall objective.[1] Toward that end, the Department stated that another reason for requesting the information sought in the ANPRM was to assist the task force in making its required recommendations. At the same time, the Department recognized that developing better procedures for accessing the information that air carriers and travel agents already routinely collect on passengers could be a substitute for developing new, expensive and overlapping information-collection systems that would rarely be used. Accordingly, it noted the need for information about the measurable benefits in notification time and accuracy to be gained by requiring substantial increased investments by airlines in obtaining data on those traveling by air and on their emergency contacts.

Discussion of Comments

Sixty comments were received in response to the ANPRM. Commenters included the Air Transport Association of America (ATA); Trans World Airlines; Hawaiian Airlines; Southwest Airlines; the State of Hawaii; the Regional Airline Association (RAA); ERA Aviation; the National Air Carrier Association (NACA); Sun Country Airlines (2 comments); North American Airlines (3 comments); Harrah's Atlantic City; the National Air Transportation Association (NATA); Aspen Aviation; Aviation Charter Services; Boise Air Service; Byerly Aviation; Charter Services; Des Moines Flying Service; Direct Flight; Eagle Aviation; Elliot Aviation (2 comments); Executive Air Fleet; Executive Flight; Flight Services Group; Hampton Airways; Hill Aircraft and Leasing (2 comments); JA Air Center; Lake Mead Air; Marc Fruchter Aviation; New World Jet Corporation; Phoenix Air; Raytheon Aircraft Services; Sky Trek; Southwest Safaris; Spirit Aviation; Waukesha Flying Services; Wisconsin Aviation; Jennifer Wuertz, Chief Pilot of Mac Air; Alaska Air Carriers Association; the Air Line Pilots Association (ALPA); the Association of Flight Attendants (AFA); the American Society of Travel Agents (ASTA); Worldspan, L.P.; the American Automobile Association (AAA); the American Association for Families of KAL 007 Victims, joined by individual families of the TWA 800 and Valujet tragedies; Mr. Richard Sobel; Mr. Steven Berry; Mr. John Gilmore; Mr. Samuel Wieler; Dr. Michael Walsh; the Social Security Administration of the U.S. Department of Health and Human Services; ARMA International; the Electronic Privacy Information Center (EPIC); the American Civil Liberties Union; and Mr. Robert Ellis Smith, publisher of the Privacy Journal.

The Air Transport Association of America (ATA) filed comments on behalf of its members (Alaska Airlines, Aloha Airlines, America West Airlines, American Airlines, American Trans Air, Continental Airlines, Delta Air Lines, DHL Airways, Emery Worldwide Airlines, Evergreen International Airlines, Federal Express, Hawaiian Airlines, KIWI International Air Lines, Midwest Express, Northwest Airlines, Polar Air Cargo, Reeve Aleutian Airways, Southwest Airlines, Trans World Airlines, United Airlines, United Parcel Service, and US Airways). Trans World Airlines, Hawaiian Airlines, and Southwest Airlines also filed individual comments. ATA stated that its members had been working to improve the dissemination of passenger manifest information in the aftermath of aviation disasters with the goal of doing everything possible to speed notifications, and would re-examine their notification procedures. ATA stated that the information-collection requirements in the APRM, if adopted, would erode customer service with adverse effects being felt most directly in reservations, ticketing, and airport check-in. ATA stated that the greatest detriment would be substantially diminished productivity in the domestic airline system, especially aircraft utilization rates. ATA stated that customers would be forced to part with sensitive personal information. ATA stated that the estimated time to collect information in the ANPRM should be increased by 3 to 4 times based on the results of an ATA-member airline survey. ATA stated that the estimated time to collect information in the ANPRM was too low also because airlines book at least twice as many reservations as they board. ATA said that the most sensible way to fulfill the desire to better assist the families of aviation accident victims was to concentrate efforts on refining carrier procedures and ensuring that public messages following an aviation disaster emphasized that only those persons who have reason to believe they had a loved one on the aircraft should call the airline.

Trans World Airlines stated that it would incur significant start-up training costs and capital costs to meet the information-collection requirements in the APRM.[2] TWA stated that while these costs are hard to define, they had been estimated to be $14.8 million. TWA stated further that since it accounted for 5.1 percent of domestic aviation market revenue passenger miles, the total expense for the aviation industry for start-up training costs and capital costs could be over $300 million. TWA noted that these figures were many times more than the total estimated costs in the ANPRM for U.S. air carriers.

Hawaiian Airlines said that because the tourist trade of the State of Hawaii is so dependent on interline-air-travel, and residents of Hawaii use air transportation much as other states depend on cars, trucks, and buses, a passenger manifest information requirement had the potential to result in significant disruptions to passengers and therefore the commerce and economy of the State of Hawaii, as well as Hawaiian Airlines. Southwest Airlines stated that the harmful effects of the information-collection requirements contemplated in the ANPRM would fall most heavily on the patrons of low-cost, high-productivity airlines such as Southwest. Southwest stated that a relatively high proportion of its passengers arrive at the airport without reservations, purchase their tickets shortly before flight, and depend upon Southwest's frequent departures. Southwest stated that the information-collection requirements in the ANPRM would add passenger-processing time at the airport that would spill over to the boarding process at the gate and the turnaround time of Southwest's aircraft.

[1] The task force required by the Aviation Disaster Family Assistance Act of 1996 was established as the Task Force on Assistance to Families of Aviation Disasters.

[2] Although TWA was a major airline at the time it filed its comments, American Airlines subsequently purchased TWA and its operations were merged with those of American.

Southwest stated that it had studied the impact of changes in turnaround time on aircraft utilization and found that even a 5-minute delay in Southwest's average aircraft turnaround time would force the elimination of approximately 125 daily flight segments. Southwest also stated that the information-collection requirements in the ANPRM, because they would require passengers to transmit personal and sensitive information over the Internet and Southwest to store this information, would likely jeopardize Southwest's cost-efficient electronic ticketing and Internet booking programs.

The State of Hawaii stated that it occupies one of the most geographically isolated land masses in the world and is uniquely dependent on air transportation to permit residents and tourists to fly from one island to another, and to link the islands comprising the State of Hawaii to the rest of the Nation. The State of Hawaii joined in the comments filed by Hawaiian Airlines. The State of Hawaii stated that the burdens imposed by the information-collection requirements in the ANPRM would translate into increased costs and fares and noted that Hawaii's local air carriers, Hawaiian and Aloha, both rely extensively on interline passengers. The State of Hawaii urged DOT to consider other, less intrusive and more cost-effective mechanisms that would permit prompt notification to family members in the unfortunate event of an aviation disaster and not place additional burdens on interline passengers.

The Regional Airline Association (RAA), which is comprised of 75 member airlines that provide service at 733 airports in the United States (500 of which depend exclusively on regional air carriers for access to the U.S. transportation system), stated that passengers fly on its member airlines to save time, and the imposition of the information-collection requirements in the ANPRM would result in passenger delays, as well as intrude into the personal privacy of air travelers. RAA said that the resources needed to maintain existing airport check-in times and collect additional passenger information could make it infeasible for its member airlines to continue to serve some communities either at all or as frequently as they now do. RAA noted that in light of the Aviation Disaster Family Assistance Act of 1996 (ADFAA), all airlines are investigating improvements in their systems of verifying passenger manifests and have enhanced their systems for accommodating telephone calls after an aviation accident. RAA stated that it believed that actions taken in response to the ADFAA would significantly improve the process of family notification. RAA stated, however, that it is very difficult to produce an accurate manifest quickly in the aftermath of an aviation disaster and the absolute accuracy of the manifest must be insured before it is released. ERA Aviation, a small regional carrier located in Anchorage, Alaska, said it did not have the database resources needed to maintain additional passenger manifest information, and did not believe that passengers would want airlines to keep such information in their computers. As an alternative, ERA suggested that DOT supply a standardized form and make it available throughout the airport or gate area in display stands. Passengers would complete the form on a voluntary basis, and the only obligation of the airline would be to accept the information provided by passengers, if they chose to do so. ERA suggested that DOT employ such a system for all modes of transportation that DOT oversees (rail, bus, plane, or boat).

The National Air Carrier Association (NACA), an association of member airlines specializing in passenger charter services, stated that one member airline had provided it with a list of recommended implementation methods. NACA estimated that, if followed, they would double existing one-hour domestic check-in times to two hours. NACA stated that it was concerned about numerous data collection efforts, both in effect and proposed, on the part of a variety of federal agencies, that could result in inefficient data collection and dissemination requirements. Sun Country Airlines, a charter airline, filed a comment and later testified before the Task Force on Assistance to Families of Aviation Disasters. In sum, Sun Country stated that it supported information-collection requirements, such as in the ANPRM, for those involved with air charters to deal with difficulties in contacting next-of-kin in the aftermath of an aviation disaster. Sun Country recommended removing date of birth or social security account number, however, because it felt that neither was useful to the notification process. Sun Country said that such a requirement should extend to charter operators and travel agents, because the additional information could be obtained most efficiently at the time of reservation, and charter operators and travel agents (and not the charter airline) had contact with passengers at the time of reservation. Sun Country said that collecting information at the airport would be the least efficient way to obtain it. Sun Country stated that it could not accurately gauge the costs of the information-collection requirements in the ANPRM since, as a charter airline, it did not generally make direct passenger reservations. North American Airlines (NAA), a charter airline, filed a comment and later testified before the Task Force on Assistance to Families of Aviation Disasters. NAA also filed a supplemental comment in which it addressed single entity charters. NAA stated that care must be taken to avoid making mistakes in notifying families in the aftermath of an aviation disaster and the issues involved in notifying families are more complicated than they appear. NAA said that full name, phone number (including area code), and hometown were the only elements of passenger manifest information that were needed. NAA predicted that passengers would object to providing social security account numbers on privacy grounds, and said collecting birth dates could lead to age discrimination complaints by bumped passengers. NAA said that requiring the collection of the same information by both scheduled and charter airlines would be extremely difficult because charter airlines did not have computer reservation systems (CRSs) or frequent flyer programs where the proposed information could be stored and accessed. NAA said that the DOT analysis of the costs of the information-collection requirements in the ANPRM had ignored the greatest cost, the decrease in utilization of aircraft that would occur because collecting additional passenger manifest information would increase boarding times and this would eat into aircraft utilization. NAA stated that the best way (better even than CRS collection) to ensure the collection of vital information would be along the lines of a Pan Am 103 family suggestion: A perforated stub on the boarding card that could, as each passenger boards, be torn off and kept by the airline. NAA estimated that it would realistically take at least a minute for the passenger to fill out the stub, and extra airline manpower and time would be required to explain the process to passengers and assist them in filling out the information requested on the stub. In its comment, NAA said that it had adopted such a procedure on its regular charter flights. Later, in its testimony before the Task Force on Assistance to Families of Aviation Disasters, NAA said that based on a few months experience, the procedure was working. NAA said that one reason it worked was that NAA

required passengers on its regular chartered flight to check-in 1½–2 hours before departure, and noted that normal scheduled flights did not have this big a window for the check-in process. NAA's supplemental comment, as mentioned above, dealt with single entity charters: A single entity charter is a charter where one entity (often a company, school, nonprofit organization, sports team, or individual) both arranges and pays for the charter. NAA said it would not be appropriate to require additional information from passengers on single entity charters since the passengers would likely resist giving information on privacy grounds and often the single chartering entity would know the passengers and already have information on hand for them.

Harrah's Atlantic City, an operator of a major hotel, casino, resort and entertainment complex in Atlantic City, New Jersey, stated that it had for the past several years conducted public charter flights between various eastern cities in the United States and Atlantic City. Harrah's said that DOT, before proceeding further, should explore working with the air carrier industry on a voluntary, consensual basis toward improved next-of-kin notification. Harrah's said that to the extent that accountability for manifest information were to rest, actually or potentially, with an entity other than the direct air carrier, confusion could result that would defeat the purpose of the information-collection requirements in the ANPRM. Thus, Harrah's urged DOT to eliminate charter operators and other indirect air carriers (*e.g.*, bulk fare contractors) from the potential coverage of any passenger manifest information requirement ultimately adopted. Harrah's stated that the manifest information requirements in the ANPRM were unnecessarily broad and that passengers should be required only to provide their full names, all other information should be voluntary.

The National Air Transportation Association (NATA) filed comments on behalf of its members, who operate on-demand air charters with small aircraft pursuant to 14 CFR part 135 of the Federal Aviation Administration's Federal Aviation Regulations (FAR) and 14 CFR part 298 of the Department's economic regulations. The following 25 FAR Part 135 on-demand air charter carriers also filed a total of 27 individual comments: Aspen Aviation, Aviation Charter Services, Boise Air Service, Byerly Aviation, Charter Services, Des Moines Flying Service, Direct Flight, Eagle Aviation, Elliot Aviation (2 comments), Executive Air Fleet, Executive Flight, Flight Services Group, Hampton Airways, Hill Aircraft and Leasing (2 comments), JA Air Center, Lake Mead Air, Marc Fruchter Aviation, New World Jet Corporation, Phoenix Air, Raytheon Aircraft Services, Sky Trek, Southwest Safaris, Spirit Aviation, Waukesha Flying Services, and Wisconsin Aviation. In addition, Jennifer Wuertz, Chief Pilot of Mac Air, filed comments regarding FAR Part 135 on-demand air charters, as did a state air carrier association, the Alaska Air Carriers Association. All those commenting regarding FAR Part 135 on-demand air charter carriers strongly urged DOT not to impose the information-collection requirements in the ANPRM on such carriers. Those commenters stated, among other things, that FAR Part 135 on-demand air carriers have never experienced difficulties with notification of families in the aftermath of a FAR Part 135 on-demand air charter flight that ended in disaster, the characteristics of these carriers makes the likelihood of family notification difficulties small, and the financial burden that they would bear if they were subjected to the information-collection requirements in the ANPRM would be disproportionately greater than for larger carriers.

The Air Line Pilots Association (ALPA), which represents 46,000 pilots that fly for 45 airlines, supported developing an enhanced domestic passenger manifest information collection effort for reasons of airline safety and security. ALPA stated that doing so could increase the accuracy of aircraft weight and balance computations, would aid security efforts geared toward unaccompanied baggage, and could provide an additional layer of security because passengers with nefarious intentions toward airline security would be reluctant to divulge the information in the ANPRM and might not fly. Regarding technology, ALPA suggested that the use of the two-dimensional bar code be explored.

The Association of Flight Attendants (AFA), which represents 40,000 flight attendants at 26 carriers, stated that collecting additional information from passengers on domestic flights was necessary for further enhancing airline response to aviation disasters. AFA noted that operators of large aircraft are already required to collect passenger names on each flight and that adding an additional question on an emergency contact name should be done. AFA said that while doing so would add costs, it was important for the family to know the status of the passenger so that the family would be spared heightened anxiety and frustration. AFA said that no matter what the financial burden, the families of victims need to know the status of their relatives as soon as possible.

The American Society of Travel Agents (ASTA), which represents about 16,000 domestic agency locations and members in about 168 foreign countries, said that it was in favor of collecting additional passenger manifest information through a simple paper form that passengers would understand and be able to fill out at the airport. ASTA said that it would, however, take longer to provide passenger manifest information than the 40 seconds estimated in the ANPRM. ASTA stated that it was concerned that a "performance standard" approach to the collection of passenger manifest information, where every airline got to choose how it would meet the requirement, could result in varying requirements on travel agents. ASTA believed that collecting passenger manifest information though reservations with missing information provided at the airport would result in conflict, confusion, and delay at airport gate areas. ASTA suggested instead a simple cloning of the standard U.S. Customs Service form, with each passenger completing the form at the airport at the time of enplanement. ASTA said that since airlines are not required to verify the information provided to them, the forms could just be collected and put into a pile or envelope by the gate attendant (who is typically compiling other piles of ticket coupons and boarding passes), and then turned over to a central depository at the airport for use in case of an aviation disaster.

Worldspan, L.P., a computer reservations system (CRS) at the time owned principally by Delta, Northwest, and TWA, stated that it stood ready to do its part to usefully collect passenger manifest information through a CRS, but saw practical and policy limits both in doing so and assuring that passenger manifests are as complete and accurate as Congress and DOT might wish. Worldspan said that there is no guarantee that a reservation made results in a passenger boarded, and a passenger boarded may do so without making a reservation. Worldspan concluded that the CRS could not alone be depended upon and each airline would have to be ultimately responsible for satisfying manifest requirements for the passengers it actually boards. Worldspan stated that while it could program its system to require the input of additional passenger manifest information before allowing a reservation to be completed, it would have no way of knowing whether the

information entered by the user was truly responsive or was just being input to override such system conventions. Worldspan said that if another means of confirming identity in addition to full name were required, date of birth would be preferable to social security account number, which, once known, generally facilitates access to other sources of private information about individuals. Worldspan said that no CRS can make its passengers records totally secure from unauthorized use. Worldspan said that it would be better to require two emergency contact telephone numbers without an emergency contact name instead of one emergency contact name and number. Worldspan said that in cases where an emergency contact did not have a telephone number, an emergency contact address should be accepted.

The American Automobile Association (AAA) stated that it has nearly 40 million members, many of whom are frequent travelers, and operates almost one thousand travel agencies, which serve both the general public and AAA members. AAA stated that an informal survey of some of its travel agency managers showed that time spent making bookings could increase by at least 20 percent if information-collection requirements along the lines of the ANPRM were implemented. AAA stated that these travel agency managers also thought that collecting social security account numbers would raise serious privacy concerns, and collecting date of birth and emergency contact information would be problematic. AAA stated, furthermore, that it was concerned with the accuracy of information provided by passengers who may be reluctant to provide it due to privacy concerns. AAA said that since the accuracy of the information would not be checked, false information could be acted on in the aftermath of an aviation disaster and liability issues could arise. AAA said that collecting information at the airport could lead to long check-in lines. AAA said it agreed with the phrase in the ANPRM, "* * * it may be that developing better procedures for accessing the information that air carriers and travel agents routinely collect on passengers could be a substitute for developing new, overlapping information-collection systems that would rarely be used." AAA urged DOT to explore all other available alternatives to help families of airline crash victims before requiring passenger manifest information for domestic flights.

The American Association for Families of KAL 007 Victims (Families Association) was joined in its comment by individual families of the TWA 800 and Valujet tragedies. The Families Association stated that accurate passenger information needs to be maintained for air crashes, because, while they occur infrequently, they are of a particularly violent nature and all aboard are often killed and human remains are often not able to be accounted for. The Families Association said that having prior knowledge of the identity of passengers is important and cost effective because it (1) allows for timely notification of next of kin, (2) provides for promptly obtaining evidence (DNA, medical records, etc.) needed to identify victims, (3) speeds the return of remains, (4) speeds the return of belongings, (5) saves the air carrier(s) money because it (they) know immediately the identity of prospective victims instead of being pressured (at substantial cost) to discover who the victims were in the aftermath of a disaster, and (6) the information would benefit the air carrier's information databases. The Families Association said that passenger manifests have been a historical tradition and necessity in the field of transportation by air (with the exception of walk-on flights) and thus that passenger information is already collected on all transportation by air (most by advance reservation) and even on over-the-counter transactions flight documents are issued in passengers' names. The Families Association said, furthermore, that Internet bookings, credit card or personal check payments provide already the passenger's name, often the address, either the home/office/contact telephone numbers, and other information deemed necessary to issue a non-cash ticket. The Families Association said that air carriers thus have most of the time, and in advance, the detailed data actually needed to confirm the actual boarding of a prospective pre-booked passenger. The Families Association stated that the DOT should promptly extend the 1996 Memorandum of Understanding (MOU) between the Department of State and U.S. air carriers on manifest information and manifest sharing on international flights to cover U.S. domestic flights. The Families Association also stated that all international air carriers that the U.S. Government allows to operate within U.S. air space (*i.e.*, under "Open Skies" agreements, and various other alliances or code-sharing agreements) should be included under such a domestic passenger manifest MOU.

Several individuals filed comments. Mr. Richard Sobel stated that from his perspective as a political scientist and policy analyst, the information-collection requirements in the ANPRM, while perhaps well intentioned, is a badly flawed idea subject to abuses, including invasion of privacy, is not cost-effective, and should not be implemented. Mr. Sobel stated that, at most, airlines should be authorized to collect name, contact phone numbers, and identify hometowns, and that this information should be automatically purged immediately after the flight (to avoid invasion of privacy). Mr. Sobel stated that for privacy and fraud reasons, there was no justification whatsoever for asking for dates of birth or social security account numbers. Mr. Sobel outlined the restrictions in the Privacy Act of 1974 (Pub. L. 93–579), which identifies the fundamental right to personal privacy under the Constitution, that are potentially involved in the information-requirement in the ANPRM. Mr. Steven Berry stated that the costs of the information-collection requirements in the ANPRM were not fiscally defensible, the time estimates for collecting information in the ANPRM were not realistic, and the information-collection requirements in the ANPRM needed to be examined in light of the 1974 Federal Privacy Act. Mr. John Gilmore strongly objected to the information-collection requirements in the ANPRM and said that they were geared toward tracking the movements of citizens. Mr. Samuel Weiler stated that the information-collection requirements in the ANPRM raised serious constitutional and fraud concerns, and the goals could be better accomplished by travelers giving their families prior notice of travel plans. Dr. Michael Walsh viewed requiring social security account number or date of birth for boarding an airplane to be an invasion of basic privacy, and noted that because the DOT information-collection requirements would not predate January 1, 1975, they would be unlawful for DOT to deny boarding based on a refusal to disclose a social security account number under Section 7(a)(2)(B) of the Privacy Act of 1974.

The Social Security Administration (SSA) of the U.S. Department of Health and Human Services said that it did not support the collection of social security account numbers because in its experience, accurate verification of identity usually requires more than just a name and social security account number. SSA said that in its experience, one must collect for positive identification name, social security account number, and date and place of birth, as well as parents' names,

including mother's maiden name. SSA went on to say that it would, however, discourage collecting these additional data elements because doing so would expose the social security account number to undesirable vulnerabilities related to criminal activity. The SSA pointed out, furthermore, that under section 7(a)(1) of the Privacy Act at 5 U.S.C. 552a, it is illegal for a Federal Agency to deny any individual any right, benefit, or privilege provided by law because that individual refuses to reveal his/her social security account number. SSA went on to state that this applies unless the disclosure is required by Federal law or the disclosure of the social security account number is made to an agency maintaining a system of records in existence and operating before January 1, 1975, or if the disclosure was required by statute or regulation adopted prior to that date.

ARMA International, an educational association of more than 10,000 professional records and information managers, strongly objected to the inclusion of social security account numbers in domestic passenger manifest information. ARMA International stated that it believe such an information collection would be a direct violation of the Privacy Act, and unnecessary for prompt passenger identification in case of a disaster. ARMA International did not object to the optional collection of other information, such as date of birth and emergency contact.

Comments from the Electronic Privacy Information Center (EPIC), American Civil Liberties Union (ACLU), and Mr. Robert Ellis Smith, publisher of the Privacy Journal, stated that many concerns regarding privacy and fraud would result from the information-collection requirements in the ANPRM. In its comment, EPIC said that the collection and use of the information in the ANPRM, including highly sensitive information such as social security account number, would represent a grave threat to personal privacy and potentially lead to widespread fraud. In its comment, the ACLU stated that: passengers have a privacy interest in, and the right to control use of, personal information about them that is gathered by air carriers, including information about the places to which they have traveled or are traveling; passengers have a privacy interest in, and the right to control the use of, other personal information about them that the ANPRM suggests the airlines should gather, such as their social security account number, date of birth, and name and phone number of their "contact" (or next of kin); the air transport system should not be turned into a citizen tracking system in which the movement of passengers can be tracked for various government or other purposes; and air traffic transit points should not be turned into government check points where government agents conduct searches of persons and property for generalized law enforcement or surveillance purposes. In his comment, Mr. Smith, of the Privacy Journal, questioned the basic information-collection approach in the ANPRM and stated that devoting the necessary time, money, and sacrifice of privacy for minimal yield is bad public policy. Instead, Mr. Smith stated what the next-of-kin of crash victims need is compassionate and responsive assistance at the time of the disaster. Mr. Smith said that DOT should devise an effective baggage-match program without the need for gathering any identifying information about a passenger.

Discussion of the Continuing Need for the Additional Information-Collection Requirements in the ANPRM and Departmental Decision to Withdraw the ANPRM

Many changes have taken place since the events that led to the Aviation Disaster Family Assistance Act (ADFAA) and, ultimately, to the request for comments in this ANPRM on improving airlines' system of notification of families of victims in the event of an airline disaster. U.S. carriers, in particular, have taken steps to ensure that passenger manifest information is available to the government shortly after the occurrence of a crash. This has been prompted, at least in part, by the requirements in the ADFAA that carriers assure that they will, among other things, (1) provide to the Director, Office of Transportation Disaster Assistance, of the National Transportation Safety Board (NTSB), and to the Red Cross (which has been designated by NTSB to assist after crashes), immediately upon request, a list of the names of the passengers aboard the aircraft, and (2) have in place a process for notifying the families of the passengers as soon as the carrier has verified that the passenger was aboard the aircraft. Each certificated carrier has filed such a plan with the Department and the NTSB, which reviewed the plans and, as described below, has worked with carriers to ensure the effectiveness of each carrier's plan.

Importantly, the incentive for carriers to provide prompt and accurate notification is not just a regulatory one. Carriers have learned valuable lessons about being proactive concerning disaster planning and assistance, and the need to follow through if a disaster occurs. In this regard, since the passage of the Family Assistance Act, many carriers have created positions within their companies for full time emergency planners/coordinators. These professionals have developed ongoing relationships with the NTSB's Office of Transportation Disaster Assistance, which, through industry meetings in which information is exchanged, as well as training sessions, has helped to spread to all carriers the lessons learned by others. This effort to improve the notification system has been aided by the fact that positive identification is now required of all passengers who board a flight, coupled with improved technology, such as the use of automated devices for the collection of boarding passes, which enhances rapid manifest reconciliation, where necessary.

As a result of all of these factors, in more recent cases involving aviation disasters, airlines have provided passenger manifest information to the NTSB within hours of a disaster and have been able to notify family members within a short time following a disaster. In our view, therefore, domestic carriers have developed a system that is working, and we do not believe that intervening at this time to require carriers to focus on a different, government-imposed system will be productive and enhance the successful information-gathering and dissemination programs carriers have worked so long and hard to put in place.

We will accordingly terminate this rulemaking. In doing so, however, we wish to point out that our own Office of Aviation Enforcement and Proceedings, which is responsible for ensuring that airlines comply with the Aviation Disaster Family Assistance Act, works closely with the NTSB on family assistance matters. The Department will through that office continue to monitor carrier conduct in providing timely and accurate passenger manifests in connection with domestic air transportation and we will not hesitate to act immediately should there appear to be a need for an industry-wide solution to any problem that occurs.

Department Decision

For the reasons explained above, the Department concludes that the information-collection requirements in the ANPRM are no longer necessary. Therefore, this rulemaking proceeding is terminated and the ANPRM is withdrawn.

Issued in Washington, DC, on June 26, 2004.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 04–16520 Filed 7–20–04; 8:45 am]

BILLING CODE 4910–62–P

FEDERAL TRADE COMMISSION

16 CFR Part 680

RIN 3084–AA96

Affiliate Marketing Rule

AGENCY: Federal Trade Commission (FTC).

ACTION: Extension of period to submit comments in response to notice of proposed rulemaking.

SUMMARY: In a **Federal Register** document published June 15, 2004, the FTC requested comment on a proposed rule that is required by Section 214(b) of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), with respect to entities subject to its jurisdiction under Section 621(a) of the Fair Credit Reporting Act (FCRA). Section 214(a) of the FACT Act amends the FCRA by adding a new section 624, which the proposed regulations implement by providing for consumer notice and an opportunity to prohibit affiliates from using certain information to make or send marketing solicitations to the consumer. The Commission is extending its comment period until August 16, 2004.

DATES: Comments addressing the proposed Affiliate Marketing Rule must be submitted on or before August 16, 2004.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to "FACT Act Affiliate Marketing Rule, Matter No. R411006" to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to: Federal Trade Commission, Office of the Secretary, Room H–159 (Annex Q), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form clearly labeled "Confidential," and comply with Commission Rule 4.9(c), 16 CFR 4.9(c). Any comment filed in paper form should be sent by courier or overnight service, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

An electronic comment can be filed by (1) Clicking on *http://www.regulations.gov;* (2) selecting "Federal Trade Commission" at "Search for Open Regulations;" (3) locating the summary of this Notice; (4) clicking on "Submit a Comment on this Regulation;" and (5) completing the form. For a given electronic comment, any information placed in the following fields—"Title," "First Name," "Last Name," "Organization Name," "State," "Comment," and "Attachment"—will be publicly available on the FTC Web site. The fields marked with an asterisk on the form are required in order for the FTC to fully consider a particular comment. Commenters may choose not to fill in one or more of those fields, but if they do so, their comments may not be considered.

Comments on any proposed filing, recordkeeping, or disclosure requirements that are subject to paperwork burden review under the Paperwork Reduction Act should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Trade Commission. Comments should be submitted via facsimile to (202) 395–6974 because U.S. postal mail at the Office of Management and Budget is subject to lengthy delays due to heightened security precautions. Such comments should also be sent to the following address: Federal Trade Commission/Office of the Secretary, Room H–159 (Annex Q), 600 Pennsylvania Avenue, NW., Washington, DC 20580.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site at *http://www.ftc.gov* to the extent practicable. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Toby M. Levin and Loretta Garrison, Attorneys, (202) 326–3224, Division of Financial Practices, Federal Trade Commission, 601 New Jersey Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Section 214 of the FACT Act requires the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, Securities and Exchange Commission, and FTC (collectively, "the Agencies") to issue coordinated regulations that implement a new section 624 of the FCRA that gives consumers the right to restrict companies from using certain information obtained from an affiliate to make marketing solicitations.

On June 15, 2004 the Commission published a notice of proposed rulemaking and invited comment on the proposed rule, setting July 20, 2004, as the deadline for comments. The other agencies charged with rulemaking under FCRA Section 624 have published their notices of proposed rulemaking more recently, and have set later deadlines for receiving comments. The FTC has determined to extend its deadline for comments to August 16, 2004. This extension may encourage additional comment on the various proposals, and will facilitate the Agencies' coordinated analysis of comments received on the rulemaking.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–16619 Filed 7–20–04; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Chapter 1

Meeting of the No Child Left Behind Negotiated Rulemaking Committee

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Announcement of negotiated rulemaking committee meeting.

SUMMARY: The Secretary of the Interior has established an advisory Committee to develop recommendations for proposed rules for Indian education under six sections of the No Child Left Behind Act of 2001. As required by the Federal Advisory Committee Act, we are announcing the date and location of the next meeting of the No Child Left Behind Negotiated Rulemaking Committee. The purpose of the meeting is the review of public comments that we received on the Notice of Proposed Rulemaking published February 25, 2004, in the **Federal Register**.

DATES: The Committee's next meeting will be held August 10–13, 2004, in Albuquerque, New Mexico. The meeting will begin at 8:30 p.m. (m.s.t.) on Tuesday, August 10 and end at 5 p.m. (m.s.t.) on Friday, August 13, 2004.

ADDRESSES: The meeting will be held at the Sheraton Old Town, 800 Rio Grande Blvd, Albuquerque, New Mexico 87104, (505) 843–6300.

FOR FURTHER INFORMATION CONTACT: Shawna Smith, No Child Left Behind Negotiated Rulemaking Project Management Office, P.O. Box 1430, Albuquerque, NM 87103–1430; telephone (505) 248–7241/6569; fax (505) 248–7242; e-mail ssmith@bia.edu. We will post additional information as it becomes available on the Office of Indian Education Programs Web site under "Negotiated Rulemaking" at *http://www.oiep.bia.edu.*

SUPPLEMENTARY INFORMATION: For more information on negotiated rulemaking under the No Child Left Behind Act, see the **Federal Register** notices published on December 10, 2002 (67 FR 75828) and May 5, 2003 (68 FR 23631) or the Web site at *http://www.oiep.bia.edu* under "Negotiated Rulemaking."

The Committee will meet to review public comments on six proposed rules that the Bureau of Indian Affairs published on February 25, 2004 at 69 FR 8752. The six rules cover: (1) Defining adequate yearly progress; (2) establishing separate geographic attendance areas; (3) establishing a formula for determining the minimum amount necessary to fund Bureau-funded schools; (4) establishing a system of direct funding and support of all Bureau-funded schools under the formula established in the Act; (5) establishing guidelines to ensure the Constitutional and civil rights of Indian students; (6) and establishing a method for administering grants to tribally-controlled schools.

There is no requirement for advance registration for members of the public who wish to attend and observe the Committee meeting. The public comment period for the six rules ended June 24, 2004, and we cannot accept public comments at this meeting.

The agenda for the meeting is as follows:

No Child Left Behind Negotiated Rulemaking

August 10–13, 2004

Albuquerque, New Mexico

Agenda

Purpose of Meeting: Review public comments on six proposed rules under the No Child Left Behind Act of 2001 and develop recommendations for final rules.

(Breaks at 10 a.m. and 3 p.m. each day and lunch at 12 p.m.–1:30 p.m.)

Tuesday, August 10, 2004

8:30 a.m.–9:30 a.m.
Opening Remarks
Introductions
Review Protocols
Review Agenda
9:45 a.m.–5 p.m.
Develop working plan for the week.
Review public comments.

Wednesday, August 11, 2004

8:30 a.m.–5 p.m.
Review public comments.

Thursday, August 12, 2004

8:30 a.m.–5 p.m.
Review public comments.

Friday, August 13, 2004

8:30 a.m.–3:30 p.m.
Review public comments 3:30 p.m.–5 p.m.
Closing remarks
Adjourn

Dated: July 16, 2004.

David W. Anderson,

Assistant Secretary—Indian Affairs.

[FR Doc. 04–16657 Filed 7–19–04; 10:58 am]

BILLING CODE 4310–6W–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 30, 37, 39, 42, 44, 47

RIN 1076–AE49

Home-living Programs and School Closure and Consolidation

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: As required by the No Child Left Behind Act of 2001, the Secretary of the Interior has developed proposed regulations using negotiated rulemaking that address the following issues: Defining adequate yearly progress, which is the measurement for determining that schools are providing quality education; establishing separate geographic attendance areas for Bureau-funded schools; establishing a formula for determining the minimum amount necessary to fund Bureau-funded schools; establishing a system of direct funding and support of all Bureau-funded schools under the formula established in the Act; establishing guidelines to ensure the Constitutional and civil rights of Indian students; and establishing a method for administering grants to tribally controlled schools. The Secretary is reopening the comment period for 10 days to allow submission of comments by the Department of Education and other interested parties.

DATES: Comments are due by the close of business on August 2, 2004.

ADDRESSES: You may submit comments, identified by the number 1076–AE51, by any of the following methods:

Direct Internet response: http://www.blm.gov/nhp/news/regulatory/index.html, or at *http://www.blm.gov,* or at regulations.gov under Indian Affairs Bureau.

Mail: Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153, Attention: RIN 1076–AE51.

Hand delivery: 1620 L Street NW., Room 401, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Catherine Freels, Designated Federal Official, PO Box 1430, Albuquerque, NM 87103–1430; Phone: 505–248–7240; e-mail: *cfreels@bia.edu.*

SUPPLEMENTARY INFORMATION: The Department of the Interior published proposed rules on February 25, 2004 (69 FR 8751), that address the following issues: (1) Defining adequate yearly progress, which is the measurement for determining that schools are providing quality education; (2) establishing separate geographic attendance areas for Bureau-funded schools; (3) establishing a formula for determining the minimum amount necessary to fund Bureau-funded schools; (4) establishing a system of direct funding and support of all Bureau-funded schools under the formula established in the Act; (5) establishing guidelines to ensure the Constitutional and civil rights of Indian students; and (6) establishing a method for administering grants to tribally controlled schools. We published these rules to implement part of the requirements of the No Child Left Behind Act (Pub. L. 107–110; enacted January 8, 2002). The comment period for the proposed rules ended on June 24, 2004. Since then, we have learned that the Department of Education has developed comments on the rules. In order to allow time for the Department of Education and any other interested parties to submit comments for consideration during development of the final rules, we are reopening the comment period for 10 days. During this period we will accept comments on any aspect of the rules from any interested parties.

Although these rules are published by the Bureau of Indian Affairs (BIA), the Bureau of Land Management is processing comments under agreement with BIA. If you wish to comment on these proposed rules, you may submit your comments by any one of several methods:

(1) You may mail comments to Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153, Attention: RIN 1076–AE51.

(2) You may submit comments electronically by direct Internet response to either *http://www.blm.gov/nhp/news/regulatory/index.html*, or *http://www.blm.gov*, or at regulations.gov under Indian Affairs Bureau.

(3) You may hand-deliver comments to 1620 L Street, NW., Room 401, Washington, DC 20036.

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

Dated: July 16, 2004.

David W. Anderson,

Assistant Secretary—Indian Affairs.

[FR Doc. 04–16658 Filed 7–19–04; 10:58 am]

BILLING CODE 4310–6W–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0191; FRL–7365–5]

Pesticides: Tolerance Exemptions for Crustacea, Eggs, Fish, Milk, Peanuts, Soybeans, Tree Nuts, and Wheat

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish an exemption from the requirement of a tolerance for residues of peanuts, tree nuts, milk, soybeans, eggs, fish, crustacea, and/or wheat when used as inert or active ingredients in pesticide products, for certain use patterns, under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: Comments, identified by docket ID number OPP–2004–0191, must be received on or before September 20, 2004.

ADDRESSES: Submit your comments, identified by docket ID number OPP–2004–0191, by one of the following methods:

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

Agency Website: *http://www.epa.gov/edocket/*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

E-mail: Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0191.

Mail: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0191.

Hand delivery: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2004–0191. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number OPP–2004–0191. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the regulations.gov websites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102) (FRL–7181–7).

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket/*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6304; fax number: (703) 305–0599; e-mail address: *boyle.kathryn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Industry (NAICS 111), e.g., crop production.

• Industry (NAICS 32532), e.g., pesticide manufacturing.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

In addition to using EDOCKET (*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

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

1. *Submitting CBI.* Do not submit this information to EPA through EDOCKET, regulations.gov, or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).

ii. Follow directions. The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What is the Agency's Authority for Taking this Action?

This proposed rule is issued under section 408 of FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170). Section 408(e) of FFDCA authorizes EPA to establish, modify, or revoke tolerances, or exemptions from the requirement of a tolerance for residues of pesticide chemicals in or on raw agricultural commodities and processed foods.

III. Background

In the **Federal Register** of May 24, 2002 (67 FR 36534) (FRL–6834–8), the Agency placed an expiration date of May 24, 2005, on the following tolerance exemptions for allergen-containing commodities:

40 CFR	Tolerance Exemption
180.910 formerly 180.1001(c)	Casein
180.910 formerly 180.1001(c)	Fish meal
180.910 formerly 180.1001(c)	Soy protein, isolated
180.910 formerly 180.1001(c)	Soybean flour
180.910 formerly 180.1001(c)	Wheat, including flour, bran, and starch
180.920 formerly 180.1001(d)	Sodium caseinate
180.930 formerly 180.1001(e)	Soy protein, isolated
180.930 formerly 180.1001(e)	Wheat shorts
180.1071	Egg solids (whole)

The 3–year expiration date was added to give the Agency time to examine the use patterns of allergens used in pesticide products and notify affected registrants of any concerns this examination disclosed with use of these substances. (See the January 15, 2002, **Federal Register** (67 FR 1925) (FRL–6807–8) for additional information). Registrants would also have the same 3 years to consider their options and then carry-out the actions needed to maintain their registrations.

IV. What Action is the Agency Taking?

Since placing the May 24, 2005, expiration date on the food allergen tolerance exemptions, the Agency has completed its review of the various ways that chemical substances such as food allergens are used in pesticide products. In this proposed rule, the Agency is proposing to establish tolerance exemptions for certain specified uses of the raw and processed forms of crustacea, eggs, fish, milk, peanuts, soybeans, tree nuts, and wheat.

The following types of uses are proposed:

• When used in seed treatment products.

• Nursery, potting and container uses.

• Pre-plant and at-transplant applications.

• Incorporation into seedling and planting beds.

• Applications to cuttings and bare roots.

• Applications that occur after the harvested crop has been removed.

• Soil-directed applications around and adjacent to all plants.

• Applications to rangelands, which is land, mostly grasslands, whose plants can provide food (i.e., forage) for grazing or browsing animals.

• When used in chemigation and irrigation via flood, drip, or furrow application.

• Application as part of a dry fertilizer on which an active ingredient is impregnated.

• Aerial and ground applications that occur when no above-ground harvestable food commodities are present (usually pre-bloom).

• Application as part of an animal feed-through product.

• Applications as gel and solid (non-liquid/non-spray) crack and crevice treatments that place the gel or bait directly into or on top of the cracks and crevices via a mechanism such as a syringe.

• Applications to the same crop from which the food commodity is derived, e.g., applications of peanut meal when applied to peanut plants.

EPA's intent is to establish exemptions from the requirement of a tolerance for these allergen-containing substances only for those uses which are unlikely to result in residues of an allergen-containing material mixed-in with other (different) food commodities as a result of a pesticide application. With the exception of the last three uses, the uses described above are soil-directed, or occur at a time that the crop is not present. If these allergens are placed directly in/on the soil (no matter the application method), then it could be expected that degradation via naturally-occurring mechanisms would occur.

Animal feed-through products are used to control flies in manure. Most animal feed-through products contain an active ingredient that is coated on a small amount of an animal feed item. The animal feed item could be an allergen-containing material such as wheat. This coated animal feed item is then mixed in with the usual animal feed items. The animal's consumption of small amounts of allergens as a result of this tolerance exemption should not impact their production of meat, milk, poultry and eggs for human consumption, and should not result in residues of allergenic-materials in food commodities.

Applications of gel and solid (non-liquid/non-spray) crack and crevice treatments that contain allergens are also not expected to result in residues in food. Food commodities can play a critical role in certain pesticide formulations used in food processing areas to control rodent populations. The rodents are attracted to and then consume the food which is coated with or contains within the active pesticide ingredient. The Agency believes that these solid gel and bait formulations that are not sprayed, but directly placed in cracks and crevices would not be inadvertently mixed-in with the near-by food commodities.

The Agency believes that aerial and ground applications, that are not soil-directed, but take place when no above-ground harvestable food is present are unlikely to result in residues in food. It is assumed that some of the allergen could come in contact with the growing plant and in certain cases the developing edible crop. EPA generally believes that the allergenic material would not be taken up by the growing plant, due to such factors as the large size of the molecules and the difficulty of passing through the plant leaf cuticle layer, but no definitive information is available. While it can be hypothesized that the allergenic material would simply "slide off" certain developing crops that have smooth surfaces and semi-spherical exteriors (e.g., apple, orange, banana, grape or tomato), the allergen might also be enfolded in crops that do not have such characteristics such as lettuce or spinach. The Agency would welcome additional information on these issues during the comment period.

The intent of these tolerance exemptions is to protect those with allergies from being unknowingly exposed to these most common allergens via consumed foods. However, there are those who are not allergic and willingly consume foods such as peanuts or wheat. Application of a pesticide product containing wheat to stored wheat commodities does not create concerns for those who are not allergic to wheat. Therefore, applications to the same crop from which the food commodity is derived, are proposed to be exempted because any residue from the allergen would not present a different allergenic risk than the underlying food commodity.

Post-harvest applications of these allergen-containing materials to stored food commodities are not being proposed because those with allergies need assurance that the foods that they consume do not contain small amounts of allergen-containing materials that are introduced via the application of a registered pesticide product. The existing time-limited tolerance exemptions in 40 CFR 180.910, 180.920, and 180.930 will expire on May 24, 2005. There is no plan to extend these tolerance exemptions. Registrants of formulations with post-harvest uses containing these eight allergens have been notified by certified mail of the upcoming expiration date by the Agency.

V. What about Chemical Substances Whose Names Are Not Readily Identified as an Allergen-Containing Commodity?

The relationship of the processed food commodity to the food commodity from which it is derived may not always be apparent by the name. For example, casein is milk protein. Currently, there are time-limited exemptions for casein and sodium caseinate.

To improve communication and to avoid repeated questions on the tolerance exemption status of the certain chemical substances, the Agency intends to create within 40 CFR 180.1071, a paragraph (b) to collect tolerance exemptions for food-commodity types of chemical substances derived fromcrustacea, eggs, fish, milk, peanuts, soybeans, tree nuts, or wheat that must also be avoided by those with certain food allergies, and present them using commonly-understood terms.

As stated above, there are time-limited exemptions for casein and sodium caseinate. The tolerance exemption for sodium caseinate is easily understood to be the following chemical substance: Caseins, sodium complexes (CAS Reg. No. 9005–46–3). However, the tolerance exemption for casein has been used as a generalized term to hold several casein chemical substances, which includes the ammonium and potassium salts as well as the hydrolyzed form of casein. To provide specificity on the food-commodity types of chemical substances that could be termed casein, tolerance exemptions are proposed for: Caseins (CAS Reg. No. 9000–71–9); caseins, ammonium complexes (CAS Reg. No. 9005–42–9); caseins, hydrolyzates (CAS Reg. No. 65072–00–6); and caseins, potassium complexes (CAS Reg. No. 68131–54–4).

VI. Cumulative Effects from Substances with a Common Mechanism of Toxicity

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

The raw and processed forms of the eight most common food allergens:crustacea, eggs, fish, milk, peanuts, soybeans, tree nuts, and wheat do not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that these chemical substances have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

VII. Determination of Safety for U.S. Population, Infants and Children

The substances considered in this proposed rule are the food commodities that most commonly can invoke an allergenic response. The intent of these tolerance exemptions is to protect those with allergies from being unknowingly

exposed to these most common allergens via consumed foods. The Agency has selected for this proposal only those uses that are unlikely to result in residues of an allergen-containing material mixed-in with other (different) food commodities as a result of a pesticide application. Those who are allergic to the eight most common food allergens (crustacea, eggs, fish, milk, peanuts, soybeans, tree nuts, and wheat) benefit by having greater surety that these substances will not be present in the foods that they do consume. The amendments and revisions to the existing tolerance exemptions will be beneficial to the regulated community by providing detailed information on how these allergenic food substances can be used in pesticide products.

As noted, the Agency is proposing only those uses which are unlikely to result in residues of an allergen-containing material mixed-in with other (different) food commodities as a result of a pesticide application. Given this fact, EPA believes that the proposed tolerance exemption will be safe for humans including infants and children. Because these exemptions are not expected to contribute to allergic individuals' exposure to allergens, EPA has not assessed the risk of these substances using a safety factor approach. Accordingly, application of an additional 10X safety factor analysis or quantitative risk assessment is not necessary to protect infants and children.

VIII. Conclusion

Accordingly, EPA is proposing to establish an exemption from the requirement for tolerance for peanuts, tree nuts, milk (including caseins), soybeans, eggs, fish, crustacea, and/or wheat when used according to those uses (as specified above) which are unlikely to result in residues of an allergen-containing material mixed-in with other (different) food commodities as a result of a pesticide application.

IX. Statutory and Executive Order Reviews

The Agency is acting on its own initiative under FFDCA section 408(e) in establishing a tolerance exemption for the allergen-containing commodities. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

This proposed rule establishes new tolerance exemptions in 40 CFR 180.1071. Establishing a new tolerance exemption permits expanded use of pesticide products and thus has a positive economic impact. Under section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that the proposed action to establish a new tolerance exemption for allergen-containing materials will not have significant negative economic impact on a substantial number of small entities.

In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

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

Dated: July 6, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.1071 is revised to read as follows:

§ 180.1071 Crustacea, Eggs, Fish, Milk, Peanuts, Soybeans, Tree Nuts, and Wheat; exemption from the requirement of a tolerance.

(a) Residues resulting from the following uses of the food commodity forms of crustacea, eggs, fish, milk,

peanuts, soybeans, tree nuts, and wheat are exempted from the requirement of a tolerance under FFDCA section 408 (when used as either an inert or an active ingredient in a pesticide formulation), if such use is in accordance with good agricultural practices:

(1) Use in pesticide products intended to treat seeds.

(2) Use in nursery and greenhouse operations, as defined in 40 CFR 170.3, which includes seeding, potting and transplanting activities.

(3) Pre-plant and at-transplant applications.

(4) Incorporation into seedling and planting beds.

(5) Applications to cuttings and bare roots.

(6) Applications to the field that occur after the harvested crop has been removed.

(7) Soil-directed applications around and adjacent to all plants.

(8) Applications to rangelands, which is land, mostly grasslands, whose plants can provide food (i.e., forage) for grazing or browsing animals.

(9) Use in chemigation and irrigation via flood, drip, or furrow application.

(10) Application as part of a dry fertilizer on which an active ingredient is impregnated.

(11) Aerial and ground applications that occur when no above-ground harvestable food commodities are present (usually pre-bloom).

(12) Application as part of an animal feed-through product.

(13) Applications as gel and solid (non-liquid/non-spray) crack and crevice treatments that place the gel or bait directly into or on top of the cracks and crevices via a mechanism such as a syringe.

(14) Applications to the same crop from which the food commodity is derived, e.g., applications of peanut meal when applied to peanut plants.

(b) *Specific chemical substances.* Residues resulting from the use of the following substances as either an inert or an active ingredient in a pesticide formulation are exempted from the requirement of a tolerance under FFDCA section 408, if such use is in accordance with good agricultural practices and such use is included in paragraph (a) of this section:

Chemical Substance	CAS No.
Caseins	9000–71–9
Caseins, ammonium complexes	9005–42–9
Caseins, hydrolyzates	65072–00–6
Caseins, potassium complexes	68131–54–4
Caseins, sodium complexes	9005–46–3

[FR Doc. 04–16214 Filed 7–20–04; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–2048; MB Docket No. 04–249; RM–10998]

Radio Broadcasting Services; Benton and Yazoo City, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by SSR Communications, Inc., licensee of Station WYAB(FM), Yazoo City, Mississippi, proposing the reallotment of Channel 226A from Yazoo City, Mississippi to Benton, Mississippi, as the community's first local transmission service, and the modification of the license for Station WYAB(FM) to reflect the changes. The coordinates for Channel 226A at Benton are 32–50–29 NL and 90–16–28 WL.

DATES: Comments must be filed on or before August 30, 2004, and reply comments on or before September 14, 2004.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Matthew K. Wesolowski, General Manager, SSR Communications, Incorporated, 5270 West Jones Bridge Road, Norcross, Georgia 30092–1628.

FOR FURTHER INFORMATION CONTACT: Victoria McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MB Docket No. 04–249, adopted July 7, 2004, and released July 9, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *www.BCPIWEB.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by adding Benton, Channel 226A, and by removing Channel 226A at Yazoo City.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–16608 Filed 7–20–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–2049; MB Docket No. 04–248, RM–10990]

Radio Broadcasting Services; Big Pine Key, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Audio Division requests comment on a Petition for Rule Making filed by Call Communications Group proposing the reservation of vacant Channel 239A at Big Pine Key, Florida for noncommercial educational use. The reference coordinates for Channel

*239A at Big Pine Key, Florida are 24–40–0 North Latitude and 81–21–0 West Longitude.

DATES: Comments must be filed on or before August 30, 2004, and reply comments on or before September 14, 2004.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Call Communications Group, PO Box 561532, Miami, Florida 33256–1832.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 04–248, adopted July 7, 2004 and released July 9, 2004. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy Printing, Inc., 445 12th Street, Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *www.BCPIWEB.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Flordia, is amended by adding Channel *239A and by removing Channel 239A at Big Pine Key.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–16609 Filed 7–20–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–2053; MM Docket No. 99–275; RM–9704]

Radio Broadcasting Services; Keno, OR

AGENCY: Federal Communications Commission.

ACTION: Proposal rule; dismissal.

SUMMARY: This document dismisses a petition for rulemaking filed by Renaissance Community Improvement Association, Inc. proposing the allotment of Channel 235A to Keno, Oregon. *See* 64 FR 49135, published September 10, 1999. With this action, the proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* in MM Docket No. 99–275, adopted July 7, 2004, and released July 9, 2004. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *www.BCPIWEB.com*. This document is not subject to the Congressional Review Act. (The Commission is, therefore, not required to submit a copy of this Report and Order to GAO, pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A), because this proposed rule was dismissed.)

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–16610 Filed 7–20–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–2068; MB Docket No. 04–252, RM–10862]

Radio Broadcasting Services; Parker, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document sets forth a proposal to amend the FM Table of Allotments, section 73.202(b) of the Commission's rules, 47 CFR 73.202(b). The Commission requests comment on a petition filed by Farmworker Educational Network, Inc., licensee of Station KRIT(FM), Channel 230C3, Parker, Arizona. Petitioner proposes the substitution of Channel 252B1 for Channel 230C3 at Parker, Arizona, and the modification of the license of Station KRIT(FM) accordingly. Channel 252B1 can be allotted at Parker in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.0 km (7.5 miles) north of Parker. The coordinates for Channel 252B1 at Parker are 34–14–45 North Latitude and 114–16–14 West Longitude. The proposed allotment is located within 320 kilometers (199 miles) of the United States-Mexico border, so it will be necessary to obtain concurrence in the allotment from the Government of Mexico. Competing expressions of interest will not be accepted.

DATES: Comments must be filed on or before August 30, 2004, and reply comments on or before September 14, 2004.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 04–252, adopted July 8, 2004, and released July 9, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room

CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *www.bcpiweb.com*.

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 230C3 and by adding Channel 252B1 at Parker.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–16611 Filed 7–20–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Revised 90-Day Petition Finding and Initiation of a 5-Year Status Review of the Lost River Sucker and Shortnose Sucker

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of a revised 90-day petition finding and initiation of a 5-year status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a revised 90-day finding for a petition to remove the Lost River sucker (*Deltistes luxatus*) and shortnose sucker (*Chasmistes brevirostris*) throughout their ranges from the Federal List of Threatened and Endangered Wildlife and Plants (List), pursuant to the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*). We find that the petition does not present substantial scientific or commercial information indicating that delisting of the Lost River and shortnose suckers may be warranted. As a result of the 1995, 1996, and 1997 fish die-offs, the endangered suckers experienced significant losses of thousands of adult suckers and have not recovered. Although the petition and information in our files do not provide new information relevant to the status of the Lost River and shortnose suckers, we are initiating a 5-year review of these species under section 4(c)(2)(A) of the Act to consider any new information that has become available as a result of recent actions to reduce threats to the species, and to provide the States, tribes, agencies, university researchers, and the public an opportunity to provide information on the status of the species. We are requesting any new information on the Lost River and shortnose suckers since their original listing as endangered species in 1988 (53 FR 27130).

DATES: The finding announced in this document was made on July 14, 2004. To be considered in the 5-year review, comments and information should be submitted to us by October 31, 2004.

ADDRESSES: Data, information, written comments and materials, or questions concerning this finding and 5-year review should be submitted to the Field Supervisor, Klamath Falls Fish and Wildlife Office, U.S. Fish and Wildlife Service, 6610 Washburn Way, Klamath Falls, Oregon 97603. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Curt Mullis, Field Supervisor, at the above address, or at 541–885–8481.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, we must make the finding within 90 days of receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If we find substantial information exists to support the petitioned action, we are required to promptly commence a review of the status of the species, if one has not already been initiated (50 CFR 424.14). "Substantial information" is defined as "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). Petitioners need not prove that the petitioned action is warranted to support a "substantial" finding; instead, the key consideration in evaluating a petition for substantiality involves demonstration of the reliability of the information supporting the action advocated by the petition (USFWS 1995).

The factors for listing, delisting, or reclassifying a species are described at 50 CFR 424.11. We may delist a species only if the best scientific and commercial data available substantiate that it is neither endangered nor threatened. Delisting may be warranted as a result of: (1) Extinction; (2) recovery; and/or (3) a determination that the original data used for classification of the species as endangered or threatened were in error.

A petition to delist the Lost River sucker and shortnose sucker, dated September 12, 2001, was submitted by Mr. Richard A. Gierak, representing Interactive Citizens United. Three other similar petitions were received and treated as comments on Mr. Gierak's petition. On May 14, 2002, the Service published its initial finding that the petitions to delist the Lost River and shortnose suckers did not present substantial scientific or commercial information indicating that delisting the suckers may be warranted (67 FR 34422). On June 12, 2002, Walt Moden, Merle Carpenter, Charles Whitlatch, John Bair, Tiffany Baldock, and Dale Cross filed a complaint in Federal District Court alleging that our initial finding on the petition to delist the Lost River sucker and shortnose sucker was arbitrary and capricious and violated the Act (*Moden* v. *U.S. Fish and Wildlife Service*). On September 3, 2003, the court ruled that our finding was arbitrary and capricious because it reached unexplained conclusions not supported by the administrative record. The court remanded the initial finding, and ordered us to either reissue the

initial finding with further explanation or proceed to a status review. Consistent with the court's order, the Service has rewritten the original finding, clarifying our analysis as well as addressing additional comments made by the court and the petitioners.

Species Information

The Lost River sucker and shortnose sucker are two fishes that naturally occur only in the upper Klamath Basin of southern Oregon and northern California. Both species primarily reside in lake habitats and spawn in tributary streams or at springs and shoreline areas within Upper Klamath Lake. Historically, the two species were very numerous in shallow lakes that occurred in the upper basin and made spawning migrations up the rivers of the Upper Klamath basin. Concentrations of migrating and spawning suckers were exploited as a food source by Native Americans and white settlers. The habitat of the two species has been highly modified, owing to water development projects, and has contributed to their listing (USFWS 1998).

The Lost River sucker and shortnose sucker are long-lived species, reaching ages of over 30 years. Also, both species are highly fecund, being capable of producing larger numbers of eggs, and are more tolerant of poor water quality conditions than trout (USFWS 2001). These factors should make the suckers adaptable to drought and other adverse conditions (USFWS 1992). However, because current water quality conditions in Upper Klamath Lake and other areas are so adverse, there is considerable mortality. Few young suckers are produced during drought years and there is a regular order-of-magnitude decrease in juvenile sucker numbers from summer to fall. For successful recruitment to occur, young fish must survive to spawn, but substantial recruitment of subadult fish into the spawning population has been rare (USFWS 2001). In a 2002 biological opinion, the Service examined data relevant to recruitment and found: "The available data show evidence for relatively substantial recruitment of smaller fish into the Williamson River population of Lost River sucker and shortnose sucker in only a few of the last eighteen years." The data also show that there is substantial recruitment into the shoreline spawning population of Lost River suckers for only a few of the last fifteen years (USFWS 2002). Also, there is apparently low survivorship over the first winter, suggesting that fall/winter survival is low (USFWS 2002). Die-offs in 1995, 1996, and 1997 have killed many of the older fish, thus reducing the ability of the populations to reproduce. Over 6,000 dead adult suckers were collected following a 1996 fish die-off, and this figure likely represented only a small fraction of the total that died (USFWS 2001). Following the 1995 through 1997 fish die-offs, the Sprague River spawning index declined 80 to 90 percent for the two suckers (USFWS 2001). Therefore, current conditions, including poor water quality and low lake levels resulting from drought, pose a serious risk to even tolerant and adaptive fish like suckers. (The spawning index is an indicator of the relative number of suckers that migrate in the Sprague River during the spring spawning period. Nets to survey suckers are put in the river weekly over the entire spawning season. The index is calculated by taking the average number of suckers caught per day per net and summing the averages over the season. While the spawning index is not necessarily the most accurate measure of population size, because individual suckers may not spawn every year and the capture efficiency of nets can be affected by water clarity, currents, debris loading, and other factors, it is a good indicator of trends when measured over a long period of time. Therefore, current conditions, including poor water quality and low lake levels resulting from drought, pose a serious risk to even tolerant and adaptive fish like suckers.

The two sucker species were federally listed as endangered in 1988 (53 FR 27130). The original listing and status assessments conducted in 2001 and 2002 and included in two biological opinions on the operations of the Bureau of Reclamation's Klamath Project (USFWS 2001, 2002) concluded that the suckers were still subject to the following threats: (1) Drastically reduced adult populations and reduction in range; (2) extensive habitat loss, degradation and fragmentation; (3) small or isolated adult populations; (4) isolation of existing populations by dams (passage); (5) poor water quality leading to large fish die-offs and reduced fitness; (6) lack of sufficient recruitment; (7) entrainment into irrigation and hydropower diversions; (8) hybridization with the other native Klamath sucker species; (9) potential competition with introduced exotic fishes; and (10) lack of regulatory protection from Federal actions that might adversely affect or jeopardize the species. These status assessments drew upon information from all published and unpublished reports on the biology, distribution, and status of the listed sucker species in the Klamath region and the ecosystem on which they depend. The assessments also included and considered new information that was available.

Discussion of Petition

The petition states that delisting of the Lost River and shortnose suckers should occur because, either: (1) The estimates of the sucker populations in the 1980s were in error and did not, in fact, demonstrate a precipitous decline (*i.e.*, sucker populations in the 1980s were much larger than assumed); or (2) the estimates of the sucker populations in the 1980s were reasonably accurate, and the suckers have demonstrated an enormous boom in the period since listing and no longer exhibit "endangered" status (*i.e.*, sucker populations have increased and are no longer endangered).

The petition's supporting documentation consists of an excerpt (four pages and "Figures 2 & 3") from testimony by David A. Vogel before the U.S. House Committee on Resources (Vogel 2001), five bibliographic references, and eight footnotes. The referenced testimony concerns sucker population estimates from the 1950s to 1997, which are included in the petition as a table labeled "Figure 2." Figure 2 provides selective information for the two sucker species from three time periods: pre-1980s (1950s–1976), 1980s, and 1990s (*see* Table 1 below). While this table displays population estimates that are higher since listing, we find that comparisons of population sizes pre- and post-listing using these data are invalid because: (1) Data were obtained using different methods and models, and assumptions used by those models were violated; and (2) the estimates do not refer to the same populations. These limitations are explained below.

TABLE 1.—ESTIMATED LOST RIVER AND SHORTNOSE SUCKER POPULATIONS FROM PETITION FIGURE 2

Species	1950s-early 1960s	1970	1976	1984	1985	1986	1987	1996	1997
Lost River Sucker ..	Unknown	Unknown	Unknown	23,123	11,861	6,000	Unknown	94,000	46,000
Shortnose Sucker ..	Extremely low (<200).	Very rare	200–1,000 ...	2,650	1,490	500	Only 20 seen	252,000	146,000

The petitioners state that sucker populations in the 1980s were much larger than assumed at listing and therefore listing was unnecessary. In support of this statement, the petitioner refers to Mr. Vogel's testimony concerning sucker population estimates, which were included in the petition (and reproduced as Figure 1) in this finding.

In response to the court's questions in its remand regarding the significance of supplementary information concerning sucker populations prior to the listing in 1988, we also considered data contained in supplementary references provided by the plaintiffs, including a letter from Craig Beinz (The Klamath Tribes) (Beinz 1986); meeting notes of the Sucker Working Group (Williams 1986); a USFWS memorandum (USFWS 1986); and a Service endangered species technical bulletin (USFWS 1987). These documents emphasize the drastic decline in sucker populations in the 1980s and the need for Federal protection, and thus supported the 1988 listing.

The sucker population information for the 1980s provided by the petitioners and reproduced above in Table 1 was obtained from surveys jointly conducted by the Klamath Tribes and Oregon Department of Fish and Wildlife from 1984 through 1986, and was produced in a final report by Bienz and Ziller (1987) titled "Status of Three Lacustrine Sucker Species (Catostomidae)." Sucker population information in this report was considered by the Service in the original listing and in the two status assessments (USFWS 1988, 2001, 2002). Bienz and Ziller (1987) focused on sucker populations that spawned in the Sprague River, the major tributary of the lake and the primary spawning site for Upper Klamath Lake suckers, because it was believed that the sport fishery on that river was adversely impacting the sucker populations. Bienz and Ziller (1987) noted significant declines in the numbers and sizes of suckers caught over the 3 years of their study and concluded: "Lost River and shortnose suckers appear headed for extirpation from Upper Klamath and Agency lakes * * *"

Table 1, above, shows evidence that suckers spawning in the Sprague River very likely experienced a precipitous decline between 1984 and 1986, consistent with the supporting literature provided by the petitioners and consistent with the final listing rule (USFWS 1988). Therefore, information referenced in the petition supports the fact that sucker populations prior to listing experienced significant declines. Consequently, the information cited in the petitions corroborates the Service's 1988 determination that listing was warranted.

The petition did not provide any information about the status of the suckers during the period between the 1950s and 1976 other than what is presented above in Table 1. The 2001 biological opinion reviewed this early data and found that creel surveys indicated an increase in the Sprague River harvest between 1966 and 1969 and then a sharp decline by 1974 (USFWS 2001).

The petitioners state that the suckers no longer exhibit "endangered" status because their populations have dramatically increased since listing, citing the referenced testimony, including various brief statements concerning additional aspects of the sucker's status. These statements are reviewed below.

Table 1, above, provides estimates of sucker population sizes for the Upper Klamath Lake in 1996 and 1997. Although the original source of the estimates is not referenced in the petitions, the Service believes the data are from a draft report entitled "Information on the Population Dynamics of Shortnose and Lost River Suckers in Upper Klamath Lake, Oregon," written by U. S. Geological Survey (USGS) staff in 1998, following their spring and summer sampling of adult sucker populations in Upper Klamath Lake and recovery of dead suckers in the 1996 through 1997 fish die-offs (Shively 2002, 2003).

The USGS did not finalize the draft report on the population estimates, owing to concerns that the implicit assumptions in the methods they used to estimate population sizes may have been violated and due to concerns associated with the data's statistical limitations (Shively 2002). As a result, the information from this report that was referenced in the petition regarding population increases is unreliable. With regard to the 1997 estimate, the Service concluded that a violation had likely occurred in both of the assumptions in the mark and recapture method (*i.e.*, that marked fish are randomly mixed in the population, and all fish have equal probability of being recaptured) (USFWS 2001). Because of inherent problems with these data, the Services did not include them in the body of its 2002 biological opinion, but instead included the population estimates in an appendix, where we carefully and fully explained their limitations (USFWS 2002).

Others have also concluded that the 1996 and 1997 population estimates based on the fish die-offs are unreliable, including Dr. D. Anderson, a specialist in the analysis of mark and recapture data to estimate fish and wildlife population sizes (Anderson 2003); the State of Oregon's Independent Multidisciplinary Science Team (IMST 2003); and the National Academy of Science's National Research Council's Committee on Endangered and Threatened Fishes in the Klamath River Basin (NRC 2003). The IMST concluded their review with the statement, "At this time, it is not possible to accurately determine the current total abundance of suckers in Upper Klamath Lake or the trend in abundance over the past 15+ years with reliability" (IMST 2003). The NRC, which had included the 1996 through 1997 population estimates in their 2002 draft interim report (NRC 2002), removed the population estimates from their final report and concluded their evaluation of population sizes with the statement: "For purposes of ESA actions, the critical facts, which are known with a high degree of certainty, are that the fish are much less abundant than they originally were and that they are not showing an increase in overall abundance" (NRC 2003).

Additionally, the 1996 through 1997 population estimates were derived from dead suckers collected during extensive summer die-offs, and therefore those data were applicable to population sizes prior to the die-offs. Based on catches of migrating suckers in the Williamson River, the USGS found that the

spawning index had declined 97 percent for both species of suckers between 1995 and 1999 (USFWS 2002). There has been an increase in the spawning index for Lost River suckers since 1999, but it has not reached the 1995 levels. Spawning indices for shortnose suckers are showing little recovery and if a substantial number of adults die in the near future, the population could plummet. Therefore, the information in the petition and in our files, rather than showing healthy populations in the 1990s, depicts populations subject to high adult mortality and showing inadequate recruitment. Consequently the data suggest a downward trend occurred in population sizes (USFWS 2002). This addresses a concern raised by the court on page 19 of the Opinion and Order regarding apparent trends in the population information. The trend that is apparent in the 1990s is one that is downward.

On page 18 of the Opinion and Order, the court pointed out that the 2001 status report does not explore the differences in methodology between estimates in the 1980s and the 1990s, except to say that "no accurate population estimate was available." As we noted through the clarification above, data collected in the 1980s were based on sampling in the Sprague River, while those obtained in the 1990s were based on dead suckers recovered from the Upper Klamath Lake fish die-offs. The population estimates, 1980s *v.* 1990s, are not comparable because the 1990s estimates are unreliable, as the USGS has stated, because those data failed to meet necessary model assumptions. Also, the estimates from the Sprague River are only for suckers that spawn in particular reaches of the Sprague River, whereas data from the die-offs likely represented suckers from several populations that might spawn in other river reaches or along the shoreline of the lake. Therefore the data are not comparable, because one data set has been invalidated and the data were not from the same populations.

Information in the petitions noted that the Upper Klamath Lake sucker populations have experienced substantial recruitment in recent years and also exhibit recruitment every year. For recruitment to occur, young suckers must survive to spawn. Although the Upper Klamath Lake sucker populations appear to spawn and produce some young every year, significant recruitment into the spawning population is infrequent (USFWS 2002). From 1988 to 2001, only two relatively strong cohorts (*i.e.*, those born in 1991 and 1993) have recruited into the spawning populations (USFWS 2002).

The petitioners referenced testimony that populations of both Lost River and shortnose sucker in Clear Lake Reservoir, and the population of shortnose sucker in Gerber Reservoir, are more abundant than reported at the time of listing and exhibit good recruitment. Clear Lake and Gerber Reservoir are much smaller than Upper Klamath Lake, and therefore have smaller sucker populations. The recent status assessments of the suckers considered this information (USFWS 2001, 2002). However, available data shows that older suckers may be absent and the populations are physically and genetically isolated by dams from the rest of the Upper Klamath Basin. Because of the small size of the reservoirs and inadequate inflows during prolonged droughts, those populations may be subject to extinction if water levels get so low that the reservoirs are dry, if predators consume the fish, or if water quality gets too poor for survival (USFWS 2001, 2002). Following the drought of 1992, Clear Lake reached levels so low that it contained only 5 percent of its full capacity. If that drought would have continued, much of the reservoir would have been dry the following year (USFWS 2002). Droughts also may prevent suckers from reaching upstream spawning areas because access is blocked (USFWS 2002). Following droughts, suckers appear to be stressed and in poor health (USFWS 2002).

The petitioners additionally referenced testimony that the geographic range of the suckers is greater than believed at the time of listing in 1988. The recent status assessments of the suckers reflect that the known geographic ranges of the two suckers have not changed substantially since listing (USFWS 2001, 2002). At the time of listing, shortnose and Lost River suckers were reported from Upper Klamath Lake, its tributaries, Lost River, Clear Lake Reservoir, the Klamath River, and the three Klamath River reservoirs (Copco, Iron Gate, and J.C. Boyle). The two additional shortnose sucker and one additional Lost River sucker populations that have been recognized since listing are within the Lost River drainage, which was identified as part of the species' range at the time of listing. The populations occur in isolated sections of the Lost River drainage and are separated from other populations by dams. They include a small population of each species in Tule Lake (including the lower Lost River below Anderson Rose Dam), which are apparently limited to several hundred adults for each species, and an isolated population of shortnose suckers in Gerber Reservoir of unknown size. Because the additional sucker populations were within the known range at the time of listing, we do not consider the additional populations as representing a substantial increase in the geographic range.

The petitioners referenced testimony that the sucker populations in the Klamath River reservoirs are more abundant and widespread than assumed at the time of listing. At the time of listing, a "substantial" population of shortnose suckers was reported from Copco Reservoir, with additional collections from Iron Gate and J.C. Boyle reservoirs. Lost River suckers were reported to have been collected from all three reservoirs but have been practically eliminated from Copco Reservoir. More recent sampling in the Klamath River reservoirs indicates these populations are not large and there is no evidence that these reservoir populations are self sustaining (USFWS 2001, 2002).

The petitioners also referenced testimony that hybridization among the species of suckers in the Klamath Basin was assumed to be a threat in the 1988 listing, but is now known not to be as problematic. The recent status assessment of the suckers reflects that ongoing genetic and morphological studies have confirmed that hybridization has resulted in genes from one species being transferred to another species and has occurred among the four species of suckers native to the Klamath Basin (USFWS 2001, 2002). The 2002 assessment found that some hybridization may be natural within Klamath suckers. However, the biological and conservation implications of hybridization, as well as the degree to which recent man-made changes to the Klamath Basin have altered the natural rate of hybridization, are still unresolved, and therefore the degree of the threat is unknown (USFWS 2002).

All of the issues discussed in the petitioner's referenced testimony, *i.e.*, mid-1990s population sizes, recruitment, geographic range, and hybridization, are addressed in the recent biological opinions that assessed the species' status and found that the endangered suckers are faced with continued threats to their populations (USFWS 2001, 2002). The quantitative comparisons among population estimates pre- and post listing provided by the petitioners and reproduced in Table 1 above are not informative owing to differences in methods and violations of model assumptions. Nevertheless, it

appears likely that some population increase occurred in the mid-1990s following cessation of the sport fishery and owing to a large 1991 year class recruiting into the adult sucker populations in the mid-1990s. However, three consecutive years of water-quality-related die-offs in 1995 through 1997 killed a major portion of the adult populations (USFWS 2002). Therefore, regardless of what the population sizes were prior to the fish die-offs, they were much smaller afterwards and consequently their reproductive potential would have been much reduced. Following the die-offs, poor water quality was realized as a serious threat, if not the major threat, to the two species' continued survival. Thus, the available scientific or commercial information indicates that: (1) The increased population numbers referenced in the petition are based on population estimates that have been determined to be unreliable; (2) any population increase that may have occurred in early 1990s was offset by later declines owing to large sucker die-offs; and (3) poor water quality was recognized as being more of a threat than was previously considered owing to three recent fish-die-off events.

Finding

We have reviewed the petition and its supporting documentation, as well as information in Service files and readily available published and unpublished studies and reports. On the basis of this review, we find that the petitions do not present substantial information indicating that delisting of the Lost River sucker or shortnose sucker may be warranted.

Five-Year Review

Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. We are then, under section 4(c)(2)(B), to determine, on the basis of such a review, whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened, or threatened to endangered. Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. Although the 90-day petition finding precludes the need to initiate a 12-month status review, we believe that a comprehensive, 5-year status review is appropriate in order for us to consider new information that has become available as a result of recent actions, and to provide the States, Tribes, agencies, university researchers, and the public an opportunity to provide information on the status of the species. This notice announces our active review of the Lost River sucker and shortnose sucker.

Although we recently completed status assessments for these species (USFWS 2001, USFWS 2002), new information is being acquired and a number of actions have been implemented or will soon be implemented to reduce threats to the species, including installing a fish screen at A-Canal in 2003, constructing a fish ladder at the Link River Dam in 2004, and improving passage in the near future at the Chiloquin Dam. Additionally, habitat restoration is occurring around Upper Klamath Lake and in its tributaries. These actions, combined with new information on the species, could affect the species' status and we are, therefore, proceeding to an updated status review of the species.

Public Information Solicited

To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting any additional information, comments, or suggestions on the Lost River sucker and shortnose sucker from the public, other concerned governmental agencies, tribes, the scientific community, industry, environmental entities, or any other interested parties. Information sought includes any data regarding historical and current distribution, biology and ecology, ongoing conservation measures for the species or its habitat, and threats to the species or its habitat. We also request information regarding the adequacy of existing regulatory mechanisms.

The 5-year review considers all new information available at the time of the review. This review will consider the best scientific and commercial data that has become available since the current listing determination or most recent status review, such as:

A. Species biology including, but not limited to, population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions including, but not limited to, amount, distribution, and suitability;

C. Conservation measures that have been implemented that benefit the species;

D. Threat status and trends; and

E. Other new information, data, or corrections including, but not limited to, taxonomic or nomenclatural changes, identification of erroneous information contained in the list, and improved analytical methods.

If you wish to provide information for the status review, you may submit your comments and materials to the Field Supervisor, Klamath Falls Fish and Wildlife Office (*see* **ADDRESSES** section). 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 a respondent's identity, as allowable by law. If you wish us to withhold your name 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 above address.

References Cited

A complete list of all references cited in this finding is available, upon request, from the Klamath Falls Fish and Wildlife Office (*see* **ADDRESSES** section).

Author

The primary author of this document is Ron Larson, fishery biologist, Klamath Falls Fish and Wildlife Office, U.S. Fish and Wildlife Service (*see* **ADDRESSES** section).

Authority

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

Dated: July 14, 2004.

Marshall Jones, Jr.,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 04–16549 Filed 7–20–04; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 69, No. 139
Wednesday, July 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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

United States Standards For Grades of Canned Pears

[Docket No. FV–04–333]

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; request for public comment.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is soliciting comments on the proposal to revise the United States Standards for Grades of Canned Pears. AMS received two petitions, one from a grower cooperative, the other from a processor, requesting that USDA change the character classification for Grade "B", slices, and diced, to read "the units are reasonably tender or tenderness may be variable within the unit." This change was requested by the industry in order to bring the standards for canned pears in line with the present quality levels being marketed today and provide guidance in the effective utilization of canned pears.

DATES: Comments must be submitted on or before September 20, 2004.

ADDRESSES: Interested persons are invited to submit written comments concerning this notice. Comments should reference the date and page of this issue of the **Federal Register**. All comments received will be made available for public inspection at the address listed below during regular business hours and on the Internet. Please submit comments to Karen L. Kaufman, Standardization Section, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue SW.; Room 0709, South Building; STOP 0247, Washington, DC 20250; Fax (202) 690–1527, e-mail *karen.kaufman@usda.gov* or *http://www.regulations.gov*. The current United States Standards for Grades of Canned Pears, along with the proposed changes, will be available either through the address cited above or by accessing the AMS Home Page on the Web at *http://www.ams.usda.gov/standards/frutcan.htm*.

FOR FURTHER INFORMATION CONTACT: Karen L. Kaufman at (202) 720–5021 or e-mail at *karen.kaufman@usda.gov*.

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946, as amended, directs and authorizes the Secretary of Agriculture "to develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices * * *." AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. Those United States Standards for Grades of Fruits and Vegetables no longer appear in the Code of Federal Regulations but are maintained by USDA/AMS/Fruit and Vegetable Programs.

AMS is proposing to revise the U.S. Standards for Grades of Canned Pears using the procedures that appear in Part 36 of Title 7 of the Code of Federal Regulations (7 CFR Part 36).

Proposed by the petitioner

AMS received two petitions, one from a grower cooperative and the other from a processor, requesting the revision of the United States Standards for Grades of Canned Pears. The standards are established under the authority of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627). The petitioners represent growers from Washington State, Oregon and parts of California.

The petitioners are requesting that USDA change the character classification for Grade "B", slices, and diced, canned pears. The petitioners believe the change in the standard will improve the economic position of domestic growers of pears.

Prior to undertaking research and other work associated with revising the grade standards, AMS decided to seek public comments on the petition. A notice requesting comments on the petition to revise the United States Standards for Grades of Canned Pears was published in the January 21, 2004, **Federal Register** (69 FR 2885).

In response to our request for comments, AMS received two comments both from pear processors. The comments favored the proposed revision of the standard.

Based on the submitted information, AMS is proposing to revise the standard for canned pears following the standard format for U.S. Grade Standards. The proposed revision will change the character classification for Grade "B", slices, and diced, style canned pears by including the following: "the units are reasonably tender or the tenderness may be variable within the unit." The current standard contains this wording for character classifications for halves, quarters, pieces or irregular pieces and whole pears.

This proposal will provide a common language for trade, a means of measuring value in the marketing of canned pears, and provide guidance in the effective utilization of canned pears. The official grade of a lot of canned pears covered by these standards will be determined by the procedures set forth in the Regulations Governing Inspection and Certification of Processed Products Thereof, and Certain Other Processed Food Products (§ 52.1 to 52.83).

This notice provides for a 60 day comment period for interested parties to comment on changes to the standards.

Authority: 7 U.S.C. 1621–1627.

Dated: July 14, 2004.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–16486 Filed 7–20–04; 8:45 am]
BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[No. LS–04–11]

Results of Soybean Request for Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service's (AMS) Request for Referendum shows that too few soybean producers want a referendum on the

Soybean Promotion and Research Order (Order) for one to be conducted. The Request for Referendum was held from May 1, 2004, through May 28, 2004, at the Department of Agriculture's (USDA) county Farm Service Agency offices. To trigger a referendum 66,388 soybean producers must complete a Request for Referendum. The number of soybean producers requesting a referendum was 3,206.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Payne, Chief; Marketing Programs Branch, Room 2638–S; Livestock and Seed Program, AMS, USDA; STOP 0251; 1400 Independence Avenue, SW.; Washington, DC 20250–0251, telephone number 202/720–1115, or via e-mail at *Kenneth.Payne@usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Soybean Promotion, Research, and Consumer Information Act (Act) (7 U.S.C. 6301 *et seq.*), every 5 years the Secretary of Agriculture (Secretary) will give soybean producers the opportunity to request a referendum on the Order. If the Secretary determines that at least 10 percent of U.S. producers engaged in growing soybeans (not in excess of one-fifth of which may be producers in any one State) support the conduct of a referendum, the Secretary must conduct a referendum within 1 year of that determination. If these requirements are not met, a referendum would not be conducted.

A notice of opportunity to Request a Soybean Referendum was publicized in the **Federal Register** (69 FR 15289) on March 25, 2004. To be eligible to participate in the Request for Referendum, producers or the producer entity that they are authorized to represent must have certified and provided supporting documentation showing that they or the producer entity they represent paid on assessment sometime during the representative period between January 1, 2002, and December 31, 2003.

According to USDA, there are 663,880 soybean producers in the United States (see 69 FR 13458).

A total of 3,206 valid Requests for Referendum were completed by eligible soybean producers. This number does not meet the requisite number of 66,388. Therefore, based on the Request for Referendum results, a referendum will not be conducted. In accordance with the provisions of the Act, soybean producers will be provided another opportunity to request a referendum in 5 years.

The following is the State-by-State results of the Request for Referendum:

State	Number of valid requests for referendum
Alabama	0
Alaska	0
Arizona	0
Arkansas	19
California	0
Colorado	4
Connecticut	0
Delaware	1
Florida	0
Georgia	6
Hawaii	0
Idaho	0
Illinois	1,145
Indiana	220
Iowa	542
Kansas	92
Kentucky	11
Louisiana	2
Maine	0
Maryland	6
Massachusetts	0
Michigan	49
Minnesota	258
Mississippi	4
Missouri	182
Montana	0
Nebraska	92
Nevada	0
New Hampshire	0
New Jersey	1
New Mexico	0
New York	1
North Carolina	18
North Dakota	16
Ohio	331
Oklahoma	7
Oregon	0
Pennsylvania	20
Puerto Rico	0
Rhode Island	0
South Carolina	4
South Dakota	112
Tennessee	9
Texas	5
Utah	0
Vermont	0
Virginia	10
Washington	0
West Virginia	11
Wisconsin	28
Wyoming	0
Total	3,206

Authority: 7 U.S.C. 6301–6311.

Dated: July 14, 2004.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–16487 Filed 7–20–04; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Forest Service

Annual List of Newspapers To Be Used by the Alaska Region for Publication of Legal Notices of Proposed Actions and Legal Notices of Decisions Subject to Administrative Appeal Under 36 CFR Part 215

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that Ranger Districts, Forests, and the Regional Office of the Alaska Region will use to publish legal notice of all decisions subject to appeal under 36 CFR part 215 and to publish legal notices for public comment on actions subject to the notice and comment provisions of 36 CFR part 215, as updated on June 4, 2003. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notice of actions subject to public comment and decisions subject to appeal under 36 CFR part 215, thereby allowing them to receive constructive notice of a decision or proposed action, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

ADDRESSES: Robin Dale, Alaska Region Group Leader for Appeals, Litigation and FOIA; Forest Service, Alaska Region; P.O. Box 21628; Juneau, Alaska 99802–1628.

DATES: Publication of legal notices in the listed newspapers begins on July 1, 2004. This list of newspapers will remain in effect until it is superceded by a new list, published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Robin Dale; Alaska Region Group Leader for Appeals, Litigation and FOIA; (907) 586–9344.

SUPPLEMENTARY INFORMATION: This notice provides the list of newspapers that Responsible Officials in the Alaska Region will use to give notice of decisions subject to notice, comment, and appeal under 36 CFR part 215. The timeframe for comment on a proposed action shall be based on the date of publication of the legal notice of the proposed action in the newspapers of record identified in this notice. The timeframe for appeal under 36 CFR part 215 shall be based on the date of publication of the legal notice of the decision in the newspaper of record identified in this notice.

The newspapers to be used for giving notice of Forest Service decisions in the Alaska Region are as follows:

Alaska Regional Office

Decisions of the Alaska Regional Forester: Juneau Empire, published daily except Saturday and official holidays in Juneau, Alaska; and the Anchorage Daily News, published daily in Anchorage, Alaska.

Chugach National Forest

Decisions of the Forest Supervisor and District Rangers: Anchorage Daily News, published daily in Anchorage, Alaska.

Tongass National Forest

Decisions of the Forest Supervisor: Juneau Empire, published daily except Saturday and official holidays in Juneau, Alaska.

Decisions of the Craig District Ranger, the Ketchikan/Misty District Ranger, and the Thorne Bay District Ranger: Ketchikan Daily News, published daily except Sundays and official holidays in Ketchikan, Alaska.

Decisions of the Admiralty Island National Monument Ranger, the Juneau District Ranger, the Hoonah District Ranger, and the Yakutat District Ranger: Juneau Empire, published daily except Saturday and official holidays in Juneau, Alaska.

Decisions of the Petersburg District Ranger: Petersburg Pilot, published weekly in Petersburg, Alaska.

Decisions of the Sitka District Ranger: Daily Sitka Sentinel, published daily except Saturday, Sunday, and official holidays in Sitka, Alaska.

Decisions of the Wrangell District Ranger: Wrangell Sentinel, published weekly in Wrangell, Alaska.

Supplemental notices may be published in any newspaper, but the timeframes for making comments or filing appeals will be calculated based upon the date that notices are published in the newspapers of record listed in this notice.

Dated: June 28, 2004.

Jacqueline Myers,

Acting Regional Forester.

[FR Doc. 04–16563 Filed 7–20–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–896A–821–819

Notice of Postponement of Preliminary Determinations in Antidumping Duty Investigations of Magnesium Metal from the People's Republic of China and the Russian Federation

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

SUMMARY: The Department of Commerce ("Department") is postponing the preliminary determinations in the antidumping duty investigations of magnesium metal from the People's Republic of China ("PRC") and the Russian Federation ("Russia") from August 5, 2004 until no later than September 24, 2004. This postponement is made pursuant to section 733(c)(1)(A) of the Tariff Act of 1930, as amended ("the Act").

EFFECTIVE DATE: July 21, 2004.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Sebastian Wright, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–4243 or (202) 482–5154, respectively.

Postponement of Preliminary Determinations

On March 25, 2004, the Department published the initiation of the antidumping duty investigations of imports of magnesium metal from the PRC and Russia. *See Initiation of Antidumping Duty Investigations: Magnesium Metal from the People's Republic of China and the Russian Federation*, 69 FR 15293 (March 25, 2004). The notice of initiation stated that we would make our preliminary determinations for these antidumping duty investigations no later than 140 days after the date of initiation.

On June 28, 2004, the petitioners[1] made a timely request pursuant to 19 CFR §351.205(e) for a fifty–day postponement of the preliminary determinations, or until September 24, 2004. The petitioners requested postponement of the preliminary determinations because they believe additional time is necessary to allow them time to analyze and submit comments to the Department regarding the respondents' questionnaire responses and to allow the Department time to analyze the respondents' data thoroughly and to seek additional information.

For the reasons identified by the petitioners and because there are no compelling reasons to deny the request, we are postponing the preliminary determinations under section 733(c)(1) of the Act. Therefore, the preliminary determinations in both these cases are now due no later than September 24, 2004. The deadline for the final determinations will continue to be 75 days after the date of the preliminary determinations, unless extended.

This notice is issued and published pursuant to sections 733(f) and 777(i) of the Act.

Dated: July 13, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–16613 Filed 7–20–04; 8:45 am]

BILLING CODE 3510–DS–S

[1] The petitioners are US Magnesium Corporation LLC, United Steelworkers of America, Local 8319, and Glass, Molders, Pottery, Plastics & Allied Workers International, Local 374.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071504E]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Groundfish Oversight Committee in August, 2004 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Monday, August 9, 2004, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Groundfish Committee will meet to

develop the details of the management measures that will be included in Framework Adjustment 40B to the Northeast Multispecies Fishery Management Plan (FMP). Framework 40B will include measures that provide additional fishing opportunities that target healthy stocks and will address several other issues identified since the approval of Amendment 13. The specific measures that will be considered in this framework include: revisions to the conservation tax for the days-at-sea (DAS) leasing and transfer programs, eliminating the tonnage upgrade restriction from the DAS transfer program, allocating a minimum number of Category B (reserve) DAS to vessels that did not receive any Category A or B DAS under Amendment 13, creating a haddock Special Access Program (SAP) north of Closed Area I, developing a mechanism to provide a DAS credit for standing by entangled whales, making a change to the season for the Closed Area II Yellowtail Flounder SAP, revising the allocation formula for the GB Cod Hook Sector, and creating a SAP to target haddock in the Western Gulf of Maine Closed Area using rod and reel. The Committee will identify the specific details for the proposed measures, will group the measures into distinct alternatives, and will develop recommendations for the Total Allowable Catches of stocks of concern that will be allocated to the proposed and existing SAPs. The Committee may also provide additional guidance to the Plan Development Team for the analysis of these measures.

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 dates.

Dated: July 16, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–1626 Filed 7–20–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071504B]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

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

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: NMFS announces that the Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator), has determined that an application for EFPs contains all of the required information and warrants further consideration. The Assistant Regional Administrator is considering the impacts of the activities to be authorized under the EFPs with respect to the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue EFPs. Therefore, NMFS announces that the Assistant Regional Administrator proposes to issue EFPs in response to an application submitted by the Cape Cod Commercial Hook Fisherman's Association (CCCHFA), in collaboration with Research, Environmental and Management Support (REMSA). These EFPs would allow up to seven vessels to fish for haddock and pollock using jigged hand gear in two Northeast (NE) multispecies year-round closed areas. Fishing would occur in Georges Bank (GB) Closed Area I (CA I) during the months of July through December 2004, and January, February, May and June 2005 and in Nantucket Lightship Closed Area (NLSCA) during the months of November and December 2004, and May and June 2005. The purpose of this study is to test the viability of jigged hand gear (handline, rod and reel, and jigging machines) to harvest haddock and pollock with minimal cod bycatch within spatial and temporal parameters determined by local historical knowledge.

DATES: Comments on this action must be received at the appropriate address or fax number (see **ADDRESSES**) on or before August 5, 2004.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, NE Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Haddock/Pollock Jigging EFP Proposal." Comments may also be sent via fax to (978) 281–9135, or submitted via e-mail to the following address: *da541@noaa.gov.*

Copies of the Environmental Assessment (EA) are available from the NE Regional Office at the same address.

FOR FURTHER INFORMATION CONTACT: Catherine Tadema-Wielandt at 978–281–9218 or *catherine.tadema-wielandt@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Three year-round closed areas were established in 1994 under Amendment 5 to the FMP to provide protection to concentrations of regulated NE multispecies, particularly Atlantic cod, haddock, and yellowtail flounder. These closure areas, CA I, CA II, and the NLSCA, have proven to be effective in improving the stock status of several species, including GB haddock.

In their EFP application, the applicants state that cod are less available than haddock and pollock during certain times and in certain portions of CA I and NLSCA, and propose to support this observation with scientific data, potentially enabling the GB haddock and pollock resources to be utilized without impacting the management program that protects GB cod. This proposal builds on an ongoing study that began on October 1, 2003, and that proposes to continue through September 2004. Preliminary results from this study demonstrate the viability of utilizing hook-and-line gear to reduce bycatch of cod in a portion of GB CA I. The CCCHFA's most recent study proposal differs in that it proposes to test jigged hook-and-line gear (handline, rod and reel, and jigging machines), as opposed to stationary longlines, to target pollock in addition to haddock, and to conduct the study in all of CA I and in NLSCA.

Proposed EFP

The proposed study would occur within CA I during the months of July through December 2004, and January, February, May and June 2005 during which eight half-day trips would occur monthly, for a total of 80 half-day trips in this area. The proposed study would occur within NLSCA during the months of November and December 2004, and May and June 2005 during which four 1–day trips would occur monthly, for a total of 16 1–day trips in this area. In

total, 96 trips would occur under this EFP.

Participating vessels would be required to use A days-at-sea (DAS) and would be prohibited from fishing in areas outside of CA I or NLSCA during an experimental fishing trip. Therefore, granting these EFPs should not result in an increase in fishing mortality over what was analyzed for Amendment 13 to the FMP. This study would follow normal jig fishing practices. A total allowable catch (TAC) of 10.0 mt for GB cod would be established for the experimental fishery. If the GB cod TAC is reached, the experimental fishery would be terminated. All fish landed would be subject to trip limits and minimum size restrictions.

REMSA scientists would collect biological and environmental data during each trip conducted under this experimental fishery. The EFPs would contain a provision that the Administrator, Northeast Region, NMFS (Regional Administrator) has the authority to discontinue the proposed experimental fishery at any time, *e.g.*, the Regional Administrator would terminate the EFP when the 10.0 mt TAC for GB cod is projected to be reached.

A draft EA has been prepared that analyzes the impacts of the proposed experimental fishery on the human environment. This draft EA concludes that the activities proposed to be conducted under the requested EFPs are consistent with the goals and objectives of the FMP, would not be detrimental to the well-being of any stocks of fish harvested, and would have no significant environmental impacts. The draft EA also concludes that the proposed experimental fishery would not be detrimental to Essential Fish Habitat, marine mammals, or protected species.

EFPs would be issued to up to seven vessels exempting them from the CA I and NLSCA restrictions of the FMP.

NMFS is particularly interested in receiving comments about granting the applicant access to the portion of CA I located within the U.S./Canada Management Area due to the hard TACs established by Amendment 13 to the FMP for GB cod, haddock and yellowtail flounder.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

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

Dated: July 15, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–1610 Filed 7–20–04; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

July 16, 2004.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: July 21, 2004.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.cbp.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously for swing, carryover, and the recrediting of unused 2003 carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 69 FR 4926, published on February 2, 2004). Also see 68 FR 65445 published on November 20, 2003.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 16, 2004.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 14, 2003, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 2004 and extends through December 31, 2004.

Effective on July 21, 2004, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Group I	
200, 218, 219, 226, 237, 239pt. [2], 300/301, 313–315, 317/326, 331pt. [3], 333–336, 338/339, 340–342, 345, 347/348, 351, 352, 359–C [4], 359–V [5], 360–363, 410, 433–436, 438, 440, 442–444, 445/446, 447, 448, 611, 613–615, 617, 631pt. [6], 633–636, 638/639, 640–643, 644, 645/646, 647, 648, 651, 652, 659–C [7], 659–H [8], 659–S [9], 666pt. [10], 845 and 846, as a group.	1,218,222,098 square meters equivalent.
Sublevels in Group I	
200	939,116 kilograms.
218	13,035,009 square meters.
219	3,003,569 square meters.
226	13,638,390 square meters.
237	2,571,765 dozen.
300/301	2,671,428 kilograms.
313	50,112,726 square meters.
314	60,274,062 square meters.

Category	Adjusted twelve-month limit [1]
315	148,896,877 square meters.
317/326	27,452,308 square meters of which not more than 5,012,216 square meters shall be in Category 326.
331pt.	2,423,333 dozen pairs.
333	126,140 dozen.
334	373,338 dozen.
335	418,241 dozen.
336	211,076 dozen.
338/339	2,523,532 dozen of which not more than 1,915,636 dozen shall be in Categories 338–S/339–S [11].
340	870,371 dozen of which not more than 435,186 dozen shall be in Category 340–Z [12].
341	768,099 dozen of which not more than 461,122 dozen shall be in Category 341–Y [13].
342	299,746 dozen.
345	137,085 dozen.
347/348	2,421,922 dozen.
351	704,081 dozen.
352	1,779,147 dozen.
359–C	778,198 kilograms.
359–V	1,070,846 kilograms.
360	9,978,257 numbers of which not more than 6,806,137 numbers shall be in Category 360–P [14].
361	5,213,065 numbers.
362	8,711,256 numbers.
363	24,773,109 numbers.
410	1,133,318 square meters of which not more than 908,477 square meters shall be in Category 410–A [15] and not more than 908,477 square meters shall be in Category 410–B [16].
433	21,905 dozen.
434	14,690 dozen.
435	26,979 dozen.
436	16,622 dozen.
438	29,088 dozen.
440	41,556 dozen of which not more than 23,746 dozen shall be in Category 440–M [17].
442	43,693 dozen.
443	140,015 numbers.
444	234,726 numbers.
445/446	301,999 dozen.
447	76,352 dozen.
448	24,402 dozen.
611	6,709,709 square meters.
613	9,316,769 square meters.
614	14,640,635 square meters.
615	31,059,697 square meters.
617	21,295,470 square meters.
631pt.	363,921 dozen pairs.
633	68,294 dozen.
634	742,984 dozen.
635	783,720 dozen.
636	599,272 dozen.
638/639	2,712,680 dozen.
640	1,475,575 dozen.
641	1,379,864 dozen.
642	412,004 dozen.
643	576,377 numbers.
644	3,860,023 numbers.
645/646	893,263 dozen.
647	1,727,190 dozen.
648	1,247,048 dozen.
651	921,695 dozen of which not more than 162,270 dozen shall be in Category 651–B [18].
652	3,497,598 dozen.
659–C	497,249 kilograms.
659–H	3,432,147 kilograms.
659–S	750,959 kilograms.
666pt.	573,372 kilograms.
845	2,538,315 dozen.
846	203,178 dozen.
Group II	
332, 359–O [19], 459pt. [20] and 659–O [21], as a group	44,114,716 square meters equivalent.

Category	Adjusted twelve-month limit [1]
Group III	
201, 220, 224–V [22], 224–O [23], 225, 227, 369–O [24], 400, 414, 469pt. [25], 603, 604–O [26], 618–620 and 624–629, as a group.	51,107,974 square meters equivalent.
Sublevels in Group III	
224–V	4,434,567 square meters.
225	7,650,474 square meters.
Group IV	
852	432,102 square meters equivalent.
Levels not in a Group	
369–S [27]	633,499 kilograms.
863–S [28]	9,097,625 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2003.

[2] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[3] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[4] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[5] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[6] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[7] Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[8] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[9] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[10] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

[11] Category 338–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023; Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[12] Category 340–Z: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

[13] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[14] Category 360–P: only HTS numbers 6302.21.3010, 6302.21.5010, 6302.21.7010, 6302.21.9010, 6302.31.3010, 6302.31.5010, 6302.31.7010 and 6302.31.9010.

[15] Category 410–A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[16] Category 410–B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.3030, 5112.11.3060, 5112.11.6030, 5112.11.6060, 5112.19.6010, 5112.19.6020, 5112.19.6030, 5112.19.6040, 5112.19.6050, 5112.19.6060, 5112.19.9510, 5112.19.9520, 5112.19.9530, 5112.19.9540, 5112.19.9550, 5112.19.9560, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

[17] Category 440–M: only HTS numbers 6203.21.9030, 6203.23.0030, 6205.10.1000, 6205.10.2010, 6205.10.2020, 6205.30.1510, 6205.30.1520, 6205.90.3020, 6205.90.4020 and 6211.31.0030.

[18] Category 651–B: only HTS numbers 6107.22.0015 and 6108.32.0015.

[19] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070 (Category 359–V); 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545 (Category 359pt.).

[20] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[21] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, 6211.12.1020 (Category 659–S); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

[22] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

[23] Category 224–O: all HTS numbers except 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020 (Category 224–V).

[24] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0805, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302.51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.0020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505 (Category 369pt.).

[25] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[26] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[27] Category 369–S: only HTS number 6307.10.2005.

[28] Category 863–S: only HTS number 6307.10.2015.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.04–16616 Filed 7–20–04; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

July 16, 2004.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: July 21, 2004.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.cbp.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 69 FR 4926, published on February 2, 2004). Also see 68 FR 65254, published on November 19, 2003.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 16, 2004.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 13, 2003, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on January 1, 2004 and extends through December 31, 2004.

Effective on July 21, 2004, you are directed to adjust the limits for the categories listed below, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month restraint limit [1]
Levels in Group I	
300/301	7,823,696 kilograms.
618–O [2]	2,161,579 square meters.
634/635	628,353 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2003.

[2] Category 618–O: all HTS numbers except 5408.24.9010 and 5408.24.9040.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.04–16617 Filed 7–20–04; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Former Yugoslav Republic of Macedonia

July 16, 2004.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: July 21, 2004.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.cbp.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing, special shift, and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 69 FR 4926, published on February 2, 2004). Also see 68 FR 68597, published on December 9, 2003.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 16, 2004.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 3, 2003 by the Chairman, Committee for the Implementation of Textile Agreements. This directive concerns imports of certain wool textile products, produced or manufactured in the Former Yugoslav Republic of Macedonia and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004.

Effective on July 21, 2004, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	adjusted twelve-month limit [1]
433	26,575 dozen.
434	12,669 dozen.
435	30,315 dozen.
443	182,857 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2003.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Inplementation of Textile Agreements.

[FR Doc. 04–16618 Filed 7–20–04; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 20, 2004.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to, U.S. Army Corps of Engineers, 441 G Street, NW., Washington, DC 20314–1000, ATTN: CECW–CO or by e-mail to *Margaret.E.Gaffney-Smith@usace.army.mil.* Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports clearance officer at (703) 325–8433.

Title, Associated Form, and OMB Number: Application for a Department of the Army Permit; ENG Form 4345, OMB Control Number 0710–0003.

Needs and Uses: Information collected is used to evaluate, as required by law, proposed construction or filing in waters of the United States that results in impacts to the aquatic environment and nearby properties, and to determine if issuance of a permit is in the public interest. Respondents are private landowners, businesses, non-profit organizations, and government agencies.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; farms; Federal government; State; local or tribal government.

Annual Burden Hours: 155,000.

Number of Respondents: 15,500.

Responses Per Respondent: 1.

Average Burden Per Response: 10 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: The Corps of Engineers is required by three federal laws, passed by Congress, to regulate construction-related activities in waters of the United States. This is accomplished through the review of applications for permits to do this work.

Brenda S. Bowen,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 04–16552 Filed 7–20–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, 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 September 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, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. 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: July 15, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Extension.

Title: Federal Direct Loan Program and Federal Family Education Loan Program Teacher Loan Forgiveness Forms.

Frequency: Forbearance annually; application one time.

Affected Public: Businesses or other for-profit; Individuals or household; not-for-profit institutions; Federal Government; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 8,700.

Burden Hours: 2,780.

Abstract: Borrowers who received loans from the William D. Ford Federal Direct Loan Program and/or the Federal Family Education Loan Program and who teach in low-income areas for five complete consecutive years, and who meet other requirements will use this application to receive up to $5,000 of their subsidized Federal Stafford Loans, unsubsidized Federal Stafford Loans, Direct Subsidize Loans, and/or Direct Unsubsidized loans forgiven. The information on the forbearance form will be used to determine whether borrowers with low balances are eligible for forbearance while they are performing qualifying teaching service.

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 2589. 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. 04–16525 Filed 7–20–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Regional Advisory Committees; Request for Nomination of Members

AGENCY: Office of Elementary and Secondary Education, U.S. Department of Education.

What Is the Purpose of This Notice?

The purpose of this notice is to give the public the opportunity to nominate candidates for positions on 10 regional advisory committees that will be chartered by the Secretary.

What Is the Role of the Regional Advisory Committees?

Section 206 of the Educational Technical Assistance Act of 2002 ("the Act") requires the establishment of the committees to advise the Secretary on the educational needs of each of 10 geographic regions. The committees will conduct educational needs assessments in their respective regions, and will submit reports on the assessment results to the Secretary. The educational needs identified by the committees will be considered by the Secretary in establishing priorities for a new program of comprehensive centers described in section 203 of the Act and for regional educational laboratories authorized in section 174 of the Education Sciences Reform Act of 2002. The comprehensive centers and regional educational laboratories will provide technical assistance to State educational agencies, school districts and schools to help them implement the goals and programs of the Elementary and Secondary Education Act of 1965, as reauthorized by the No Child Left Behind Act of 2002, and use the best research and proven practices in their school improvement efforts.

How Will the Regional Advisory Committees Assess Educational Needs?

Each regional advisory committee will conduct a variety of activities, including virtual meetings, to obtain information from individuals, agencies and organizations in the region regarding the region's educational needs and how those needs would be most effectively addressed. Governors, chief State school officers and State staff, school district educators, public and charter school administrators, teachers and parents, regional education service providers, researchers, and business representatives would be among those asked to participate in the assessment.

What Is the Composition of Each Regional Advisory Committee?

Each committee will reflect a balanced representation of the States in the region and will not have more than one representative from each State educational agency in the region. In addition, the total number of local educational agency representatives, parents, and practicing educators will be greater than the total number of State educational agency representatives, higher education representatives, business representatives and researchers on the committee. The committees will vary in size but, on average, may have about 12 members.

What States Are Included in Each Region?

The 10 regions are the same geographic regions served by the regional educational laboratories and include the following States and entities:

Region 1: Alabama, Florida, Georgia, Mississippi, North Carolina, and South Carolina

Region 2: Arkansas, Louisiana, New Mexico, Oklahoma, and Texas

Region 3: Arizona, California, Nevada, and Utah

Region 4: Kentucky, Tennessee, Virginia, and West Virginia

Region 5: Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont, Puerto Rico, and Virgin Islands

Region 6: Delaware, Maryland, New Jersey, Pennsylvania, and Washington, DC

Region 7: Colorado, Kansas, Missouri, Nebraska, North Dakota, South Dakota, and Wyoming

Region 8: Illinois, Indiana, Iowa, Michigan, Minnesota, Ohio, and Wisconsin

Region 9: Alaska, Idaho, Montana, Oregon, and Washington

Region 10: Hawaii, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia (Chuuk, Kosrae, Pohnpei, and Yap), Guam, the Republic of the Marshall Islands, and the Republic of Palau

Who Is Eligible To Be Nominated?

You may nominate:

1. State educational agency representatives
2. Local educational agency (both rural and urban) representatives
3. Representatives of institutions of higher education, including individuals representing university-based education research and university-based research in subjects other than education.
4. Parents.
5. Practicing educators, including classroom teachers, principals, administrators, school board members, and other local school officials.
6. Business representatives.
7. Researchers.

How Long Will Members of the Regional Advisory Committees Serve?

Members will serve for up to six months. The Secretary will dissolve each committee after the committee submits its needs assessment report. The report is due to the Secretary not later than 6 months after the committee is first convened.

How Can I Nominate Someone?

The nominator must submit for each nominee the following information to the U.S. Department of Education:

1. A resume of 5 pages or less that highlights relevant educational and professional experiences; and
2. A cover page that lists (a) the nominee's name, position, organization or group affiliation, mailing address, phone number(s), fax number, e-mail address and the State represented, and (b) the name, position, organization or group affiliation, mailing address, phone number(s) fax number and e-mail address of the person making the nomination.

Send the nomination materials electronically to Racnominations@ed.gov or by mail to Enid Simmons, US Department of Education, School Support and Technology Programs, 400 Maryland Avenue, SW., Room 3E303, Washington, DC 20202–6400. Telephone: 202–708–9499.

When Must Nominations Be Received?

All nominations must be received no later than 30 days from the date of the publication of this Notice, midnight Eastern Standard Time. If the 30th day falls on a weekend or a Federal holiday, the deadline will be the next working day.

How Can I Get Additional Information?

If you have questions about the nomination process or about the regional advisory committees, please send them electronically to Racrequest@ed.gov or by mail to Enid Simmons, U.S. Department of Education, School Support and Technology Programs, 400 Maryland Avenue, SW., Room 3E303, Washington, DC 20202–6400. Telephone: 202–708–9499.

Dated: July 15, 2004.

Raymond Simon,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 04–16591 Filed 7–20–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

General Atomics, Inc.; Notice of Intent to Grant Exclusive Patent License

AGENCY: Office of the General Counsel, Department of Energy.

ACTION: Notice of intent to grant exclusive patent license.

SUMMARY: Notice is hereby given to an intent to grant to General Atomics, Inc., of San Diego, CA, an exclusive license to practice the invention described in U.S. Patent No. 6,379,841, entitled "Solid State Electrochemical Current Source". The invention is owned by the United States of America, as represented by the U.S. Department of Energy (DOE).

DATES: Written comments or nonexclusive license applications are to be received at the address listed below no later than August 20, 2004.

ADDRESSES: Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: John T. Lucas, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, Forrestal Building, Room 6F–067, 1000 Independence Ave., SW., Washington, DC 20585; telephone (202) 586–2939.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 209 provides federal agencies with authority to grant exclusive licenses in federally-owned inventions, if, among other things, the agency finds that the public will be served by the granting of the license. The statute requires that no exclusive license may be granted unless public notice of the intent to grant the license has been provided, and the agency has considered all comments received in response to that public notice, before the end of the comment period.

General Atomics, Inc. of San Diego, CA has applied for an exclusive license to practice the invention embodied in U.S. Patent No. 6,379,841, and has plans for commercialization of the invention.

The exclusive license will be subject to a license and other rights retained by the U.S. Government, and other terms and conditions to be negotiated. DOE intends to negotiate to grant the license, unless, within 30 days of this notice, the Assistant General Counsel for Technology Transfer and Intellectual Property, Department of Energy, Washington, DC 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention in which applicant states that it already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

The Department will review all timely written responses to this notice, and will proceed with negotiating the license if, after consideration of written responses to this notice, a finding is made that the license is in the public interest.

Issued in Washington, DC on July 15, 2004.

Paul A. Gottlieb,

Assistant General Counsel for Technology, Transfer and Intellectual Property.

[FR Doc. 04–16585 Filed 7–20–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–371–000]

Chandeleur Pipe Line Company; Notice of Abbreviated Application for Certificate of Public Convenience

July 14, 2004.

Take notice that on July 1, 2004, Chandeleur Pipe Line Company (Chandeleur), pursuant to section 7(c) of the Natural Gas Act (NGA), as amended, and part 157 of the Commission's regulations submitted an abbreviated application for a certificate of public convenience and necessity, authorizing the acquisition of volumes of natural gas to comprise system line pack and the authority to include the costs of the line pack acquired hereunder in future rate filings. The cost of the proposed acquisition is $318,432.

Chandeleur states that the acquisition by Applicant of the line pack will ensure standardization with industry practice.

Questions regarding this application should be directed to Linda L. Geoghegan, at 2811 Hayes Road, Houston, TX 77082 or by telephone at (281) 596–3592 or via e-mail at *GeoghLL@ChevronTexaco.com.*

Any person desiring to be heard or to protest said application should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Take further notice that, pursuant to the authority contained in, and subject to the jurisdiction conferred upon the Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on the application if no motion to intervene is filed within the time required herein and if the Commission, on its own review of the matter, finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission, on it own motion, believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Chandeleur to appear or be represented at the hearing.

Comment Date: July 29, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1616 Filed 7–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP04–370–000 and RP96–383–058]

Dominion Transmission, Inc.; Notice of Abandonment of Service and Negotiated Rate Agreement

July 14, 2004.

Take notice that on June 30, 2004, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following Pro Forma tariff sheets:

Third Revised Sheet No. 6
Fifth Revised Sheet No. 1404

DTI also submitted, as part of its FERC Gas Tariff, First Revised Volume No. 2, the following Pro Forma tariff sheets:

Second Revised Sheet No. 5
First Revised Sheet No. 293
Sheet Nos. 294–308

DTI requests an effective date of August 1, 2004 for its proposed tariff sheets. DTI states that the purpose of this filing is to convert its individually certificated service under Rate Schedule X–70 to open access service under part 284.

Any person desiring to be heard or to protest said application should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Intervention and Protest Date: July 29, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1615 Filed 7–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

July 14, 2004.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters.

b. *Project No.:* 2503–082.

c. *Date Filed:* July 8, 2004.

d. *Applicant:* Duke Energy Corporation.

e. *Name of Project:* Keowee-Toxaway Hydroelectric Project.

f. *Location:* The project is located on Lake Keowee in Oconee County, South Carolina. The project does not utilize Federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Joe Hall, Duke Energy Company, P.O. Box 1006, Charlotte, NC 28201–1006. Phone: (704) 382–8576

i. *FERC Contact:* Any questions on this notice should be addressed to Shana High at (202) 502–8674.

j. *Deadline for filing comments and/or motions:* August 3, 2004.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2503–082) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages e-filings.

k. *Description of Proposal:* Duke Energy Corporation proposes to lease 0.313 acres of project property to Keowee Key Property Owners Association for a commercial/residential marina which will consist of one cluster dock with 14 slips. The lease will increase a previously approved lease area from 11.34 acres to 11.653 acres. The cluster dock will be constructed of treated wood and encapsulated Styrofoam. No dredging will be required for the construction and operation of these facilities.

l. *Locations of the Application:* This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for 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", "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. 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. E4–1619 Filed 7–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04-188-003]

Great Lakes Gas Transmission Limited Partnership; Notice of Compliance Filing

July 14, 2004.

Take notice that on July 8, 2004, Great Lakes Gas Transmission LimitedPartnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, proposed to be effective April 1, 2004:

First Revised Sheet No. 50R
First Revised Sheet No. 50S

Great Lakes states that these tariff sheets are being filed to comply with the Commission's June 23, 2004 Order on Rehearing and Compliance, wherein the Commission accepted Great Lakes' tariff sheets as proposed in its April 30, 2004, compliance filing in Docket No. RP04-188-002, and granted, in part, and denied, in part, Great Lakes' request for rehearing in Docket No. RP04-188-001. Great Lakes states that it was directed to file revised tariff sheets within fifteen (15) days of the June 23 Order consistent with the Commission directives to provide objective criteria for evaluating the outlook and history of a shipper as part of its creditworthiness review, and notice to shippers of the basis for a non-creditworthy determination, as set forth in that Order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1623 Filed 7–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02-118-008]

High Island Offshore System, L.L.C.; Notice of Negotiated Rate Filing

July 14, 2004.

Take notice that on July 8, 2004, High Island Offshore System, L.L.C. (HIOS), tendered for filing and acceptance (1) a Gas Transportation Agreement between HIOS and Walter Oil and Gas Corporation (Walter) pursuant to HIOS' Rate Schedule IT; (2) a Negotiated Rate

Letter Agreement between HIOS and Walter dated August 1, 2004; and (3) a Reserve Commitment Agreement between HIOS and Walter dated August 22, 2003.

HIOS states that the filed agreements reflect a negotiated rate arrangement between HIOS and Walter that will become effective on August 1, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1622 Filed 7–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–102]

Natural Gas Pipeline Company of America; Notice of Negotiated Rate

July 14, 2004.

Take notice that on July 9, 2004, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, with an effective date of July 10, 2004.

Natural states that the purpose of this filing is to implement an amendment to an existing negotiated rate transaction entered into by Natural and Occidental Energy Marketing, Inc., under Natural's Rate Schedule FTS pursuant to section 49 of the General Terms and Conditions of Natural's 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 be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1614 Filed 7–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–329–001]

Questar Southern Trails Pipeline Company; Notice of Tariff Filing

July 14, 2004.

Take notice that on July 12, 2004, Questar Southern Trails Pipeline Company (Southern Trails) tendered for filing an amendment to its June 11, 2004, tariff filing. Questar states that the amended filing consists of the following tariff sheets to Original Volume No. 1 of its FERC Gas Tariff:

Substitute Third Revised Sheet Nos. 1 and 30
Substitute Original Sheet No. 114

Southern Trails states that a copy of this filing has been served upon its customers and the Public Service Commissions of Utah, New Mexico, Arizona, and California.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1624 Filed 7–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Soliciting Comments, Motions To Intervene, and Protests

July 14, 2004.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands.

b. *Project No.:* 516-394.

c. *Date Filed:* June 25, 2004.

d. *Applicant:* South Carolina Electric & Gas Company.

e. *Name of Project:* Saluda Project.

f. *Location:* Lake Murray in Saluda County, South Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Randolph R. Mahan, Manager, Environmental Programs and Special Projects, SCANA Services, Inc., Columbia, SC 29218, (803) 217-9538.

i. *FERC Contacts:* Any questions on this notice should be addressed to Mrs. Jean Potvin at (202) 502-8928, or e-mail address: *jean.potvin@ferc.gov.*

j. *Deadline for filing comments and or motions:* August 16, 2004.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P-516-394) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages e-filings.

k. *Description of Request:*

The licensee proposes to issue a permit authorizing Westshore Limited to excavate 3,260 cubic yards of material from within an area of 0.918 acres in waters of Lake Murray at the existing Spinners Marina.

l. *Location of the Application:* The filing is available for review at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnLineSupport@ferc.gov* or toll free (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", "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. 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.

q. Comments, protests and interventions may be filed electronically via the Internet 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* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1620 Filed 7–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT95–11–006]

Southern Star Central Gas Pipeline, Inc; Notice of Refund Report

July 14, 2004.

Take notice that on June 14, 2004, Southern Star Central Gas Pipeline, Inc. (Southern Star), formerly Williams Gas Pipelines Central, Inc., tendered for filing a report of activities regarding collection of Kansas ad valorem taxes in Southern Star's Docket No. GT95–11.

Southern Star states that this filing is being made in compliance with a Commission order directing that the pipelines file reports concerning their activities to collect and flow through refunds of the taxes at issue. Southern Star further states that this filing reflects amounts still due to Southern Star in Docket No. GT95–11 as a result of the Kansas ad valorem tax refunds ordered by the Commission in 1993 and related to tax payments originally made in 1988 and after.

Southern Star states that a copy of its filing was served on all parties included on the official service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208-3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Protest Date: July 21, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1617 Filed 7–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–12–002]

TransColorado Gas Transmission Company; Notice of Compliance Filing

July 14, 2004.

Take notice that on July 1, 2004, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of August 1, 2004:

Seventh Revised Sheet No. 21
First Revised Sheet No. 22B

TransColorado is filing the above-referenced tariff sheets in compliance with the Commission's "Order Issuing Certificate" dated March 24, 2004, in Docket No. CP04–12–000.

TransColorado states that a copy of this filing has been served upon all

parties on the official service list for this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Protest Date: July 29, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1625 Filed 7–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–130–000, et al.]

American Transmission Company LLC, et al.; Electric Rate and Corporate Filings

July 12, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. American Transmission Company LLC

[Docket No. EC04–130–000]

Take notice that on July 8, 2004, American Transmission Company LLC (ATCLLC) tendered for filing an Application for Authority to Acquire Transmission Facilities Under section 203 of the Federal Power Act. ATCLLC requests that the Commission authorize ATCLLC to acquire ownership of certain transmission facilities from the Wisconsin Public Service Corporation. ATCLLC requests an effective date of August 15, 2004.

Comment Date: July 29, 2004.

2. CSW Ft. Lupton, Inc. Thermo Holdings LP

[Docket No. EC04–131–000]

Take notice that on July 9, 2004, CSW Ft. Lupton, Inc. (CSW) and Thermo Holdings LP (Thermo) (jointly, Applicants) filed with the Commission an application pursuant to section 203 of the Federal Power Act (FPA) for authorization for the sale and transfer of all except one tenth of one percent of CSW's partnership interests in Thermo Cogeneration Partnership, L.P. (Thermo Cogen) to Thermo (which will result in an indirect change of control over the FPA jurisdictional facilities owned by Thermo Cogen).

Comment Date: July 30, 2004.

3. New York Independent System Operator, Inc.

[Docket Nos. ER03–552–009 and ER03–984–007]

Take notice that on July 6, 2004, the New York Independent System Operator, Inc. (NYISO) tendered for filing a compliance filing pursuant to the Commission's order issued June 2, 2004, in Docket Nos. ER03–552–006 *et al.*

NYISO states that it has served a copy of this filing to all parties listed on the official service list maintained by the Secretary of the Commission in these proceedings. NYISO states that it has also served a copy of this filing to all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: July 27, 2004.

4. Public Service Company of New Mexico

[Docket No. ER04–416–002]

Take notice that on July 6, 2004, Public Service Company of New Mexico (PNM) submitted a filing containing certain revisions to PNM's Open Access Transmission Tariff (OATT), in compliance with the Commission's Order issued June 4, 2004, 107 FERC ¶ 61,255.

PNM states that copies of the filing have been sent to all PNM large generation interconnection customers, to all entities that have pending large generation interconnection requests with PNM, to the New Mexico Public Regulation Commission, and to the New Mexico Attorney General.

Comment Date: July 27, 2004.

5. Nevada Power Company and Sierra Pacific Power Company

[Docket No. ER04–418–003]

Take notice that on July 6, 2004, Nevada Power Company and Sierra Pacific Power Company (collectively, the Nevada Companies) submitted a compliance filing pursuant to the Commission's order issued June 4, 2004, 107 FERC ¶ 61,255.

Comment Date: July 27, 2004.

6. Central Vermont Public Service Corporation

[Docket Nos. ER04–510–003 and EL04–88–002]

Take notice that on July 6, 2004, Central Vermont Public Service Corporation (Central Vermont) in response to a deficiency letter issued June 15, 2004, additional information relating to Substitute Original Service Agreement No. 46, a revised unexecuted interconnection Agreement with North Hartland, LLC filed on April 12, 2004, in Docket Nos. ER04–510–002 and EL04–88–001.

Central Vermont states that copies of the filing were served upon North Hartland, LLC, the Vermont Department of Public Service, and the Vermont Public Service Board.

Comment Date: July 27, 2004.

7. Southern California Edison Company

[Docket No. ER04–724–001]

Take notice that on July 6, 2004, Southern California Edison Company (SCE), tendered for filing supplemental information pursuant to the Commission's letter issued June 4, 2004, regarding its April 9, 2004, filing in Docket No. ER04724–000.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California, FPL Energy Green Power Wind, LLC and Commission Staff.

Comment Date: July 27, 2004.

8. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–754–001]

Take notice that on July 6, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), in compliance with the Commission's order issued June 4, 2004, in Docket No. ER04–754–000, submitted for filing on behalf of itself and American Transmission Company LLC (ATCLLC) and Wisconsin Public Service Corporation (WPSC) a proposed Amendment No. 1 to the Amended and Restated Generation-Interconnection Agreement between ATCLLC, WPSC, and the Midwest ISO.

Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all state commissions within the region. Midwest ISO notes that the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter. The Midwest ISO states that it will provide hard copies to any interested parties upon request.

Comment Date: July 27, 2004.

9. Renaissance Power, L.L.C.

[Docket No. ER04–992–000]

Take notice that on July 7, 2004, Renaissance Power, L.L.C. (Renaissance) 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 a rate schedule under which it specifies its revenue requirement for providing cost-based Reactive Support and Voltage Control from Generation Sources within the Michigan Electric Transmission Company, LLC (METC) control area. Renaissance requests an effective date of September 1, 2004.

Renaissance states that it has provided copies of the filing to METC, and the Midwest Independent System Operator, Inc., and the Michigan Public Service Commission.

Comment Date: July 28, 2004.

10. Duke Energy Corporation

[Docket No. ER04–993–000]

Take notice that on July 7, 2004, Duke Energy Corporation, on behalf of Duke Electric Transmission, (collectively, Duke) tendered for filing a revised Network Integration Transmission Service Agreement (NITSA) between Duke and North Carolina Municipal Power Authority No. 1. Duke seeks an effective date for the revised NITSA of July 1, 2004.

Comment Date: July 28, 2004.

11. Boston Generating, LLC

[Docket No. ER04–994–000]

Take notice that on July 7, 2004, Boston Generating, LLC (Boston Generating) submitted for filing, pursuant to section 205 of the Federal Power Act and part 35 of the Commission's regulations an application for market-based rate authorization to sell energy, capacity, and ancillary services, and reassign transmission capacity and resell firm transmission rights. Boston Generating requests the waivers and exemptions from regulation typically granted to the holders of market-based rate authorization. Boston Generating requests an effective date of August 1, 2004.

Comment Date: July 28, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). 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 motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1611 Filed 7–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL04–110–000, et al.]

New York Independent System Operator, Inc., et al.; Electric Rate and Corporate Filings

July 14, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. New York Independent System Operator, Inc., Central Hudson Gas & Electric Corporation, LIPA, New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Rochester Gas and Electric Corporation v. New York Independent System Operator, Inc., New York Independent System Operator, Inc.

[Docket No. EL04–110–000, Docket No. EL04–113–001, (Not Consolidated), Docket No. EL04–115–001, and Docket No. ER04–983–001]

Take notice that on July 13, 2004, the New York Independent System Operator, Inc. (NYISO) filed proposed revisions to its Market Administration and Control Area Services Tariff and Open Access Transmission Tariff under its authority to make unilateral tariff filings in "exigent circumstances." NYISO states that the proposed tariff revisions are part of a comprehensive offer of settlement that the NYISO has submitted in the above-captioned proceedings.

The NYISO states that it has electronically served a copy of this filing on the official representative of each of its customers, on each participant in its stakeholder committees, and on the New York State Public Service Commission.

Comment Date: July 20, 2004.

2. Perryville Energy Partners, L.L.C. and Entergy Services, Inc. on Behalf of Entergy Louisiana, Inc.

[Docket No. EL04–118–000]

Take notice that on July 12, 2004, Perryville Energy Partners, L.L.C. (PEP) and Entergy Services, Inc., on behalf of Entergy Louisiana, Inc. +, filed with the Federal Energy Regulatory Commission a petition for declaratory order that the Commission disclaim jurisdiction over the disposition of PEP's generating facility located near Perryville, Louisiana.

PEP states that a copy of the petition was served upon the Louisiana Public Service Commission, the Arkansas Public Service Commission, the Mississippi Public Service Commission, the New Orleans City Council, and the Public Utility Commission of Texas.

Comment Date: August 2, 2004.

3. Alabama Power Company

[Docket Nos. ER04–664–002]

Take notice that on July 9, 2004, Alabama Power Company made a compliance filing in accordance with the Federal Energy Regulatory Commission's order in Alabama Power Company, 107 FERC ¶ 61,146 (2004).

Comment Date: July 30, 2004.

4. PPL Distributed Generation, LLC

[Docket No. ER04–671–000 and ER04–671–001]

On July 12, 2004, PPL Distributed Generation, LLC (PPL Distributed Generation) submitted a Notice of Withdrawal of its market-based rate application and of its later filed request for extension of time. PPL Distributed Generation requests an effective date of July 26, 2004.

Comment Date: July 22, 2004.

5. Vermont Electric Cooperative, Inc.

[Docket No. ER04–694–002]

Take notice that on July 9, 2004, Vermont Electric Cooperative, Inc. (VEC), submitted a supplement to its March 31, 2004 application for market-based rate authority originally filed with the Commission on March 31, 2004. VEC is requesting such authority, effective January 1, 2003.

Comment Date: July 30, 2004.

6. Southern Company Services, Inc.

[Docket No. ER04–952–000]

Take notice that on July 8, 2004, Southern Company Services, Inc. (SCS), on behalf of Georgia Power Company (GPC), filed with the Commission a clarification of its June 23, 2004 Notice of Cancellation of the Interconnection Agreement between Southern Power Company and GPC, Service Agreement No. 458, under Southern Companies' Open Access Transmission Tariff, Fourth Revised Volume No. 5.

Comment Date: July 29, 2004.

7. PJM Interconnection, L.L.C.

[Docket No. ER04–1000–000]

Take notice that on July 9, 2004, PJM Interconnection, L.L.C. (PJM), submitted for filing an executed first revised second interim interconnection service agreement between PJM and Armstrong Energy Limited Partnership, L.L.L.P. PJM requests a waiver of the Commission's 60-day notice requirement to permit a June 10, 2004 effective date for the Interim ISA.

PJM states that copies of this filing were served upon the parties to the agreement and the state regulatory commissions within the PJM region.

Comment Date: July 30, 2004.

8. Ameren Energy Marketing Co. Central Illinois Public Service Company d/b/a/ AmerenCIPS

[Docket No. ER04–1001–000]

Take notice that on July 9, 2004, Ameren energy Marketing Company (AME) and Central Illinois Public Service Company d/b/a/ AmerenCIPS, (collectively, Ameren Companies) pursuant to section 205 of the Federal Power Act (FPA), 16 U.S.C. 824b, and section 35.13 of the Commission's regulations, 18 CFR 35.13, filed an amendment to an existing electric power sales agreement between them to extend the term of that agreement from December 31, 2004, through December 31, 2006, and to make other minor conforming changes to this agreement. Ameren Companies requests an effective date of September 7, 2004.

Ameren Companies state that copies of this filing have been served on all affected state commissions.

Comment Date: July 30, 2004.

9. Alabama Power Company

[Docket No. ER04–1002–000]

Take notice that on July 9, 2004, Alabama Power Company (Alabama Power) filed an Exhibit F to the Amended and Restated Agreement for Partial Requirements and Complementary Services between Alabama Power and the Alabama Municipal Electric Authority (AMEA) (Alabama Power Rate Schedule No. 168). Alabama Power states that the amendment sets forth its and AMEA's agreement regarding the addition of a new point of connection in accordance with the Amended PR Agreement. An effective date of May 1, 2004 is requested.

Comment Date: July 30, 2004.

10. American Electric Power Service Corporation

[Docket No. ER04–1003–000 and ER04–1007–000]

Take notice that on July 9, 2004, American Electric Power Service Corporation on behalf of Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, AEP Texas Central Company, AEP Texas North Company and Wheeling Power Company, (collectively AEP) filed revisions to their Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff, Third Revised Volume No. 6.

AEP states that a copy of the transmittal letter has been served on all parties to this proceeding, all customers under the tariff and a copy of the filing has been served on the State public service commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment Date: July 30, 2004.

11. Alpena Power Generation, L.L.C.

[Docket No. ER04–1004–000]

Take notice that on July 9, 2004, Alpena Power Generation, L.L.C. (Alpena Generation), tendered for filing a request for market-based rate authority and a request for waiver of the sixty-day notice requirement. Alpena Generation also requests waiver from the Commission's code of conduct, and waiver of the accounting, reporting and other requirements under parts 41, 101, and 141 of the Commission's regulations.

Comment Date: July 30, 2004.

12. EcoElectrica, L.P.

[Docket No. QF95–328–006]

Take notice that on July 7, 2004, EcoElectrica, L.P. (EcoElectrica) filed an amendment to the application filed April 18, 2004, in compliance with the Letter Order issued July 2, 2004, in Docket No. QF95–328–006.

Comment Date: July 30, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). 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 motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1612 Filed 7–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–123–004, et al.]

Boston Edison Company, et al., Electric Rate and Corporate Filings

July 13, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Boston Edison Company

[Docket No. EL02–123–004]

Take notice that, on July 2, 2004, Boston Edison Company (BECo) submitted its compliance filing pursuant to the Commission's Order issued June 2, 2004 in Docket No. EL02–123–002, 107 FEC ¶ 61,248.

BECo states that Copies of the filing were served upon the official service list in the above-captioned proceeding and the affected customers.

Comment Date: July 23, 2004.

2. Devon Power LLC, Middletown Power LLC, Montville Power LLC, and NRG Power Marketing Inc

[Docket No. ER03–563–040]

Take notice that on July 8, 2004, Middletown Power LLC (Middletown) and Norwalk Power LLC (Norwalk) tendered for filing revisions to the True-Up Schedules to the Cost-of-Service Agreements between Middletown and Norwalk and ISO New England Inc. (ISO–NE) filed April 7, 2004 in Docket No. ER03–563–032 and amended on June 28, 2004 in Docket No. ER03–563–037.

Middletown and Norwalk state that they have provided copies of the Revised True-Up Schedules to ISO–NE and served each person designated on the official service list compiled by the Secretary in Docket No. ER03–563.

Comment Date: July 29, 2004.

3. New York Independent System Operator Inc.

[Docket No. ER03–836–005]

Take notice that on July 8, 2004, New York Independent System Operator Inc. (NYISO) tendered for filing its third and 10-Minute Non-Synchronous Reserve Market Report (Report). NYISO states that the Report is in response to Commission's order issued July 1, 2003 Conditionally Accepting Proposed Tariff Revisions in Docket No. ER03–836–000.

Comment Date: July 29, 2004.

4. Arizona Public Service Company

[Docket No. ER04–442–003]

Take notice that July 1, 2004 Arizona Public Service Company (APS) submitted for filing revisions to its Open Access Transmission Tariff (OATT) in compliance with the Commission's order issued June 4, 2004 in Docket No. ER04–442–002.

APS states that copies of this letter have been served on all parties on the service list.

Comment Date: July 22, 2004.

5. MidAmerican Energy Company

[Docket No. ER04–627–001]

Take notice that on July 8, 2004, MidAmerican Energy Company (MidAmerican), filed a revised Transmission Operating Agreement between MidAmerican and Nebraska Public Power District in compliance with the Commission's letter order issued May 7, 2004 in Docket No. ER04–627–000.

MidAmerican states that it has served a copy of the filing on the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment Date: July 29, 2004.

6. MAG Energy Solutions Inc.

[Docket No. ER04–839–001]

Take notice that on July 6, 2004, MAG Energy Solutions Inc. (MAG E.S.) submitted for filing additional information and a revised rate schedule regarding its Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority filed May 13, 2004 in Docket No. ER04–839–001.

Comment Date: July 28, 2004.

7. Kansas City Power & Light Company

[Docket No. ER04–982–000]

Take notice that on July 1, 2004, Kansas City Power & Light Company, (KCPL) submitted for filing a Notice of Cancellation of Service Schedules B, D, E and F to KCPL's Rate Schedule FERC No. 88.

KCPL states that it has served a notice of the proposed cancellation on Missouri Public Service Commission, Kansas Corporation Commission and The Empire District Electric Company.

Comment Date: July 22, 2004.

8. Panda Leesburg Power Partners, L.P.

[Docket No. ER04–995–000]

Take notice that on July 9, 2004, Panda Leesburg Power Partners, L.P., (Panda Leesburg), pursuant to 18 CFR 35.13 and 131.53 of the Commission's Rules and Regulations, submitted for filing a Notice of Cancellation of Panda Leesburg's FERC Rate Schedule No. 1. Panda Leesburg requests an effective date of August 20, 2003.

Comment Date: July 30, 2004.

9. Panda Midway Power Partners, L.P.

[Docket No. ER04–996–000]

Take notice that on July 9, 2004, Panda Midway Power Partners, L.P., (Panda Midway), pursuant to 18 CFR 35.13 and 131.53 of the Commission's Rules and Regulations, submitted for filing a Notice of Cancellation of Panda Midway's FERC Rate Schedule No.1. Panda Midway requests an effective date of April 12, 2004.

Comment Date: July 30, 2004.

10. Panda Perkiomen Power, L.P.

[Docket No. ER04–997–000]

Take notice that on July 9, 2004, Panda Perkiomen Power, L.P. (Panda Perkiomen) pursuant to 18 CFR 35.13 and 131.53 of the Commission's Rules and Regulations, submitted for filing a Notice of Cancellation of Panda Perkiomen's FERC Rate Schedule No. 1. Panda Perkiomen requests an effective date of August 20, 2003.

Comment Date: July 30, 2004.

11. Vermont Electric Cooperative, Inc.

[Docket No. ER04–998–000]

Take notice that on July 9, 2004, Vermont Electric Cooperative, Inc. (VEC) tendered for filing, pursuant to section 205 of the Federal Power Act, Rate Schedule FERC No. 11 and two Notices of Cancellation of its existing First Revised Rate Schedule FERC Nos. 5 and 7, affecting the terms and conditions of service to Barton Village, Inc. Electric Department (Barton) and the Village of Orleans Electric Department (Orleans). VEC requests an effective date of April 1, 2004.

VEC states that copies of the filing were served on Barton, Orleans, Vermont Electric Power Company, Inc., the Vermont Public Service Board, and the Vermont Department of Public Service.

Comment Date: July 30, 2004.

12. LG&E Westmoreland Rensselaer

[Docket No. ER04–999–000]

Take notice that on July 8, 2004, LG&E Westmoreland Rensselaer (LG&E Westmoreland) tendered for filing, in accordance with 18 CFR 35.15 of the Commission's Rules and Regulations, a Notice of Cancellation of its Rate Schedule FERC No. 1, Revision No. 1, and all supplements thereto. LG&E Westmoreland requests an effective date of July 1, 2004.

Comment Date: July 29, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). 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 motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1613 Filed 7–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF04-13-000]

El Paso Pipeline Group, Western Pipelines; Notice of Intent To Prepare an Environmental Impact Statement for the Piceance Basin Expansion Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings and Route Inspection

July 14, 2004.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) on the El Paso Pipeline Group, Western Pipeline's (El Paso) planned Piceance Basin Expansion Project in northwestern Colorado and south-central Wyoming. This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the planned project. Your input will help to determine which issues need to be evaluated in the EIS. The Commission will use the EIS in its decisionmaking process to determine whether or not to authorize the project. Please note that the scoping period will close on August 16, 2004.

Comments may be submitted in written form or verbally. Further details on how to submit written comments are provided in the Public Participation section of this notice. In lieu of sending written comments, you are invited to attend the public scoping meetings scheduled as follows:

SCHEDULE FOR PUBLIC SCOPING MEETINGS

Date and time	Location
August 3, 2004, at 7 p.m.	Moffat County Commissioner's Office—Shadow Mountain Facility, 1055 County Road 7, Craig, CO.
August 4, 2004, at 7 p.m.	Meeker Community Center—Fairfield Center, 200 Main Street, Meeker, CO.

Note that El Paso plans to hold open house meetings to announce its project to the public on the same dates and at the same locations as the FERC public scoping meetings. The open houses will begin at 6:30 p.m.

Public scoping meetings are being held in the two Colorado counties where the majority of the planned facilities would be located. Because El Paso's planned pipeline would be located along the same route in Wyoming as the planned Entrega Pipeline Project (PF04-7-000) for which scoping was recently concluded, we are not scheduling an additional public meeting in Wyoming. However, this should not discourage the submission of written comments regarding the facilities planned for the Wyoming portion of El Paso's project.

This notice is being sent to 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 [1] urge government representatives to notify their constituents of this planned project and encourage them to comment on their areas of concern.

Summary of the Proposed Project

El Paso is planning to construct, own, and operate a new 143-mile, 24-inch-diameter interstate natural gas pipeline that will extend from its existing Greasewood Compressor Station near Meeker in the Piceance Basin of Rio Blanco County, Colorado, to its existing Wamsutter Compressor Station in Sweetwater County near Wamsutter, Wyoming. Here, the new pipeline would interconnect with existing pipeline systems owned by Wyoming Interstate Company and Colorado Interstate Gas Company (CIG). This project could add at least 350,000 decatherms per day of new capacity to transport natural gas from the Western Rocky Mountain Region to markets in the midwestern and eastern United States.

The project would include the addition of compression at the Greasewood Compressor Station, and construction of other appurtenant facilities. The proposed pipeline alignment would follow existing pipeline or utility corridors for about 85 percent of its length.

One of El Paso's customers would need to transport gas between a location in the Parachute Valley, Garfield County, Colorado, and the Greasewood Compressor Station. Various transport means, including the use of both existing and new facilities, are under consideration. However, one option would require construction of a new 36-mile-long interconnecting pipeline from the area of the existing Roan Cliffs Meter Station (north of Parachute) to the Greasewood Compressor Station. If constructed, the route of the interconnecting pipeline would generally parallel CIG's existing Parachute Creek Lateral pipeline. Information on an interconnecting pipeline will be included in the analysis presented in the EIS. Construction of

[1] "We," "us," and "our" refer to the environmental staff of the FERC's Office of Energy Projects.

new interconnecting facilities would be the responsibility of the customer.

A map depicting El Paso's planned pipeline route between the Greasewood Compressor Station and the Wamsutter area, and the interconnecting pipeline route between the Roan Cliffs Meter Station and the Greasewood Compressor Station is provided in appendix 1.[2]

El Paso plans to place the project in service by June 2006, with the majority of pipeline construction completed by the end of 2005. To achieve the initial in-service date, El Paso intends to request approval to begin construction of the Piceance Basin Expansion facilities in August 2005.

Land Requirements

El Paso's planned pipeline would disturb about 1,750 acres of land during construction. Where paralleling another pipeline, the new pipeline would typically be located about 50 to 75 feet from the existing pipeline. El Paso plans to use a 100-foot-wide right-of-way (ROW) during construction, and subsequently maintain a 50-foot-wide permanent ROW. The construction ROW would be expanded at special work areas (*e.g.,* steep slopes, major stream crossings).

Construction of the interconnecting pipeline would disturb about 450 acres during construction, based on a 100-foot-wide construction ROW. A 50-foot permanent right-of-way would be requested for this pipeline.

The EIS Process

The FERC will be the lead Federal agency for the EIS process, which is being conducted to satisfy the requirements of the National Environmental Policy Act (NEPA). 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 (Certificate).

NEPA also requires us to discover and address issues and concerns the public may have about proposals which come before the Commission, and to ensure those issues and concerns are analyzed in the EIS. This process is referred to as "scoping." The goal of the scoping process is to focus the analysis in the EIS on the important and potentially significant environmental issues related to the proposed action, and on reasonable alternatives. This notice formally announces the beginning of the scoping process and requests agency and public comments on El Paso's planned Piceance Basin Expansion Project. All scoping comments received will be considered during the preparation of the EIS. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section of this notice.

Our independent analysis of El Paso's planned project will be included in a 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 Commission's official service list. A 45-day comment period will be allotted for review of the EIS. We will consider all timely comments and revise the document, as necessary, before issuing a final EIS.

The El Paso's planned Piceance Basin Expansion Project is in the preliminary design stage. At this time, specific routing and other details are being finalized and no formal application has been filed with the FERC. El Paso expects to file a formal application with the FERC in November 2004. Although we have no formal Certificate application, we are initiating our environmental review of El Paso's planned project under our NEPA Pre-Filing Process. The purpose of the FERC's NEPA Pre-filing Process is to:

- Establish a framework for constructive discussion between the project proponents, potentially affected landowners, agencies, and the Commission staff;
- Encourage the early involvement of interested stakeholders to identify issues and study needs; and
- Attempt to resolve issues early, before an application is filed with the FERC.

We have already held early discussions with the U.S. Department of the Interior's Bureau of Land Management, which has agreed to assist us in the preparation of the EIS as a cooperating agency to satisfy its NEPA responsibilities. By this notice, we are asking other Federal, State, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us, too. Agencies that would like to request cooperating status should follow the instructions for filing comments provided below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the planned project. Please focus your comments on the potential environmental effects, reasonable alternatives (including alternative facility sites and pipeline routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please mail your comments so that they will be received in Washington, DC on or before August 16, 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 Street, NE., Room 1A, Washington, DC 20426;
- Label one copy of your comments for the attention of Gas Branch 1; and
- Reference Docket No. PF04–13 on the original and both copies.

The public scoping meetings (*see* page 1 of this notice) are designed to provide another opportunity to offer comments on the planned project. Interested groups and individuals are encouraged to attend the meetings and present comments on the environmental issues they believe should be addressed in the EIS. A transcript of the meetings will be made so that your comments will be accurately recorded.

A docket number (PF04–13–000) has been established to place information filed by El Paso, related documents issued by the Commission, and public scoping comments into the public record.[3] 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 NEPA 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.

The Commission encourages electronic filing of comments. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the "eFiling" link and the link to the User's Guide. Prepare your submission in the same manner as you

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Internet Web site *http://www.ferc.gov*) at the "eLibrary" link or from the Commission's Public Reference Room at (202) 502–8371. For instructions on connecting to eLibrary, refer to the end of this notice. Copies of the appendices are being sent to all those receiving this notice in the mail.

[3] To view information in the docket, follow the instructions for using the eLibrary link in Availability of Additional Information, below.

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 a free 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."

Route Inspection

Concurrent with the public scoping meetings (August 3 and 4, 2004), we will also be conducting an inspection of the route and locations of aboveground facilities associated with El Paso's planned project. This inspection wili include both aerial and ground components. Anyone interested in participating in the inspection activities may contact the FERC's Office of External Affairs (identified below) for more details and must provide their own transportation.

Environmental Mailing List

If you wish to remain on our mailing list to receive any additional environmental notices and copies of the draft and final EIS, it is important that you return the Return Mailer (appendix 2) attached to this notice. If you do not return the mailer, you will be removed from our mailing list.

Availability of Additional Information

Additional information about the planned project is available from the Commission's Office of External Affairs, at 1–866–208–FERC (3372) 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 (*i.e.*, PF04–13–000) excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659.

The Commission now offers a free service called eSubscription that 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. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm*.

In addition, a fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" is available for viewing on the FERC Internet Web site. 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.

El Paso has initiated a Public Participation Plan to provide a means of communication for participating stakeholders. A toll-free number has been established for communicating with El Paso regarding this project (Mr. David R. Anderson, Land Department Manager, 1–877–598–5263). Also, contacts and information requests can be made by e-mail directly to El Paso at *david.r.anderson@elpaso.com*. Finally, El Paso plans to establish a Web site for this project by the end of July 2004. The Web site will include a list of public repositories along the planned route where all maps and Federal applications are available for inspection, frequently asked questions regarding the planned project, and other useful information. El Paso's Web site will be: *http://www.elpaso.com*.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1621 Filed 7–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2244—Washington]

Energy Northwest; Notice of Site Visit

July 13, 2004.

Energy Northwest, Licensee for the Packwood Lake Hydroelectric Project (FERC No. 2244), will be hosting a site visit for the project on August 27, 2004. The site visit is being conducted to provide all parties interested in the Project's relicensing an opportunity to view the project's facilities and surrounding area. Commission staff will be attending the site visit and providing an overview of the Commission's Integrated Licensing Process (ILP), the process Energy Northwest is currently pursuing for the licensing of the project.

Under the ILP, the Commission conducts its National Environmental Policy Act (NEPA) scoping meeting within 90 days of the filing of the Licensee's Notice of Intent. A site visit is typically held in conjunction with that scoping meeting. However, access to some project facilities may be limited by winter weather during the early part of the year when scoping for this project is currently planned, in 2005. For this reason, it is unlikely that the Commission will host its own site visit in conjunction with its NEPA scoping meeting. Subsequently, the Commission encourages all interested parties to participate in this site visit to ensure a productive scoping meeting early next year. Details of the site visit follow:

Date and Time: August 27, 2004 at 11 a.m. (PST).

Location: Packwood Lake Project's Powerhouse, 179 Powerhouse Road, Packwood, WA.

Transportation will be provided from the powerhouse to the reservoir. Due to the remote location of the reservoir, some hiking will be involved (approximately 2 miles). Please dress accordingly. Additionally, it is recommended that parties interested in attending bring a bag lunch.

If you are planning to attend the site visit or require further information or directions, please contact Ms. Laura Schinnell of Energy Northwest at: (509) 372–5123 or via e-mail at: *lschinnell@energy-northwest.com*.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1618 Filed 7–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southwestern Power Administration

Sam Rayburn Dam Power Rate

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of public review and comment.

SUMMARY: The Administrator, Southwestern Power Administration (Southwestern), has prepared Current and Revised 2004 Power Repayment Studies that show the need for an increase in annual revenues to meet cost recovery criteria. Such increased revenues are required primarily due to increased future estimates of operations and maintenance expenses at the project. The Administrator has developed a proposed Sam Rayburn Dam rate schedule, which is supported by a power repayment study, to recover the required revenues. Beginning January 1, 2005, the proposed rate would increase annual revenues 24.9 percent from $2,013,024 to $2,513,700.

DATES: The consultation and comment period will begin on the date of publication of this **Federal Register** notice and will end October 19, 2004.

1. Public Information Forum—July 27, 2004, 1 p.m. central time, Tulsa, OK.

2. Public Comment Forum—August 26, 2004, 9 a.m. central time, Tulsa, OK.

ADDRESSES: If requested, the forums will be held in Southwestern's offices, Room 1500, Williams Center Tower I, One West Third Street, Tulsa, Oklahoma 74103.

FOR FURTHER INFORMATION CONTACT: Mr. Forrest E. Reeves, Assistant Administrator, Office of Corporate Operations, Southwestern Power Administration, U.S. Department of Energy, One West Third Street, Tulsa, Oklahoma 74103, (918) 595–6696, *gene.reeves@swpa.gov*.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy was created by an Act of the U.S. Congress, in the Department of Energy Organization Act, Public Law 95–91, dated August 4, 1977. Southwestern's power marketing activities were transferred from the Department of Interior to the Department of Energy, effective October 1, 1977. Guidelines for preparation of power repayment studies are included in DOE Order No. RA 6120.2, Power Marketing Administration Financial Reporting. Procedures for Public Participation in Power and Transmission Rate Adjustments of the Power Marketing Administrations are found at title 10, part 903, subpart A of the Code of Federal Regulations (10 CFR 903).

Southwestern markets power from 24 multi-purpose reservoir projects, with hydroelectric power facilities constructed and operated by the U.S. Army Corps of Engineers. These projects are located in the states of Arkansas, Missouri, Oklahoma, and Texas. Southwestern's marketing area includes these States as well as Kansas and Louisiana. The costs associated with the hydropower facilities of 22 of the 24 projects are repaid via revenues received under the Integrated System rates, as are Southwestern's transmission facilities that consist of 1,380 miles of high-voltage transmission lines, 24 substations, and 46 microwave and VHF radio sites. Costs associated with the Robert D. Willis and Sam Rayburn Dams, two projects that are isolated hydraulically, electrically, and financially from the Integrated System are repaid by separate rate schedules. The Sam Rayburn Dam project is addressed in this notice.

Following Department of Energy guidelines, the Administrator, Southwestern, prepared a Current Power Repayment study using the existing Sam Rayburn Dam rate. The Study indicates that Southwestern's legal requirement to repay the investment in the power generating facility for power and energy marketed by Southwestern will not be met without an increase in revenues. The need for increased revenues is primarily due to increased future estimates of Operation and Maintenance (O&M) power-related expenses for the U.S. Army Corps of Engineers. The Revised Power Repayment Study shows that an increase in annual revenue of $500,676 (a 24.9 percent increase), beginning January 1, 2005, is needed to satisfy repayment criteria.

Opportunity is presented for Southwestern customers and other interested parties to receive copies of the Sam Rayburn Dam Power Repayment Studies and the proposed rate schedule. Persons desiring a copy of the Power Repayment Data Package with the proposed Rate Schedule, should submit a request to Mr. James W. Sherwood, Director, Rates and Repayment, Office of Corporate Operations, Southwestern Power Administration, One West Third Street, Tulsa, OK 74103, (918) 595–6673 or via e-mail to *swparates@swpa.gov*.

A Public Information Forum is scheduled on July 27, 2004, to explain to customers and the public the proposed rate and supporting studies. The proceeding will be transcribed, if held. A chairman, who will be responsible for orderly procedure, will conduct the Forum. Questions concerning the rate, studies, and information presented at the Forum will be answered, to the extent possible, at the Forum. Questions not answered at the Forum will be answered in writing. However, questions involving voluminous data contained in Southwestern's records may best be answered by consultation and review of pertinent records at Southwestern's offices.

Persons interested in attending the Public Information Forum should so indicate in writing by letter or facsimile transmission (918–595–6656) by July 23, 2004, their intent to appear at such Forum. Should no one indicate an intent to attend by the above-cited deadline, no such Forum will be held.

A Public Comment Forum is scheduled for August 26, 2004, at which interested persons may submit written comments or make oral presentations of their views and comments related to the rate proposal. The proceeding will be transcribed, if held. A chairman, who will be responsible for orderly procedure, will conduct the Forum. Southwestern's representatives present and the chairman may ask questions of the speakers.

Persons interested in attending the Public Comment Forum should so indicate in writing by letter or facsimile transmission (918–595–6656) by August 19, 2004, their intent to appear at such Forum. Should no one so indicate an intent to attend by the above-cited deadline, no such Forum will be held. Persons interested in speaking at the Forum should submit a request to the Administrator, Southwestern, in writing by August 19, 2004, their intent to appear at such Forum, so that a list of speakers can be developed. The chairman may allow others to speak if time permits.

A transcript of each Forum will be made. Copies of the transcripts may be obtained directly from the transcribing service for a fee. Copies of all documents introduced will also be available from the transcribing service for a fee. A copy of the written comments, together with a diskette in MS Word, regarding the proposed rate change are due on or before October 19, 2004. Comments should be submitted to Forrest E. Reeves, Assistant Administrator, Southwestern Power Administration, U.S. Department of Energy, One West Third Street, Tulsa, Oklahoma, 74103.

Following review of the oral and written comments and the information gathered during the course of the proceedings, the Administrator will submit the amended Sam Rayburn Dam Proposal, and Power Repayment Studies in support of the proposed rate to the Deputy Secretary of Energy for confirmation and approval on an interim basis, and subsequently to the Federal Energy Regulatory Commission (FERC) for confirmation and approval on a final basis. The FERC will allow the public an opportunity to provide written comments on the proposed rate increase before making a final decision.

Dated: July 8, 2004.

Michael A. Deihl,

Administrator.

[FR Doc. 04–16584 Filed 7–20–04; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0196; FRL–7366–1]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency(EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP–2004–0196, must be received on or before August 20, 2004.

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

FOR FURTHER INFORMATION CONTACT: Thomas Harris, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9423; e-mail address: *Harris.Thomas@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0196. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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

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

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

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

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

C. How and To Whom Do I Submit Comments?

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

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

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2004–0196. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0196. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0196.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2004–0196. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

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

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

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

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in any Previously Registered Products

1. *File Symbol*: 264–TRI. *Applicant*: Bayer CropScience, 2 TW Alexander Drive, Research Triangle Park, NC 277709. *Product Name*: Spiromesifen Technical. *Active Ingredient*: Spiromesifen at 97%. *Proposed classification/Use*: Formulation into insecticide/miticide; for application to certain food and feed crops and ornamental plants.

2. *File Symbol*: 264–TRO. *Applicant*: Bayer CropScience. *Product Name*: Oberon 2SC. Insecticide/Miticide. *Active Ingredient*: Spiromesifen at 24.0%. *Proposed classification/Use*: For application on strawberry; vegetable, tuberous and corm (crop subgroup 1C); vegetables, leafy greens (except Brassica) (crop subgroup 4A); vegetables, Brassica (crop group 5); vegetables, fruiting (except Cucurbits) (crop group 8); vegetables, Cucurbit (crop group 9); cotton; and corn, field.

3. *File Symbol*: 432–RETO. *Applicant*: Bayer Environmental Science, 95 Chesnut Ridge Rd., Montvale, NJ 07645. *Product Name*: Forbid 4F. Insecticide/Miticide. *Active Ingredient*: Spiromesifen at 45.2%. *Proposed classification/Use*: For application to outdoor ornamental plants.

4. *File Symbol*: 432–REIN. *Applicant*: Bayer Environmental Science. *Product Name*: BSN 2060 480SC. Insecticide/Miticide. *Active Ingredient*: Spiromesifen at 45.2%. *Proposed classification/Use*: For application to ornamental plants in greenhouse, shade house, or nursery settings.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: July 7, 2004.

Betty Shackleford,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 04–16215 Filed 7–20–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0194; FRL–7367–9]

Ziram; Availability of Reregistration Eligibility Decision Documents for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces availability and starts a 60-day public comment period on the Reregistration Eligibility Decision (RED) documents for the pesticide active ingredient ziram. The RED represents EPA's formal regulatory assessment of the health and

environmental data base of the subject chemical and presents the Agency's determination regarding which pesticidal uses are eligible for reregistration.

DATES: Comments, identified by docket identification (ID) number OPP–2004–0194, must be received on or before September 20, 2004.

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

FOR FURTHER INFORMATION CONTACT: Amaris Johnson, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–9542; e-mail address:*johnson.amaris@epa.gov.*

For technical questions on this RED (Case no. 2180), contact Amaris Johnson, Chemical Review Manager.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) or the Federal Food, Drug, and Cosmetic Act (FFDCA); environmental, human health, and agricultural advocates; pesticides users; and members of the public interested in the use of pesticides. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2004–0194. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 South Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.* To access RED documents and RED fact sheets electronically, go directly to the REDs table on the EPA Office of Pesticide Programs Home Page, at *http://www.epa.gov/pesticides/reregistration/status.htm/.*

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

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

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

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

C. How and to Whom Do I Submit Comments?

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

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

public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2004–0194. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0194. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0194.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 South Bell St., Arlington, VA, Attention: Docket ID Number OPP–2004–0194. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

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

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

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

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

II. Background

A. What Action is the Agency Taking?

The Agency has issued a RED for the pesticide active ingredient listed in this document. Under FIFRA, as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of the chemical listed in this document is substantially complete, and the pesticide's risks have been mitigated so that it will not pose unreasonable risks to people or the environment when used according to its approved labeling. In addition, EPA is reevaluating existing pesticides and reassessing tolerances under the Food Quality Protection Act (FQPA) of 1996. The pesticide included in this notice also has been found to meet the FQPA safety standard.

All registrants of pesticide products containing the active ingredient listed in this document will be sent the appropriate RED, and must respond to labeling requirements and product specific data requirements (if applicable) within 8 months of receipt. Products also containing other pesticide active ingredients will not be reregistered until those other active ingredients are determined to be eligible for reregistration.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing this RED as final document with a 60-day comment period. Although the 60-day public comment period does not affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. If any comment significantly affects a RED, EPA will amend the RED by publishing the amendment in the **Federal Register**.

B. What is the Agency's Authority for Taking this Action?

The legal authority for REDs falls under FIFRA, as amended in 1988 and 1996. Section 4(g)(2)(A) of FIFRA directs that, after submission of all data concerning a pesticide active ingredient, "the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration," before calling in product specific data on individual end-use products, and either reregistering products or taking "other appropriate regulatory action."

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: July 6, 2004.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 04–16572 Filed 7–20–04; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

July 2, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before September 20, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–0500.

Title: Section 76.1713, Resolution of Complaints.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 10,400.

Estimated Time per Response: 18 hours.

Frequency of Response: Recordkeeping and Third party disclosure requirements.

Total Annual Burden: 187,200 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 76.1713 requires cable system operators to advise subscribers at least once each calendar year of the procedures for resolution of complaints about the quality of television signals delivered. Cable system operators must maintain records on all such subscriber complaints and resolution of complaints for at least a one-year period.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–16605 Filed 7–20–04; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 04–1978]

The Consumer & Governmental Affairs Bureau Reminds Telecommunications Equipment Manufacturers and Telecommunications Service Providers of Obligation To Designate Agent for Complaints Received by the FCC

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Consumer & Governmental Affairs Bureau reminds telecommunications equipment manufacturers and telecommunications service providers subject to Section 255 of the Communications Act of 1934, of their obligation to designate an agent for service of informal and formal complaints received by the Federal Communications Commissions.

DATES: Effective June 30, 2004.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Arlene Alexander, (202) 418–0581 (voice), (202) 418–0183 (TTY), or e-mail *Arlene.Alexander@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Public Notice,* DA 04–1978 released June 30, 2004.

This designation or updated designation information may be sent to the Commission via e-mail to *Section255_POC@fcc.gov* or you can mail 1 copy only to: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554 Attn: Arlene Alexander, Room 6–A629.

Contact information for section 255 telecommunications equipment manufacturers is posted on the Consumer & Governmental Affairs Bureau's Web site at *http://www.fcc.gov/cgb/dro/section255_manu.html;* contact information for telecommunications service providers is posted at *http://www.fcc.gov/cgb/dro/service_providers.html;* and contact information for affected colleges and universities is posted at *http://www.fcc.gov/cgb/dro/section255_colleges.html.*

The Commission asks that you check this information for accuracy. If the information is not accurate, current, or non-existent, please e-mail the correct information to *Section255_POC@fcc.gov.*

The full text of this document and filings will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. These documents may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI, Inc. at their Web site: *www.bcpiweb.com* or call 1–800–378–3160. Filings may also be viewed on the Consumer & Governmental Affairs Bureau, Disability Rights Office homepage at *http://www.fcc.gov/cgb/dro.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This *Public Notice* can also be downloaded in Word and Portable Document Formats (PDF) at *http://www.fcc.gov/cgb/dro/section255.html.*

Synopsis: On September 29, 1999, the Commission released a *Report and*

Order and Further Notice of Inquiry (Report and Order), See Implementation of Section 255 and 251(a)(2) of the Communications Act of 1934, as enacted by the Telecommunications Act of 1996, Report and Order and Further Notice of Inquiry, WT Docket No. 96–198, FCC 99–181, 16 FCC Rcd 6417 (September 29, 1999) (*Report and Order*), that adopted regulations implementing Section 255, which requires telecommunications equipment manufacturers and service providers to ensure that their equipment and services are accessible to persons with disabilities, to the extent that it is readily achievable to do so. The regulations require, in part, that equipment manufacturers and service providers covered by Section 255 designate an agent for service of informal and formal complaints received by the Commission. *See* 47 CFR 6.18 and 7.18. The designation shall include a name or department designation, business address, telephone number, and, if available, TTY number, facsimile number, and Internet e-mail address.

Federal Communications Commission.

Jay Keithley,

Deputy Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 04–16607 Filed 7–20–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011679–006.

Title: ASF/SERC Agreement.

Parties: American President Lines, Ltd.; ANL Singapore Pte Ltd.; APL Co. Pte Ltd.; China Shipping Container Lines, Co. Ltd.; COSCO Container Lines Co., Ltd.; Evergreen Marine Corp. (Taiwan) Ltd.; Hanjin Shipping Co., Ltd.; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line Ltd.; Sinotrans Container Lines Co., Ltd.; Wan Hai Lines Ltd.; and Yang Ming Marine Transport Corp.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment adds ANL Singapore Pte Ltd. as a party to the agreement.

Agreement No.: 200563–011.

Title: Oakland/Trans Pacific Marine Terminal Agreement.

Parties: Port of Oakland and Trans Pacific Container Corporation.

Filing Party: Thomas D. Clark, Esq.; Assistant Port Attorney; Port of Oakland; 530 Water Street; Oakland, CA 94607.

Synopsis: The proposed amendment revises the assigned premises covered by the agreement.

Agreement No.: 201113–004.

Title: Oakland/SSA LLC Preferential Assignment Agreement.

Parties: Port of Oakland and SSA Terminals, LLC.

Filing Party: Thomas D. Clark, Esq.; Assistant Port Attorney; Port of Oakland; 530 Water Street; Oakland, CA 94607.

Synopsis: The amendment expands the assigned premises, provides for improvements, and adjusts the compensation payable under the agreement.

Agreement No.: 201158.

Title: Docking and Lease Agreement By and Between City of Portland, Maine, and Scotia Prince Cruises Limited.

Parties: City of Portland, Maine, and Scotia Prince Cruises Limited.

Filing Party: Judith H. Harris; Manager, Maritime Policy; Department of Transportation; City of Portland; 40 Commercial Street, Suite 100; Portland, Maine 04101.

Synopsis: This terminal lease agreement, in effect since October 3, 1986, outlines the terms and conditions under which Scotia Prince Cruises Limited may use the port facilities of the City of Portland, Maine. It also provides for an exclusive arrangement between the parties, whereby Scotia Prince agrees not to operate or participate in other passenger or passenger vehicle ferry services between other ports in New England and Nova Scotia and the City of Portland agrees not to grant to any other party the right to use the premises for any passenger or passenger vehicle ferry services without the prior written consent of Scotia Prince.

By Order of the Federal Maritime Commission.

Dated: July 16, 2004.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–16600 Filed 7–20–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicant:

Starlink Consolidation Service (New York), Inc., JFK Cargo Center Bldg. 75, Suite 230, Jamaica, NY 11430. Officers: Anne Wong Liu, Secretary, (Qualifying Individual), Patrick Chung, President.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Caribbean Logistic & Marketing Services, C/3 D–5 El Naranjal, Toa Baja, PR 00949, Iris V. Figueroa Colon, Sole Proprietor.

Cargo Service Center, Inc., 440 McClellan Highway, East Boston, MA 02128. Officers: Kathleen G. Murphy, Vice President, (Qualifying Individual), Matthew Thoi, President.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant:

Future Forwarding Company, 5673 Old Dixie Highway, Suite 140, Forest Park, GA 30297. Officers: Barbara L. Herring, Vice President, (Qualifying Individual), David W. Holland, Director/Chairman.

Dated: July 16, 2004.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–16601 Filed 7–20–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission ("FTC" or "Commission").

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below will be submitted to the Office of Management and Budget ("OMB") for review, as required by the Paperwork Reduction Act ("PRA"). The FTC is seeking public comments on its proposal to extend through September 30, 2007 the current PRA clearance for information collection requirements contained in its Appliance Labeling Rule ("Rule"), promulgated pursuant to the Energy Policy and Conservation Act of 1975 ("EPCA"). The clearance expires on September 30, 2004.

DATES: Comments must be submitted on or before September 20, 2004.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to "Appliance Labeling Rule: Paperwork comment, R611004" to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159 (Annex U), 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled "Confidential." [1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection requirements should be addressed to Hampton Newsome, Attorney, Bureau of Consumer Protection, Division of Enforcement, Room 4616, Federal Trade Commission, 600 Pennsylvania Ave., NW., Washington, DC 20580 (202–326–2889).

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. "Collection of information" means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the Rule (OMB Control Number 3084–0069).

The FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

The Appliance Labeling Rule (16 CFR Part 305) establishes testing, reporting, recordkeeping, and labeling requirements for manufacturers of major household appliances (refrigerators, refrigerator-freezers, freezers, water heaters, clothes washers, dishwashers, room air conditioners, furnaces, central air conditioners, heat pumps, pool heaters, certain lighting products, and certain plumbing products). The requirements relate specifically to the disclosure of information relating to energy consumption and water usage. The Rule's testing and disclosure requirements enable consumers purchasing appliances to compare the energy use or efficiency of competing models. In addition, EPCA and the Rule require manufacturers to submit relevant data to the Commission regarding energy or water usage in connection with the products they manufacture. The Commission uses this data to compile ranges of comparability for covered appliances for publication in the **Federal Register**. These submissions, along with required records for testing data, may also be used in enforcement actions involving alleged misstatements on labels or in advertisements.

Burden Statement

Estimated annual hours burden: 445,000 hours.

The estimated hours burden imposed by Section 324 of EPCA and the Commission's Rule include burdens for testing (338,292 hours); reporting (1,324 hours); recordkeeping (767 hours); labeling (101,333 hours); and retail catalog disclosures (2,550 hours). The total burden for these activities is 445,000 hours (rounded to the nearest thousand), which is the same as staff's previous estimate in its 2001 submission to OMB.

The following estimates of the time needed to comply with the requirements of the Rule are based on census data, Department of Energy figures and estimates, general knowledge of manufacturing practices, and industry input and figures. Because compliance burden falls almost entirely on manufacturers and importers (with a *de minimis* burden for retailers), burden estimates are calculated on the basis of the number of domestic manufacturers and/or the number of units shipped domestically in the various product categories.

A. Testing

Under the Rule, manufacturers of covered products must test each basic model they produce to determine energy usage (or, in the case of plumbing fixtures, water consumption). The burden imposed by this requirement is determined by the number of basic models produced, the average number of units tested per model, and the time required to conduct the applicable test.

Manufacturers need not subject each basic model to testing annually; they must retest only if the product design changes in such a way as to affect energy consumption. The staff estimates that the frequency with which models are tested every year ranges roughly between 10% and 50% and that the actual percentage of basic models tested varies by appliance category. In addition, it is likely that only a small portion of the tests conducted is

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

attributable to the Rule's requirements. Given the lack of specific data on this point, staff has conservatively assumed that all of the tests conducted are attributable to the Rule's requirements and will use the high end of the range noted above. Accordingly, the burden estimates are based on the assumption that 50% of all basic models are tested annually. Thus, the estimated testing burden for the various categories of products covered by the Rule is as follows [2].

Category of manufacturer	Number of basic models	Percentage of models tested (FTC required)	Avg. number of units tested per model	Hours per unit tested	Total annual testing burden hours
Refrigerators refrigerator-freezers, and freezers	3,075	50	2	4	12,300
Dishwashers	393	50	2	1	393
Clothes washers	500	50	2	2	1,000
Water heaters	650	50	2	24	15,600
Room air conditioners	1,092	50	2	8	8,736
Furnaces	1,900	50	2	8	15,200
Central A/C	1,270	50	2	24	30,480
Heat pumps	903	50	2	72	65,016
Pool heaters	250	50	2	12	3,000
Fluorescent lamp ballasts	975	50	4	3	5,850
Lamp products	2,100	50	12	14	176,400
Plumbing fittings	1,700	50	2	2	3,400
Plumbing fixtures	22,000	50	1	.0833	917
					338,292

B. Reporting

Reporting burden estimates are based on information from industry representatives. Manufacturers of some products, such as appliances and HVAC equipment (furnaces, central air conditioners, and heat pumps), indicate that, for them, the reporting burden is best measured by the estimated time required to report on each model manufactured, while others; such as makers of fluorescent lamp ballasts and lamp products, state that an estimated number of annual burden hours by manufacturer is a more meaningful way to measure. The figures below reflect these different methodologies as well as the varied burden hour estimates provided by manufacturers of the different product categories that use the latter methodology.

Appliances, HVAC Equipment, and Pool Heaters

Staff estimates that the average reporting burden for these manufacturers is approximately two minutes per basic model. Based on this estimate, multiplied by a total of 10,033 basic models of these products, the annual reporting burden for the appliance, HVAC equipment, and pool heater industry is an estimated 334 hours (2 minutes × 10,033 models ÷ 60 minutes per hour).

Fluorescent Lamp Ballasts, Lamp Products, and Plumbing Products

The total annual reporting burden for manufacturers of fluorescent lamp ballasts, lamp products, and plumbing products is based on the estimated average annual burden for each category of manufacturers, multiplied by the number of manufacturers in each respective category, as shown below:

Category of manufacturer	Annual burden hours per manufacturer	Number of manufacturers	Total annual reporting burden hours
Fluorescent lamp ballasts	6	20	120
Lamp products	15	50	750
Plumbing products	1	120	120

Total Reporting Burden Hours

The total reporting burden for industries covered by the Rule is 1,324 hours annually (334 + 120 + 750 + 120).

C. Recordkeeping

EPCA and the Appliance Labeling Rule require manufacturers to keep records of the test data generated in performing the tests to derive information included on labels and required by the Rule. As with reporting, burden is calculated by number of models for appliances, HVAC equipment, and pool heaters, and by number of manufacturers for fluorescent lamp ballasts, lamp products, and plumbing products.

Appliances, HVAC Equipment, and Pool Heaters

The recordkeeping burden for manufacturers of appliances, HVAC equipment, and pool heaters varies directly with the number of tests performed. Staff estimates total recordkeeping burden to be approximately 167 hours for these manufacturers, based on an estimated average of one minute per record stored (whether in electronic or paper format), multiplied by 10,033 tests performed annually (1 minute × 10,033 basic models ÷ 60 minutes per hour).[3]

[2] The following numbers reflect estimates of the basic models in the market. The actual numbers will vary from year to year. Since 2001, the Commission has not identified any changes in the number of basic models that would yield a significant increase in the total burden hours for testing. The average number of units tested per model and the hours per unit tested are based on information from industry sources.

[3] The amount of annual tests performed is derived by multiplying the number of basic models within the relevant product categories by the average number of units tested per model within each category (the underlying information may be drawn from the table in Section A.).

Fluorescent Lamp Ballasts, Lamp Products, and Plumbing Products

The total annual recordkeeping burden for manufacturers of fluorescent lamp ballasts, lamp products, and plumbing products is based on the estimated average annual burden for each category of manufacturers (derived from industry sources), multiplied by the number of manufacturers in each respective category, as shown below:

Category of manufacturer	Annual burden hours per manufacturer	Number of manufacturers	Total annual recordkeeping burden hours
Fluorescent lamp ballasts	2	20	40
Lamp products	10	50	500
Plumbing products	.5	120	60

Total Recordkeeping Burden Hours

The total recordkeeping burden for industries covered by the Rule is 767 hours annually (167+40+500+60).

D. Labeling

EPCA and the Rule require that manufacturers of covered products provide certain information to consumers, through labels, fact sheets, or permanent markings on the products. The burden imposed by this requirement consists of (1) the time needed to prepare the information to be provided, and (2) the time needed to provide it, in whatever form, with the products. The applicable burden for each category of products is described below:

Appliances, HVAC Equipment, and Pool Heaters

EPCA and the Rule specify the content, format, and specifications for the required labels, so manufacturers need only add the energy consumption figures derived from testing. In addition, most larger companies use automation to generate labels, and the labels do not change from year to year. Given these considerations, staff estimate that the time to prepare labels for appliances, HVAC equipment, and pool heaters is no more than four minutes per basic model. Thus, for appliances, HVAC equipment, and pool heaters, the approximate annual drafting burden involved in preparing labels is 669 hours per year [10,033 (basic models) × 4 minutes (drafting time per basic model) ÷ 60 (minutes per hour)].

Industry representatives and trade associations have estimated that it takes between 4 and 8 seconds to affix each label to each product. Based on an average of 6 seconds per unit, the annual burden for affixing labels to appliances, HVAC equipment, and pool heaters is 83,522 hours [6 (seconds) × 50,113,098 (the number of total products shipped) ÷ 3,600 (seconds per hour)].

The Rule also requires that HVAC equipment manufacturers disclose energy usage information on a separate fact sheet or in an approved industry-prepared directory of products. Staff has estimated the preparation of these fact sheets requires approximately 30 minutes per basic model. Manufacturers producing at least 95 percent of the affected equipment, however, are members of trade associations [4] that produce approved directories (in connection with their certification programs independent of the Rule) that satisfy the fact sheet requirement. Thus, the drafting burden for fact sheets for HVAC equipment is approximately 102 hours annually [4,073 (basic models) × .5 hours × .05 (proportion of equipment for which fact sheets are required)].

The Rule allows manufacturers to prepare a directory containing fact sheet information for each retail establishment as long as there is a fact sheet for each basic model sold. Assuming that six HVAC manufacturers (*i.e.*, approximately 5% of HVAC manufacturers), produce fact sheets instead of having required information shown in industry directories, and each spends approximately 16 hours per year distributing the fact sheets to retailers and in response to occasional consumer requests, the total time attributable to this activity would also be approximately 96 hours.

The total annual labeling burden for appliances, HVAC equipment, and pool heaters is 669 hours for preparation plus 83,522 hours for affixing, or 84,191 hours. The total annual fact sheet burden is 102 hours for preparation and 96 hours for distribution, or 198 hours. The total annual burden for labels and fact sheets for the appliance, HVAC, and pool heater industries is, therefore, estimated to be 84,389 hours (84,191 + 198).

Fluorescent Lamp Ballasts

The statute and the Rule require that labels for fluorescent lamp ballasts contain an "E" within a circle. Since manufacturers label these ballasts in the ordinary course of business, the only impact of the Rule is to require manufactures to reformat their labels to include the "E" symbol. Thus, the burden imposed by the Rule for labeling fluorescent lamp ballasts is minimal.

Lamp Products

The burden attributable to labeling lamp products is also minimal, for similar reasons. The Rule requires certain disclosures on packaging for lamp products. Since manufacturers were already disclosing the substantive information required under the Rule prior to its implementation, the practical effect of the Rule was to require that manufactures redesign packaging materials to ensure they include the disclosures in the manner and form prescribed by the Rule. Because this effort is now complete, there is no ongoing labeling burden imposed by the Rule for lamp products.

Plumbing Products

The statute and the Rule require that manufacturers disclose the water flow rate for plumbing fixtures. Manufacturers may accomplish this disclosure by attaching a label to the product, through permanent markings imprinted on the product as part of the manufacturing process, or by including the required information on packaging material for the product. While some methods might impose little or no additional incremental time burden and cost on the manufacturer, other methods (such as affixing labels) could. Thus, staff estimate an overall blended average burden associated with this disclosure requirement of one second per unit sold. Staff also estimate that there are approximately 9,000,000 covered fixtures and 52,000,000 fittings sold annually in the country. Therefore, the estimated annual burden to label plumbing products is 16,944 hours [61,000,000 (units) × 1 (seconds) ÷ 3,600 (seconds per hour)].

Total Burden for Labeling

The total labeling burden for all industries covered by the Rule is

[4] These associations include the Air-Conditioning and Refrigeration Institute, the Gas Appliance Manufacturers Association, and the Hydronics Institute.

101,333 hours (84,389 +16,944) annually.

E. Retail Sales Catalogs Disclosures

The Rule requires that sellers offering covered products through retail sales catalogs (*i.e.*, those publications from which a consumer can actually order merchandise) disclose in the catalog energy (or water) consumption for each covered product. Because this information is supplied by the product manufacturers, the burden on the retailer consists of incorporating the information into the catalog presentation.

In the past, staff has estimated that there are 100 sellers who offer covered products through paper retail catalogs. While the Rule initially imposed a burden on catalog sellers by requiring that they draft disclosures and incorporate them into the layouts of their catalogs, paper catalog sellers now have substantial experience with the Rule and its requirements. Energy and water consumption information has obvious relevance to consumers, so sellers are likely to disclose much of the required information with or without the Rule. Accordingly, given the small number of catalog sellers, their experience with incorporating energy and water consumption data into their catalogs, and the likelihood that many of the required disclosures would be made in the ordinary course of business, staff believe that any incremental burden the Rule imposes on these paper catalog sellers would be minimal.

Staff estimates that there are an additional 150 new online sellers of covered products who are subject to the Rule's catalog disclosure requirements. Many of these sellers may not have the experience the paper catalog sellers have in incorporating energy and water consumption data into their catalogs. Staff estimates that these online sellers each require approximately 17 hours per year to incorporate the data into their online catalogs. This estimate is based on the assumption that entry of the required information takes 1 minute per covered product and an assumption that the average online catalog contains approximately 1,000 covered products (based on a sampling of websites of affected retailers). Given that there is a great variety among sellers in the volume of products they offer online, it is very difficult to estimate such volume with precision. In addition, this analysis assumes that information for all 1,000 products is entered into the catalog. This is a conservative assumption because the number of incremental additions to the catalog from year to year is likely to be much lower after initial start-up efforts have been completed. The total catalog disclosure burden for all industries covered by the Rule is 2,550 hours (150 sellers × 17 hours annually).

Estimated annual cost burden: ($7,906,857 in labor costs and $3,519,422 in capital or other non-labor costs).

Labor Costs: Staff derived labor costs by applying appropriate estimated hourly cost figures to the burden hours described above. In calculating the cost figures, staff assumes that test procedures are conducted by skilled technical personnel at an hourly rate of $20.00, and that recordkeeping and reporting, and labeling, marking, and preparation of fact sheets, generally are performed by clerical personnel at an hourly rate of $10.75.

Based on the above estimates and assumptions, the total annual labor costs for the five different categories of burden under the Rule, applied to all the products covered by it, is $7,907,000 (rounded to the nearest thousand), derived as follows:

Activity	Burden hours per year	Wage category hourly rate	Total annual labor cost
Testing	338,292	Skilled technical/$20	$6,765,840
Reporting	1,324	Clerical/$10.75	14,233
Recordkeeping	767	Clerical/$10.75	8,245
Labeling, marking, and fact sheet preparation	101,333	Clerical/$10.75	1,089,330
Catalog disclosures	2,550	Clerical/$10.75	27,413
			7,905,061

Capital or Other Non-Labor Costs: $3,519,000 (rounded), determined as follows:

Staff has examined the five distinct burdens imposed by EPCA through the Rule—testing, reporting, recordkeeping, labeling, and retail catalog disclosures—as they affect the 11 groups of products that the Rule covers. Staff has concluded that there are no current start-up costs associated with the Rule. Manufacturers have in place the capital equipment necessary—especially equipment to measure energy and/or water usage—to comply with the Rule.

Under this analysis, testing, recordkeeping, and retail catalog disclosures are activities that incur no capital or other non-labor costs. As mentioned above, testing has been performed in these industries in the normal course of business for many years as has the associated recordkeeping. The same is true regarding compliance applicable to the requirements for paper catalogs. Manufacturers and retailers who make required disclosures in catalogs already are producing catalogs in the ordinary course of their businesses; accordingly, capital cost associated with such disclosure would be minimal or nil. Staff recognizes that there may be initial costs associated with posting online disclosure, and it invites further comment to reasonably quantify such costs.

Manufacturers that submit required reports to the Commission directly (rather than through trade associations) incur some nominal costs for paper and postage. Staff estimates that these costs do not exceed $2,500. Manufacturers must also incur the cost of procuring labels and fact sheets used in compliance with the Rule. Based on estimates of 50,113,098 units shipped and 128,650 fact sheets prepared,[5] at an average cost of seven cents for each

[5] The units shipped total is based on combined actual or estimated industry figures across all of the product categories, except for fluorescent lamp ballasts, lamp products, and plumbing products. Staff has determined that, for those product categories, there are little or no costs associated with the labeling requirements. The fact sheet estimation is based on the previously noted assumption that five percent of HVAC manufacturers produce fact sheets on their own. Based on total HVAC units shipped (10,291,965), five percent amounts to 514,598 HVAC units. Because manufacturers generally list more than one unit on a fact sheet, staff has estimated that manufacturers independently preparing them will use one sheet for every four of these 514,598 units. Thus, staff estimates that HVAC manufacturers produce approximately 128,650 fact sheets.

label or fact sheet, the total (rounded) labeling cost is $3,516,922.

William E. Kovacic,
General Counsel.
[FR Doc. 04–16483 Filed 7–20–04; 8:45 am]
BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 042 3002]

Jonathan Barash; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 30, 2004.

ADDRESSES: Comments should refer to "Jonathan Barash, File No. 042 3002," to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/ Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the Supplementary Information section. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent to the following email box: *consentagreement@ftc.gov*.

FOR FURTHER INFORMATION CONTACT: Richard Cleland or Janet Evans, FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3088 or (202) 326–2125.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 16, 2004), on the World Wide Web, at "*http://www.ftc.gov/os/adjpro/d9317/index.htm*." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Written comments must be submitted on or before July 30, 2004. Comments should refer to "Jonathan Barash, File No. 042 3002," to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled "Confidential." [1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be sent to the following e-mail box: *consentagreement@ftc.gov*.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Jonathan Barash ("proposed respondent"). Proposed respondent collaborated with others in the marketing of a purported children's weight loss product called "Pedia Loss," and a purported female libido enhancer called "Fabulously Feminine."

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will review the agreement in light of any comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

The Commission's complaint charges that advertising for Pedia Loss made unsubstantiated claims that (1) Pedia Loss causes weight loss in overweight or obese children ages 6 and over, and (2) when taken by overweight or obese children ages 6 and over, Pedia Loss causes weight loss by suppressing appetite, increasing fat burning, and slowing carbohydrate absorption. The Commission's complaint also charges that advertising for Fabulously Feminine falsely represented that clinical testing proves that Fabulously Feminine enhances a woman's satisfaction with her sex life and level of sexual desire. In addition, the complaint challenges the unsubstantiated claim that Fabulously Feminine will increase a woman's libido, sexual desire, and sexual satisfaction by stimulating blood flow and increasing sensitivity.

Part I A of the proposed order pertains to Pedia Loss. It requires that proposed respondent possess and rely on competent and reliable scientific evidence to support claims that Pedia Loss or any other covered product or service causes weight loss, suppresses

appetite, increases fat burning, or slows carbohydrate absorption; causes weight loss in overweight or obese children ages 6 and over; or causes weight loss by suppressing appetite, increasing fat burning, or slowing carbohydrate absorption, when taken by overweight or obese children ages 6 and over. Part IB of the order pertains to Fabulously Feminine. It requires that proposed respondent possess and rely on competent and reliable scientific evidence to support claims that Fabulously Feminine or any other covered product or service will increase a woman's libido, sexual desire, or sexual satisfaction.

Part II of the proposed order requires that proposed respondent possess and rely on competent and reliable scientific evidence to support benefits, performance, or efficacy claims for covered products or services defined as any dietary supplement, food, drug, or device, and any health-related service or program promoting weight loss or sexual enhancement.

Part III of the proposed order prohibits proposed respondent from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test or studies. Part IV of the proposed order permits proposed respondent to make certain claims for drugs or dietary supplements that are permitted in labeling under laws and/or regulations administered by the U.S. Food and Drug Administration.

The remainder of the proposed order contains standard requirements that proposed respondent maintain advertising and any materials relied upon as substantiation for any representation covered by substantiation requirements under the order; distribute copies of the order to certain company officials and employees; and file one or more reports detailing his compliance with the order. Part IX of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–16482 Filed 7–20–04; 8:45 am]

BILLING CODE 6750–01–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, July 30, 2004, from 9 a.m. to 4 p.m. and is open to the public.

ADDRESSES: The meeting will be held at The Hubert H. Humphrey Building, Room 800, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Deborah Queenan, Coordiantor 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 April 23, 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. Minutes will be available after August 16, 2004.

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 Agecncy 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, July 30, 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. Tentative agenda items include a discussion led by David J. Brailer, M.D., Ph.D., newly appointed National Health Information Technology Coordinator for DHHS, who will discuss the information technology goals for the Department, and a discussion of enhancements to AHRQ's available web-based information tools. The official agenda will be available on AHRQ's Web site at *http://www.ahrq.gov* no later than July 19, 2004. The meeting will adjourn at 4 p.m.

Dated: July 13, 2004.

Carolyn M. Clancy,

Director.

[FR Doc. 04–16598 Filed 7–20–04; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Contract Review Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), announcement is made of an Agency for Healthcare Research and Quality (AHRQ) Technical Review Committee (TRC) meeting. This TRC's charge is to review contract proposals and provide recommendations to the Director, AHRQ, with respect to the technical merit of proposals submitted in response to a Request for Proposals (RFP) regarding "Health Information Technology Resource Center (HITRC)". The RFP was published in the Federal Business Opportunities on June 14, 2004.

The upcoming TRC meeting will be closed to the public in accordance with the Federal Advisory Committee Act (FACA), section 10(d) of 5 U.S.C., Appendix 2, FACA regulations, 41 CFR 101–6.1023 and procurement regulations, 48 CFR 315.604(d). The discussions at this meeting of contract proposals submitted in response to the above-referenced RFP are likely to reveal proprietary information and

personal information concerning individuals associated with the proposals. Such information is exempt from disclosure under the above-cited FACA provision and procurement rules that protect the free exchange of candid views and facilitate Department and Committee operations.

Name of TRC: The Agency for Healthcare Research and Quality—"Health Information Technology Resource Center (HITRC)".

Date: August 12 and 13, 2004 (Closed to the public).

Place: Agency for Healthcare Research and Quality, 540 Gaither Road, Conference Center, Rockville, Maryland 20850.

Contact Person: Anyone wishing to obtain information regarding this meeting should contact Steve Bernstein, Center for Primary Care, Prevention, and Clinical Partnerships, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, Maryland 20850, 301–427–1581.

Dated: July 1, 2004.

Carolyn M. Clancy,

Director.

[FR Doc. 04–16597 Filed 7–20–04; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–JP]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, or to send comments contact Sandi Gambescia, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E11, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Risk Factors for Acute Hepatitis B or Acute Hepatitis C in Older Adults—New—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC).

Questionnaires and data collection forms have been designed to collect information over a 24-month period regarding risk factors for acute hepatitis B or acute hepatitis C in persons age ≥60 years. The purpose of the project is to evaluate the possible associations between healthcare-related exposures and sporadic cases of acute hepatitis B or acute hepatitis C among older adults. The results of the project will assist CDC in accomplishing the part of its mission related to preparing recommendations for the prevention and control of viral hepatitis and its sequelae.

The respondent universe will include residents of a defined geographic area served by the participating public health agency, along with their healthcare providers. Persons identified as meeting the case definition for acute hepatitis B or C age ≥60 years will be asked to participate. Controls will be randomly selected through random digit dialing from among persons age ≥60 years in the general population. For consenting cases and controls, medical record reviews and healthcare provider interviews will be conducted in connection with healthcare-related exposures. There is no cost to respondents.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs)	Total burden hours
Consenting Adults Meeting Case/Control Criteria	160	1	30/60	80
Healthcare Providers	120	1	20/60	40
Total	280			120

Dated: July 15, 2004.

Betsey Dunaway,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–16544 Filed 7–20–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04232]

Strengthening HIV/AIDS, STI and TB Prevention, Control and Treatment Activities in the Addis Ababa University; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2004 funds for a cooperative agreement program to strengthen activities for the prevention, control, and treatment of HIV/AIDS, STI, and TB in the Addis Ababa University (AAU). The Catalog of Federal Domestic Assistance number for this program is 93.941.

B. Eligible Applicant

Assistance will be provided only to the Addis Ababa University (AAU). No other applicants are solicited. The AAU is the only appropriate and qualified organization to conduct the activities supported by the CDC/GAP in Ethiopia because:

1. The AAU and its TAH are uniquely positioned in terms of legal authority, ability, and credibility to supported technical capacity development for HIV/AIDS/STI/TB prevention and control efforts of the country.
2. The AAU is mandated by the Ethiopian Government to provide training for all cadres of health care professionals and health social scientists who are deployed to all regions of the country.
3. As the only National Central Medical Center with the only medical speciality/residency training in the country, the University and its colleges and faculties constitute the oldest and largest training institution, and the most experienced research facility in the country.
4. The University is associated with the Ministry of Education, and works closely with the Ministry of Health and other sector ministries, as well as with a number of regional and international institutions, including U.S. universities.

C. Funding

Approximately $200,000 is available in FY 2004 to fund this award. It is expected that the award will begin on or before September 1, 2004, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, telephone: 770–488–2700.

For program technical assistance, contact: Dr. Tadesse Wuhib, Project Officer, U.S. Embassy, Entoto Road, P.O. Box 1014, Addis Ababa, Ethiopia, telephone: 251–1–669566, e-mail: *wuhibt@etcdc.com.*

For financial, grants management, or budget assistance, contact: Shirley Wynn, Contract Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, telephone: 770–488–1515, e-mail: *zbx6@cdc.gov.*

Dated: July 15, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–16543 Filed 7–20–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Comprehensive STD Prevention Systems, Prevention of STD-Related Infertility, and Syphilis Elimination

Announcement Type: Competing Continuation.

Funding Opportunity Number: 05004.

Catalog of Federal Domestic Assistance Number: 93.977.

Key Dates:

Application Deadline: September 15, 2004.

I. Funding Opportunity Description

Authority: This program is authorized under Section 318 (a) (b) (c) of the Public Health Service Act [42 U.S.C. Section 247c (a)(b)and(c)], as amended. Regulations governing the implementation of this legislation are covered under 42 CFR Part 51b, Subparts A and D.

Purpose: The purpose of the program is to support sexually transmitted disease (STD) programs in designing, implementing, and evaluating Comprehensive STD Prevention Systems (CSPS), including, where applicable, initiatives and strategies specific to (1) the Infertility Prevention Program (IPP) to prevent STD-related infertility; (2) the Syphilis Elimination Program (SE) to eliminate syphilis in High Morbidity Areas; and (3) the Gonoccocal Isolate Surveillance Project (GISP) to monitor gonoccocal resistance to multiple antibiotics. As an optional activity some programs may choose to participate in the Quality Evaluation Initiative (QEI) to evaluate one program activity. This program announcement addresses the "Healthy People 2010" focus area of Sexually Transmitted Disease which is aimed at addressing health disparities (Areas of Special Emphasis) among racial and ethnic minority populations at greater risk for STDs due to health disparities, high risk sexual behaviors, the settings in which they are found, or because they are at risk for or have acquired other diseases. These Areas of Special Emphasis represent high priority prevention opportunities and have direct relevance to multiple essential functions. The Areas of Special Emphasis identified by each grantee will depend on disease and behavioral surveillance (*e.g.*, case reports, prevalence monitoring, behavioral assessments) and other locally determined data and criteria. While all gender, age, racial, cultural, and economic groups are potentially affected by STDS, some population groups are disproportionately affected by STDs and their complications. As noted in Healthy People 2010, these population groups include African Americans, Hispanics, American Indian/Alaskan Natives, Asian and Pacific Islanders, women, and adolescents and young adults. Groups considered at risk because of high risk sexual behaviors include men who have sex with men and persons with multiple sex partners. Additionally, high priority prevention opportunities may exist for groups that can be accessed in certain settings. These settings include, but are not limited to, correctional facilities, HIV prevention and care clinics, substance abuse centers or private medical care facilities. Finally, opportunities exist for STD programs to collaborate and integrate with HIV and hepatitis prevention programs to better serve groups that are at risk for or are infected with all of these diseases. Examples of collaborative activities include, but are not limited to, encouraging medical providers to provide HIV, hepatitis and STD screening in high prevalence settings;

supporting the development and expansion of HIV counseling, testing, referral and partner services; and integrating HIV, hepatitis and STD prevention messages into health educational materials.

Development of this program response provides an opportunity to conduct short, intermediate, and long term program planning. It may serve as the one document that fully describes the goals, objectives, activities (present and future) of your comprehensive STD prevention program.

Measurable outcomes of the program will be in alignment with one (or more) of the following performance goal(s) for the National Center for HIV, STD, and TB Prevention (NCHSTP): (1) Reduce STD rates by providing chlamydia and gonorrhea screening, treatment, and partner treatment to 50 percent of women in publicly funded family planning and STD clinics nationally; (2) Reduce the incidence of primary and secondary syphilis; and (3) Reduce the incidence of congenital syphilis.

To ensure quality programs and to measure progress, grantees are required to report on a set of performance measures appropriate for specific program components. Each grantee will set its own annual target level of performance for each performance measure. In future years these measures will be refined and enhanced. Guidance on performance measures for specific definitions of measures and terms will be provided in a separate companion guidance.

Grantees will be required to specify baseline performance using data from the period January 1—June 30, 2004. In addition, grantees will be required to specify one-year and four-year goals for each performance measure. The discussion should provide a rationale for the goals that are set and describe data sources and methods of analysis used in setting the baseline performance, one-year and four-year goals. If the data sources needed to establish the baseline level are not available, the grantee should describe what steps or actions will be conducted in Year One to set the baseline level in Year Two.

Grantees are also expected to provide measurable and quantitative four-year project period goals and measurable and quantitative one-year budget period objectives when developing their program plans. These measurable goals and objectives should relate to the program priorities identified and justified in the Background, Need, and Narrative sections of the application. If the grantee determines, based on project area data, that a specific performance measure is not applicable, the grantee must provide adequate justification as to why they should not be held accountable for reporting on the measure.

Grantees are responsible for achieving the target levels of performance measures and program goals and objectives established in their grant application. If a grantee does not achieve their goals, CDC will work with the grantee to determine what steps can be taken to improve performance. CDC actions could include providing technical assistance, placing conditions or restrictions on the award of funds or, with chronic failure to improve, reducing funds.

In addition to performance measures, four-year goals and one-year objectives, grantees are also required to report program data in the same format as tables provided. These data tables are listed in two sections of this program announcement, (1) Background and Need and (2) Progress Reports. In future years of this grant cycle, the data tables will be refined and enhanced. Grantees can expect additional data reporting requirements to become part of future progress reports.

Activities for CSPS: Awardee activities for this program are as follows:

The grantee will be responsible for developing a CSPS program plan that includes the following activities:

1. Provide Community and Individual Behavior Change Interventions.
2. Provide Medical and Laboratory Services.
3. Ensure Partner Services.
4. Promote Leadership and Program Management.
5. Conduct Surveillance and Data Management.
6. Provide or ensure Training and Professional Development.
7. Ensure a documented STD Outbreak Response Plan.
8. Conduct Program Evaluation.

Activities for IPP: Awardee activities for this program are as follows: The grantee will be responsible for developing an IPP program plan that includes the following activities:

1. Ensure clinical services including chlamydia and gonorrhea screening and treatment of young, sexually active women and their sex partners.
2. Support laboratory testing.
3. Develop surveillance and data management systems to ensure collection of all CDC core data elements.
4. Provide program management and leadership.
5. Ensure provider training.

Activities for SE: Awardee activities for this program are as follows: The grantee will be responsible for developing a SE program plan that includes the following activities:

1. Enhance surveillance.
2. Strengthen community involvement and partnerships.
3. Provide rapid outbreak response.
4. Expand clinical and laboratory services.
5. Enhance health promotion.

Activities for GISP:

1. Collect, handle, and ship specimens.
2. Report demographic and clinical data.

Activities for QEI (Optional): In addition to the required evaluation activities some grantees may opt to participate in the Quality Evaluation Initiative by conducting the following activities:

1. Evaluate one program intervention.
2. Report the outcome of the evaluation.

II. Award Information

Type of Award: Grant.

Fiscal Year Funds: 2005.

Approximate Total Funding: $103,000,000.

Federal funds are intended to supplement (not replace or supplant) current state and local resources and must be used to assist state and local programs in conducting high-priority activities as described in their CSPS, IPP and SE plans.

CSPS: Approximately $57,000,000 is available (based on FY2004 financial assistance base-level awards) in FY 2005 to fund 65 awards. Included within CSPS is the optional activity, Quality Evaluation Initiative (QEI), for which no additional funding is available at this time. The average base-level award for CSPS is expected to be $877,000, ranging from $24,000 to $5,105,000. Funding estimates may change.

IPP: Approximately $28,000,000 (based on FY 2004 financial assistance base level awards) is available in FY 2005 to fund 65 awards. Awards will range from $10,700 to $1,910,000.

SE: Approximately $18,000,000 is available in FY 2005 to supplement up to 38 CSPS Project Grants to design, implement, and evaluate intervention strategies for syphilis elimination in High Morbidity Areas (HMA). It is expected that awards will range from $135,000 to $1,900,000.

GISP: Approximately $460,000 is available in FY 2005. Awards will range from $3,000 to $92,000.

Approximate Number of Awards:

CSPS: 65
IPP: 65
SE: 38
GISP: 28–35

Approximate Average Award:

CSPS: $877,000
IPP: $431,000
SE: $474,000
GISP: $19,000
Floor of Award Range:
CSPS: $24,000
IPP: $10,700
SE: $135,000
GISP: $3,000
Ceiling of Award Range:
CSPS: $5,105,000
IPP: $1,910,000
SE: $1,900,000
GISP: $92,000

Anticipated Award Date: January 1, 2005.

Budget Period Length: 12 months.

Project Period Length: 4 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

CDC is specifically authorized to make grants to state and political subdivisions of states for research and demonstration projects for STD prevention and control; STD screening, treatment, and case finding; public information and education programs for STD prevention; and education, training, and clinical skills improvement for the prevention and control of STDs.

CSPS: Eligible applicants for the CSPS funds are the 65 official public health agencies that are current recipients of project grants for Preventive Health Services-Sexually Transmitted Disease Control Grants. These applicants have the necessary infrastructure in place to perform the activities required and have the experience needed to successfully complete the required functions.

IPP: Eligible applicants for the IPP funds are the 65 official public health agencies that are current recipients of project grants for Preventive Health Services—Sexually Transmitted Disease Control Grants. These applicants have the necessary infrastructure in place to perform the activities required and have the experience needed to successfully complete the required functions.

SE: Project areas eligible for Syphilis Elimination funding are stratified in three different tiers: (1) Those with greater than 100 cases of Primary and Secondary (P and S) syphilis in 2003; (2) those with greater than 35 cases of P and S and a Male to Female case ratio greater than or equal to 2.5 in 2003; (3) those project areas previously funded for syphilis elimination who have not reached stable reductions of P and S syphilis for the years 2000–2003.

Project areas with greater than 100 cases of P and S syphilis are: Alabama, Arizona, Baltimore, Chicago, California, Florida, Georgia, Illinois, Los Angeles, Louisiana, Maryland, Massachusetts, Michigan, New Jersey, New York City, North Carolina, Ohio, Puerto Rico, San Francisco, Tennessee, Texas.

Project areas with greater than 35 cases of P and S Syphilis and a Male to Female case ratio greater than or equal to 2.5: District of Columbia, Minnesota, Virginia, Washington, Philadelphia, Pennsylvania, New York State. Oregon.

Those project areas previously funded for syphilis elimination activities 1999–2004 who have not reached stable reductions in P and S syphilis for three years 2001–2003 are: Arkansas, Connecticut, Indiana, Kentucky, Missouri, Mississippi, Oklahoma, South Carolina, Wisconsin.

GISP: Current participants include Alabama, Arizona, California, Colorado, Florida, Georgia, Hawaii, Illinois, Louisiana, Minnesota, Missouri, Nevada, New Mexico, North Carolina, Ohio, Oregon, Texas, Washington, Baltimore, Philadelphia, San Francisco, Los Angeles, Oklahoma, and Michigan. These applicants have the necessary infrastructure in place to perform the activities required and have the experience needed to successfully complete the required functions. Additional eligible sites may be added as funds become available.

A Bona Fide Agent is an agency/organization identified by the state as eligible to submit an application under the state eligibility in lieu of a state application. If you are applying as a bona fide agent of a state or local government, you must provide a letter from the state or local government as documentation behind the first page of your application form.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

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.

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.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161–1. Application forms, instructions, and appendices are available on the CDC Web site, at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

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

The program announcement is the definitive guide on application format, content, and deadlines. It supersedes information provided in the application instructions. If there are discrepancies between the application form instructions and the program announcement, adhere to the guidance in the program announcement.

You must submit a signed original and two copies of your application forms.

Application: You must include a project narrative with your application forms. Your narrative must be submitted in the following format:

- Maximum number of pages: CSPS is 40, IPP is 20, SE is 20, QEI is five; and GISP is five. If your narrative exceeds the page limit, only the first 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 metal clips; not bound in any other way.
- Number all pages.
- Single spaced.
- Include a complete index with page numbers to all parts of the application and its appendices.

Your narrative should address activities to be conducted during the entire project period, and must include the following:

1. Specific one-year interim targets and four-year overall goals.
2. The discussion should provide a rationale for the targets and a description of how each relates to

Healthy People 2010 Objectives. (Reference-*http://www.healthypeople.gov/document/html/volume2/25stds.htm*)

The goals should reflect the vision, priorities and direction of the grantee's STD program during the next four-year project period. These goals should be supported by background and need descriptions and be consistent with the goals of the Division of STD Prevention.

The narrative must include the following items in the order listed:

1. Executive Summary

Your executive summary should include a clear and succinct description of your program including, but not limited to, funding you are applying for (CSPS, IPP, SE, and GISP), program's mission and purpose, program structure, significant morbidity and other trends, goals of the program for which funding is requested, and key activities to meet these goals. Those applicants choosing to participate in the QEI initiative should also address this initiative in the executive summary.

2. Background and Need for CSPS, IPP, and SE

This section should describe the grantee's total STD program (not just the portion which is federally funded), STD prevention needs, and provide a sound platform for proposed CSPS, IPP, and SE funded activities. The grantee must include the following:

a. An overview and update of chlamydia, gonorrhea and syphilis morbidity and prevalence (where appropriate) trends by relevant characteristics (*e.g.*, gender, age, race/ethnicity, geography) for the past five years. Provide current syphilis reactor grid indicating date of last assessment and modification. Additionally, complete the following four tables separately for each of these time periods: calendar year 2003 and the first six months of 2004.

TABLE 1.—CHLAMYDIA

Provider type	Number of Chlamydia tests (List as many as appropriate)		Number of positive tests (List as many as appropriate)		Test used	Screening criteria
	Females	Males	Females	Males		
FP						
STD						
Prenatal						

TABLE 2.—GONORRHEA

Provider type	Number of Gonorrhea tests (List as many as appropriate)		Number of positive tests (List as many as appropriate)		Test used	Screening criteria
	Females	Males	Females	Males		
FP.						
STD.						
Prenatal.						

TABLE 3.—MALE PRIMARY AND SECONDARY SYPHILIS CASES

Number of cases	Cases with partner information*	Information about index case					
		Total number of HIV+	Total number of HIV–	Total number of HIV status unknown	HIV + & MSM**	HIV – & MSM	HIV Status unknown & MSM

*Partner information is defined as partner information gathered during an interview and/or information gathered from a provider even if the case is not interviewed.

**MSM refers to men who have sex with men.

TABLE 4.—FEMALE PRIMARY AND SECONDARY SYPHILIS CASES

Number of Cases	Cases with Partner Information*	Information about Index Case		
		Total number of HIV+	Total number of HIV–	Total number of HIV status unknown

*Partner information is defined as partner information gathered during an interview and/or information gathered from a provider even if the case is not interviewed.

b. Discussion of significant behavioral trends of groups affected by STDs (*e.g.*, sexual risk, substance abuse, and health care seeking); health services delivery trends (*e.g.*, number of clinics, patients seen, relationships with private providers) and program management (*e.g.*, organizational structure, funding, federal and local staffing, resource limitations) trends over the past five years. Include any other relevant information or trends that may be major factors affecting STD morbidity within your project area.

c. Discussion of community involvement and organizational partnerships in planning, implementation and evaluation of program activities including successes, obstacles, and barriers. Also describe collaboration with other governmental and non-governmental entities (*e.g.*, regional infertility prevention projects, school-based clinics, correctional centers, community planning groups, Indian Health Services, tribes, faith-based organizations, STD/HIV Prevention Training Centers, AIDS Education and Training Centers).

d. Discussion of Areas of Special Emphasis: Grantees are expected to identify the Areas of Special Emphasis to be addressed through program activities and provide a rationale for the selections. The grantee must include morbidity, behavioral, or other data/information to support the rationale. Examples of information to include are: (1) Case rates or prevalence monitoring data; (2) data indicating the demographic characteristics of the groups to be reached; (3) behavioral or other risk data; or (4) documentation of existing project area activities related to the Areas of Special Emphasis chosen.

e. Statement of grantee's one year interim target and four-year overall project period goals for each target. Provide a rationale for the targets and a description of how each relates to Healthy People 2010 Objectives. (Reference: *http://www.healthypeople.gov/document/html/volume2/25stds.htm*)

3. CSPS Essential Functions

Following are instructions to complete this section:

I. Narrative: Describe and discuss the status of each essential function as specified under each function. As appropriate, include information about how the Areas of Special Emphasis identified in the background section are being addressed.

II. Objectives: List the budget period (one year) program objectives for each essential function. They should be consistent with grantee's program priorities as related to each function. Assure that each objective is specific, measurable, achievable and ambitious, relevant, and time bound (SMART). The suggested number of objectives for each essential function is one to three.

III. Activities: Describe the activities that will be conducted to achieve the objectives for the next budget period. Include in this section any training of program staff or external partners necessary to conduct the activities and achieve the objectives.

IV. Monitoring Plan: A plan should be developed that will monitor the activities and progress made toward meeting the objectives developed for each essential function. The plan should answer the following questions:

1. What is being done? (e.g., strategy, intervention,activity)
2. By whom? (e.g., staffing)
3. For whom? (e.g., target population)
4. How? (e.g., where, when, how often, how much)
5. For what specific benefit(s)? (e.g., what are the expected results or outcomes?)
6. What resources are being used? (*e.g.*, staff, materials, money etc.)

Essential Functions

Community and Individual Behavior Change Interventions. Community Behavior Change is defined as an intervention conducted for more than one person at any given time while Individual Behavior Change is defined as an intervention conducted one-on-one. Information on STD prevention interventions (or strategies) can include abstinence, monogamy, i.e., being faithful to a single sexual partner, or using condoms consistently and correctly. These approaches can avoid risk (abstinence) or effectively reduce risk for STD (monogamy, consistent and correct condom use).

The components of this essential function are:

1. Describe how the program implements strategies to target individuals, groups or whole communities to build awareness and stimulate individual behavior change.
2. Describe how the program develops networks with experts in the fields of communication, behavioral and social science, social marketing and advertising to further promote STD prevention messages.

Medical and Laboratory Services. Medical Services are defined as clinical/diagnostic STD services provided by private and public health care providers. Laboratory Services are defined as STD testing performed at licensed facilities. The components are:

1. Describe collaboration with non-governmental entities, Community-based organizations (CBOs), providers, etc., whose clients are at risk for STDs to expand access to care.
2. Describe how the program assures that the clinical services and standards of care in those settings providing STD services are of high quality and consistent with CDC's guidelines and recommendations.
3. Describe screening and counseling of persons at risk for STDs in settings where STD services are provided. Screening criteria should be based on local morbidity.
4. Describe how the program assures the availability of on-site, "stat" (immediate) STD laboratory tests (Clinical Laboratory Improvement Amendments [CLIA] adherence required) in laboratories in public STD clinic settings.
5. Describe how the program assures that all laboratories adhere to reporting requirements including the transmission of quality, complete data in a timely manner to providers and the health department.

There is one performance measure for this essential function. Specify baseline performance, one-year, and four-year goals for the following measure:

Proportion of female admittees to large juvenile detention facilities tested for chlamydia. (See appendix five for list of proposed large county detention facilities by project area that project areas may use in responding to this measure.)

The following information regarding the baseline indicator should be provided:

1. Describe how the baseline was developed.
2. Describe what data sources were used in setting the baseline.
3. Describe how the data were analyzed to develop this baseline.
4. Describe how the one-year and four-year goals were developed.
5. If the data sources needed to establish the baseline level are not available, describe what steps/actions will be conducted in Year One to set the baseline level in Year Two.

Partner Services. Partner Services are those activities offered to individuals infected with STDs, their sex partners, and other persons who are at increased risk for infection in an effort to prevent further transmission of disease. The components are:

1. Describe confidential notification, appropriate medical attention, and needed referrals for sex partners and other high risk individuals.

2. Describe risk reduction plans to reduce likelihood of acquiring future STD/HIV.

3. Describe identification of communities at risk by analyzing information gathered from interviews conducted with patients, partners, and others at risk for STD and HIV.

4. Describe integration or coordination of STD and HIV partner services.

There are five performance measures for this essential function. Specify baseline performance, and one-year and four-year goals, for the following five measures:

1. Proportion of primary and secondary syphilis cases interviewed within 7, 14, and 30 calendar days from the date of specimen collection.

2. Number of contacts prophylactically treated or newly diagnosed and treated within 7, 14 and 30 calendar days from day of interview of index case, per case of P and S syphilis.

3. Number of "associates" or "suspects" tested, per case of P and S syphilis.

4. Number of "associates" or "suspects" treated for newly diagnosed syphilis, per case of P and S syphilis.

Project areas receiving syphilis elimination funding are not required to report on the following performance measure. For all other project areas, when providing required information for this measure, describe how the data was analyzed to identify the chosen priority population(s).

5. Proportion of priority gonorrhea cases interviewed within 7, 14 and 30 days from the date of specimen collection. Priority population(s) is to be locally determined (*e.g.*, pregnant women, women aged 15–19 years, women of child-bearing age, resistant gonorrhea, MSM, etc.)

The following information regarding each baseline performance should be provided:

1. Describe how the baseline was developed.

2. Describe what data sources were used in setting the baseline.

3. Describe how the data were analyzed to develop this baseline.

4. Describe how the one-year and four-year goals were developed.

5. If the data sources needed to establish the baseline level are not available, describe what steps/actions will be conducted in Year One to set the baseline level in Year Two.

Leadership and Program Management. Leadership is defined as providing the vision and context in which management activities are implemented. It provides a clear sense of purpose and direction. Program Management is defined as overseeing the implementation of elements created by leadership. Components of this essential function are:

1. Describe program vision to set the context in which activities can be implemented.

2. Describe implementation of the elements created by leadership which include assessment, assurance, and policy development.

3. Describe dissemination and implementation of national and local guidelines and the delivery of high quality STD prevention and clinical services.

4. Describe the development of sound policy that promotes STD prevention program goals through solid strategic and operational planning.

5. Describe the involvement of affected communities and other relevant partners in strategic and operational planning.

Surveillance and Data Management. Surveillance is defined as the ongoing and systematic collection, analysis, interpretation, and dissemination of health data for the purpose of describing and monitoring disease trends. Data management is defined as the process of collection, analysis, storage, retrieval, and distribution of data. The components of this essential function are:

1. Describe the improvement and maintenance of timely and active data and information systems for monitoring STD incidence and prevalence, especially in high risk populations and geographic areas.

2. Describe your system to detect changing patterns, identify populations at risk, and provide surveillance data and feedback to program managers, community health providers, HIV community planning groups, policy makers, family planning partners, correctional facilities, Managed Care Organizations, and the lay public.

There are two performance measures for this essential function. Baseline performance for these measures will be provided by CDC. Specify one-year and four-year goals for the following two measures.

1. Proportion of reported cases of gonorrhea, chlamydia, P and S syphilis, early latent (EL) syphilis, and congenital syphilis sent to CDC via the National Electronic Telecommunications System for Surveillance (NETSS) that have complete data for age, race, sex, county, and date of specimen collection.

2. Proportion of reported cases of gonorrhea, chlamydia, P and S syphilis, EL syphilis, and congenital syphilis sent to CDC via NETSS within 30 and 60 days from the date of specimen collection.

The following information regarding each baseline indicator should be provided:

1. Describe how the one-year and four-year goals were developed.

Training and Professional Development. Training is defined as a set of activities designed to develop specific skills of workers who are required to perform public health prevention functions or tasks. The training process includes assessment of staff proficiency and identification of training needs; delivery of training to address skill and knowledge deficiencies; and evaluation of the effectiveness of the training on performance. Professional development is a strategy to develop the necessary professional expertise within the targeted workforce. It is a broader level of commitment to worker development and might include participation in informational seminars and in-service workshops, formal academic education, and experiential activities which aid in the growth of workers' professional expertise. Components of this essential function are:

1. Describe the programs on-going systematic assessment of the training needs of staff and external partners.

2. Describe how the program identifies ongoing training resources.

3. Describe opportunities for professional development for staff members.

4. Describe training for the professional development of external partners including staff and physicians of private medical settings.

STD Outbreak Response Plan (not included in page limitation). All grantees must include an updated STD Outbreak Response Plan as an attachment. The plan should include standards for surveillance and procedures for analysis of data; a timetable and schedule for review of disease trends; the disease thresholds, for gonorrhea and syphilis at a minimum, at which the plan is to be initiated; the meaningful involvement of the affected community in the effort; staffing considerations, including number, disciplinary mix, and specific responsibilities of members of response teams; the notification to CDC; the evaluation of the effectiveness of the response; and a schedule for the periodic review of both the outbreak plan and the surveillance system attributes.

4. Quality Evaluation Initiative

The Quality Initiative, a new component, is intended to assist

grantees in building local evaluation capacity by improving knowledge and skill in the area of program evaluation as practically applied to the CSPS. Self-selected grantees are given the opportunity to develop plans to conduct an in-depth, science-based evaluation. It is an opportunity for a grantee to closely examine a program intervention to determine its strengths and weaknesses, its benefits, and its future direction. In addition, grantees will be provided technical assistance by the Division to assist in the development, implementation, and execution of this initiative. During the project period, the grantee will have an opportunity to closely examine a program intervention to determine its strengths and weaknesses, its benefits, and its future direction.

To express interest in pursuing this quality evaluation initiative the grantee should address the following items in their application.

a. Describe any current program evaluation and quality improvement activities the program has or is currently conducting.

b. Select and briefly describe the rationale for selection of ONE program intervention to be evaluated.

c. List the most important questions to be answered (what does the grantee want to learn about the intervention).

d. Describe what technical assistance your project would need to conduct an evaluation.

5. Infertility Prevention Plan

A comprehensive program plan for infertility prevention should be developed based on access to populations at risk, prevalence of disease, and available resources (federal, state, local, and private). Project areas are expected to develop a program plan that uses the most cost-effective approaches available and provide a rationale for the approach selected. To improve cost-effectiveness, programs are encouraged to expand screening to adolescent women in settings with a female prevalence of chlamydia greater than two percent (family planning clinics, STD clinics, adolescent health clinics, Indian Health Service sites, community health centers, school-based health centers, and juvenile detention centers) before screening males. In general, screening men is not cost-effective unless the prevalence in the men screened is substantially higher than the prevalence in women who can be screened (such as seven percent in men vs two percent in women).

Project area IPP program plans must be developed in collaboration with family planning (FP) and laboratory partners. The application must include a recently dated letter that provides evidence of collaboration and indicates the percentage (at least 50 percent) of IPP funds that will support screening and treatment of women and their sex partners in Title X family planning settings. If the funds are less than 50 percent, justification must be provided in the letter. The STD and the designated Title X family planning representative must jointly sign the letter.

The project area must provide the Regional IPP Coordinator a draft copy of the CSPS Background section, IPP plan, and IPP budget in sufficient time to provide feedback prior to local clearance. Any comments from the Regional IPP Coordinator received seven days before submission to local clearance should be considered by the project area for incorporation in the application.

The following are instructions to complete this section.

I. *Narrative:* Describe and discuss the status of each IPP core component. As appropriate, include information about how the Areas of Special Emphasis identified in the background section are being addressed.

II. *Objectives:* List the budget period (one year) program objectives for each IPP core component. The objectives should be consistent with and address relevant priority areas as outlined in the 2003 Regional IPP Plan Guidance. Assure that each objective is SMART. The suggested number of objectives for each core component is one to three.

III. *Activities:* Describe the required activities to achieve the objectives related to the five IPP core components for the next budget period (one year). Report on all relevant activities regardless of funding source. Activities supported with IPP funds should be clearly identified and reported separately. Progress reports should be shared with members of the regional advisory committee to keep them abreast of program successes and shortfalls.

IV. *Monitoring Plan:* A plan should be developed that will monitor the activities and progress made toward meeting the objectives developed for each IPP core component. The plan should answer the following questions:

1. What is being done? (*e.g.*, strategy, intervention, activity)

2. By whom? (*e.g.*, staffing)

3. For whom? (*e.g.*, target population)

4. How? (*e.g.*, where, when, how often, how much)

5. For what benefit? (*e.g.*, what are the expected results or outcomes?)

6. What resources are being used? (*e.g.*, staff, materials, money, etc.)

IPP Core Components: Include a description of each of the five IPP core components within your narrative.

Clinical Services

- Describe how the program is targeting/expanding chlamydia screening to young sexually active women and men at risk for infection in family planning, STD and other settings including, but not limited to, Indian Health Service sites, migrant and community health centers, adolescent clinics, school-based facilities, and juvenile detention centers.
- Describe counseling and education strategies to prevent and control chlamydia and gonorrhea including (a) the importance of partner referral and treatment, (b) the impact of untreated chlamydia and repeat chlamydial infections on future fertility and (c) information on STD prevention methods (or strategies) such as abstinence, monogamy, *i.e.*, being faithful to a single sexual partner, or using condoms consistently and correctly.
- Describe monitoring of treatment success.
- Describe monitoring of partner testing and treatment.
- Describe monitoring of regional screening guidelines, protocols, and other quality assurance activities.

Expanded Clinical Services: (If funding allows, describe one or more of the components below.)

- Describe how chlamydia screening among private sector providers is promoted.
- Describe monitoring of screening coverage in family planning and STD clinics (*i.e.*, the number of eligible women screened divided by the number of eligible women being seen at a site).
- Describe screening women for gonorrhea (see budget section for funding restrictions). To use IPP funds for this purpose, the grantee must describe gonorrhea positivity data of one percent or greater at the provider sites where services are to be supported. Pending further guidance from CDC, a site-specific or age-specific gonorrhea prevalence should equal or exceed one percent. Other supporting prevalence monitoring data should be included for each population or clinic site that can substantiate the need for using IPP funds.
- Describe male chlamydia screening activities (see budget section for funding restrictions). To use IPP funds for this purpose, the grantee must quantify and describe any other male screening activities conducted with other funds that are occurring in the project area;

describe what type of activity will be undertaken and type of facility; and submit core IPP data elements to regional coordinator.

There are two performance measures for this IPP Core Component. Specify baseline performance, and one-year and four-year goals for the following two measures:

1. Among clients of IPP family planning clinics, the proportion of women with positive chlamydia tests that are treated within 14 and 30 days of the date of specimen collection.

2. Among clients of IPP family planning clinics, the proportion of women with positive gonorrhea tests that are treated within 14 and 30 days of the date of specimen collection.

The following information regarding baseline performance for each measure should be provided:

1. Describe how the baseline was developed.

2. Describe what data sources were used in setting the baseline.

3. Describe how the data were analyzed to develop this baseline.

4. Describe how the one-year and four-year goals were developed.

5. If the data sources needed to establish the baseline level are not available, describe what steps/actions will be conducted in Year One to set the baseline level in Year Two.

Laboratory Support

- Describe tests used for chlamydia and gonorrhea screening including criteria for confirmation testing.
- Describe quality assessment practices to monitor performance of laboratories.
- Describe how compliance to regional turnaround time standards is monitored.
- Describe how specimen adequacy is monitored.
- Describe methods to increase test sensitivity where appropriate (*e.g.*, additional testing within negative gray zone).
- Describe methods to improve test specificity and improve positive predictive value.

Surveillance and Data Management

- Describe local information systems used to collect all elements of the regional IPP core data set.
- Describe how the project area is using data for program planning.
- Describe how adherence to regional or locally developed screening criteria is monitored.
- Describe quality assurance activities to monitor completeness and timeliness of submission of chlamydia and gonorrhea prevalence monitoring data to regional coordinators.

Expanded Surveillance and Data Management Component: (If funds are available)

- Describe local information systems used to collect enhanced IPP data elements.

Program Management and Leadership:

- Describe participation in the regional IPP advisory committee and collaboration with state family planning and public health laboratory partners.
- Describe how information about the regional project is disseminated to local areas.
- Describe how the project area adheres to regionally developed protocols (when not in conflict with local policy).

Expanded Program Management and Leadership: (If funds allow, describe the following)

- Describe strategies to optimize program resources (*e.g.*, increasing non-federal contribution to project; improving program efficiency by increasing use of electronic reporting or reducing laboratory costs; negotiating lower test or treatment costs; expanding third party reimbursement; or other efforts to increase program resources during the reporting period).

Provider Training

If not addressed in the CSPS training section, describe training efforts that support implementation of the IPP and how training needs are assessed.

6. Syphilis Elimination (applies only to HMA applicants)

Following are the instructions to complete this section:

I. Narrative: Describe and discuss the current status of each SE strategy. As appropriate, include information about how the Areas of Special Emphasis identified in the Background section are being addressed.

II. Objectives: List the budget period program (one year) objectives for each SE strategy. The objectives should reflect your program's primary focus as it relates to each of the five strategies. Assure that the objectives are SMART. The suggested number of objectives for each SE strategy is one to three.

III. Activities: Describe the activities that will be conducted to achieve the objectives for the next budget period. Include in this section any training of program staff or external partners necessary to conduct the activities and achieve the objectives.

IV. Monitoring Plan: A plan should be developed that will monitor the activities and progress made toward meeting the objectives developed for each SE strategy. The plan should answer the following questions:

1. What is being done? (*e.g.*, strategy, intervention, activity)

2. By whom? (*e.g.*, staffing)

3. For whom? (*e.g.*, target population)

4. How? (*e.g.*, where, when, how often, how much)

5. For what specific benefit? (*e.g.*, what are the expected results or outcomes?)

6. What resources are being used? (*e.g.*, staff, materials, money, etc.)

Five Strategies to Eliminate Syphilis

There are five strategies listed in the National Plan to Eliminate Syphilis from the United States. HMAs must address all five strategies.

1. Enhanced Surveillance

a. Describe how you will enhance the project area surveillance system to plan, implement and evaluate syphilis elimination activities. This should include a description of how case reporting systems have been enhanced and how the systems have been used to estimate the burden of disease, define local epidemiology, monitor trends, monitor time frames for reporting consistent with those in the National Plan, identify high priority populations, identify gaps in health care and prevention intervention opportunities, design and evaluate interventions, and allocate resources.

b. Describe syphilis prevalence monitoring activities as outlined in the "Recommendations for Public Health Surveillance of Syphilis in the United States" and how these data have been used to evaluate the yield of screening programs, monitor disease burden and trends, identify priority populations, evaluate case reporting data, design interventions, and allocate resources.

There are two performance measures for this component. Specify baseline performance, and one-year and four-year goals for the following two measures:

1. Proportion of providers or partnerships delivering continuing care for >50 HIV+ individuals, who have written protocols for screening those clients for syphilis.

2. Proportion of female admittees entering selected project area adult city and county jails that were tested for syphilis. (See appendix four for the list of ten adult city and 29 selected county jails)

The following information regarding each baseline indicator should be provided:

1. Describe how the baseline was developed.

2. Describe what data sources were used in setting the baseline.

3. Describe how the data were analyzed to develop this baseline.

4. Describe how the one-year and four-year goals were developed.

5. If the data sources needed to establish the baseline level are not available, describe what steps/actions will be conducted in Year One to set the baseline level in Year Two.

2. Strengthened Community Involvement and Organizational Partnerships

a. Describe assessment activities that include members of the affected communities to determine the non-governmental, community-based, health and non-health agencies, and institutions that should be involved in the development of the syphilis elimination plan. This should include a description of how community coalitions and other partners are involved to (1) review the epidemiology of syphilis and the social and institutional context of its persistence and (2) design and implement locally relevant, enhanced syphilis prevention interventions and control services identified by community assessment activities.

b. Describe how current STD and HIV prevention activities in the project area and other relevant healthcare and non-health sector activities (*e.g.*, HIV care providers, community health centers, faith communities, substance abuse treatment) are being integrated in the syphilis elimination plan. Describe activities to increase partnerships to improve the availability of and accessibility to quality preventive care services for high priority populations. If obstacles or barriers exist describe the situation and activities to overcome the situation.

3. Syphilis Outbreak Response Plan

In addition to addressing syphilis in the STD Outbreak Response Plan (required appendix), the grantee should provide a rationale for the area-specific syphilis threshold cited in the Plan. The grantee should also briefly describe whether their Outbreak Response Plan had been activated and evaluated for the period of time between January 2003 and June 2004. For example, How well did it work? Was it necessary to modify the plan? What were the outcomes of activating the plan and related interventions? (*e.g.*, increased awareness, reduced incidence, what methodology was used to evaluate the activation of the plan?)

4. Expanded Clinical and Laboratory Services

a. Develop, implement, and evaluate enhanced syphilis prevention interventions and control systems. Recipients must be able to provide accessible and timely client-centered counseling, screening and treatment services in sites frequented by priority populations.

b. Working with community and institutional partners, grantees must determine which of the following essential interventions are needed to assure elimination of syphilis in their local situation. Recipients must be able to execute and evaluate the identified interventions. Interventions include: (1) Enhanced clinical and laboratory services to assure high quality, accessible biomedical services; (2) screening in priority population settings that are determined by each project area based on current data analyses and input from community partners (settings could include HIV prevention clinics, corrections, drug treatment, emergency rooms, homeless shelters, local communities, and other community appropriate settings); (3) improved partner services, including partner notification, identification and provision of services within social-sexual networks, and high quality disease investigation services linking to quality clinical and counseling services; and (4) community-based services for priority populations. Community-based services should include access to disease screening and treatment, referral for other clinical services as appropriate, outreach to priority populations, prevention education, and condom distribution.

5. Enhanced Health Promotion

a. Expand community and individual risk reduction interventions to lower the acquisition and transmission of syphilis through delivery of theory-based behavior change interventions targeting priority populations.

b. Develop systematic communication and media strategies (print, television, radio and local CBO outreach activities to assure dissemination of syphilis elimination messages.

Note: Information on syphilis prevention methods (or strategies) can include abstinence, monogamy, *i.e.*, being faithful to a single sexual partner, or using condoms consistently and correctly. These approaches can avoid risk (abstinence) or effectively reduce risk for syphilis (monogamy, consistent and correct condom use).

7. Gonococcal Isolate Surveillance Program (Applies Only to GISP Applicants)

Provide a narrative that includes the following:

- Describe enrollment strategy. Specifically, describe how applicant intends to reach a goal of 25 isolates per month.
- Describe procedures for isolate collection, handling and shipping.
- Describe patient data applicant intends to collect and the plan for submitting data to CDC in a timely fashion.
- Where appropriate, describe procedures for determining beta-lactamase production and antimicrobial susceptibilities of GISP isolates.
- Where appropriate, discuss timeliness of isolate testing and submission of results, storage or duplicate isolates, use of control strains, proficiency testing, and timeliness of CASPIR isolate submission.

8. Budget and Budget Justifications (Not Included in Page Limit)

An individual line-item budget and budget justification must be submitted for each funding source for which your program is applying. The budget and justifications should reflect year one of operation. All requested costs should be consistent with program objectives and activities, especially those related to requests for personnel, and contracts. For all contracts, provide: (1) Name of contractor, (2) period of performance, (3) method of selection (*e.g.*, competitive or sole source), (4) description of activities, (5) reason for contracting activities, and (6) itemized budget. For personnel requests, include the following: Name, position title, salary, percentage of effort, and amount requested. For non-federal resources: Document the resources expended (*see* Form 424A, Section C, Non-Federal Resources). Grantees must complete appendix number four, Table of staff percentage of time spent on HIV activities and appendix number five, Table of state and local contributions to STD prevention efforts. Funding restrictions, which must be taken into account while writing your budget, are listed in section "IV.5. Funding Restrictions" of this announcement.

Note: Any information systems development supported through this cooperative agreement should be done according to the Public Health Information Network (PHIN) architecture specifications. The creation of standards-based, interoperable public health information systems is the goal of these specifications. Two of the chief components of the PHIN initiative are affected by or affect almost any information systems development project and special attention should be paid to them. These are standard messaging (data exchange) formats and content and standard vocabulary code sets. Examples of projects heavily affected by these components are surveillance systems developed according to National Electronic Disease Surveillance

System (NEDSS) standards and Laboratory Information Management System (LIMS) implementations. For more information on Public Health Information Network (PHIN), the PHIN architecture, PHIN messaging, and PHIN standards, functions, and specifications, go to *http://www.cdc.gov.phin/.*

Additional information must be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes:

1. Curriculum Vitae of Project Director.
2. Syphilis Reactor Grid.
3. Outbreak Response Plan.
4. IPP letter of support.
5. Table 1. Percentage Direct Assistance/Financial Assistance (DA/FA) Staff Time Attributed to STD and HIV Activities.
6. Table 2. State and Local Contribution for STD Prevention by Budget Category.

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 *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/pubcommt.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 letter.

Additional requirements that may require you to submit additional documentation with your application are listed in the "Administrative and National Policy Requirements" section of this announcement.

IV.3. Submission Dates and Times

Application Deadline Date: September 15, 2004.

Explanation of Deadlines: 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 that 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 application format, content, and deadlines. 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 the 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. This will 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

Funding restrictions, which must be taken into account while writing your budget, are as follows:

CSPS

1. Grant funds may be used for costs associated with organizing and conducting STD Prevention activities described in the Application Structure and Content section of this announcement. Funds cannot be used to supplant existing state or local funds.
2. When federal funds are used to develop or purchase STD health education materials, they shall contain medically accurate information regarding the effectiveness or lack of effectiveness in preventing the STD the materials are designed to address.

IPP

1. In consultation with the Project Area's Title X family planning grantee(s), at least 50 percent of the total IPP funds must be directed to support screening of women and their partners in Title X family planning programs. The level of support must be documented in a current letter signed by the STD Director and the designated Title X family planning grantee representative. If less than 50 percent (of the funds), the letter must include an explanation of the alternate arrangement.
2. Up to ten percent of the total IPP funds can be used to support gonorrhea screening of women. The collaboration letter from the STD Program Director and Title X designated representative must indicate how the Title X Family Planning partner(s) was involved in these decisions. The grantee must include a detailed budget that delineates the amount of IPP funds allocated for gonorrhea screening activities.
3. Up to 20 percent of the total IPP funds can be used to support male screening. The collaboration letter from the STD Program Director and Title X designated representative must indicate how the Title X Family Planning partner(s) was involved in these decisions. The grantee must include a detailed line item budget that delineates the amount of IPP funds allocated for male screening and treatment activities.
4. IPP funds can be used to support testing, treatment and counseling services provided to the partners of individuals with chlamydia. However, support of Disease Intervention Specialists for these partner services is restricted pending the development of CDC guidance regarding such services.

SE

1. HMAs may use funds for infrastructure development to support syphilis elimination activities.
2. Thirty percent of funds must be awarded to community organizations that serve affected populations. Community organizations are those that are within reasonably circumscribed geographic areas in which there is a sense of interdependence and belonging. These organizations have access to, and history and social credibility with, persons and groups affected by syphilis. They are able to provide culturally competent and relevant interventions. Grantees must report on activities of these funded organizations in future project period progress reports.

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 must be less than 12 months of age.

Awards will not allow reimbursement of pre-award costs.

Guidance for completing your budget can be found on the CDC website, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

IV.6. Other Submission Requirements

Application Submission Address

Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management–PA# 05004, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant. 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.

All applications will receive a technical acceptability review (TAR). Your application will be evaluated against the criteria listed in "Section IV.2. Content and Form of Application Submission" of this announcement.

The following review criteria apply to the QEI:

1. Plan Description (60 points)

Does the applicant describe a plan to identify and develop an evaluation of one program activity using an appropriate framework, *e.g.*, CDC's Framework for Program Evaluation in Public Health Practice, that is specific to STD prevention and control? Is the plan complete, sound, practical, and able to be generalized to other STD prevention programs.

2. Capacity (40 points)

Does the applicant provide a staffing plan that demonstrates an understanding of the labor requirements for this activity including staff member(s) name with resume or summary of their program evaluation experience and other relevant experience? Does the applicant clearly state a commitment to produce a high quality evaluation product?

The following review criteria apply to GISP:

1. Enrollment strategy (40 points)

Does the applicant describe an enrollment strategy that demonstrates likelihood that goal of 25 isolates per month will be reached?

2. Procedures (40 points)

Does the applicant describe appropriate procedures for isolate collection, handling and shipping? Does the applicant describe, if applicable, procedures for determining beta-lactamase production and antimicrobial susceptibilities of GISP isolates? Does the applicant discuss, if applicable, timeliness of isolate testing and submission of results, storage or duplicate isolates, use of control strains, proficiency testing, and timeliness of CDC and ATSDR Specimen Packaging, Inventory, and Repository (CASPIR) isolate submission.

3. Data plan (20 points)

Does the applicant describe data to be collected and plan for timely submission of data?

4. Budget (not scored)

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff and for responsiveness by NCHSTP, Division of STD Prevention. Incomplete applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review 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 Date

Anticipated award date is January 1, 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 or Part 92

For more information on 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–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research.
- AR–7 Executive Order 12372.
- AR–8 Public Health System Reporting Requirements.
- AR–10 Smoke-Free Workplace Requirements.
- AR–11 Healthy People 2010.
- AR–12 Lobbying Restrictions.
- AR–14 Accounting System Requirements.
- AR–22 Research Integrity.
- AR–23 States and Faith-Based Organizations.
- AR–24 Health Insurance Portability and Accountability Act Requirements.

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements

You must provide CDC with an original, plus two copies of the following reports:

1. Interim progress report is due on or before September 15 of each year. 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. Detailed Line-Item Budget and Justification.

e. Additional Requested Information. The following data tables are required for the first six months of the budget period.

TABLE 1.—CHLAMYDIA

Provider type	Number of Chlamydia tests (List as many as appropriate)		Number of positive tests (List as many as appropriate)		* Test used	Screening criteria
	Females	Males	Females	Males		
FP.						
STD.						
Prenatal.						

TABLE 2.—GONORRHEA

Provider type	Number of Gonorrhea tests (List as many as appropriate)		Number of positive tests (List as many as appropriate)		Test used	Screening criteria
	Females	Males	Females	Males		
FP.						
STD.						
Prenatal.						

TABLE 3.—MALE PRIMARY AND SECONDARY SYPHILIS CASES

Number of cases	Cases with partner information*	Information about Index Case					
		Total number of HIV+	Total number of HIV–	Total number of HIV Status Unknown	HIV + & MSM	HIV– & MSM	HIV status unknown & MSM

*Partner information is defined as partner information gathered during an interview and/or information gathered from a provider even if the case is not interviewed.

TABLE 4.—FEMALE PRIMARY AND SECONDARY SYPHILIS CASES

Number of cases	Cases with partner information*	Information about Index Case		
		Total number of HIV +	Total number of HIV	Total number of HIV status unknown

*Partner information is defined as partner information gathered during an itnerview and/or information gathered from a provider even if the case is not interviewed.

f. Measures of Effectiveness. The following performance measures are required for the first six months of the budget period.

1. Proportion of female admittees to large juvenile detention facilities tested for chlamydia.

2. Proportion of primary and secondary (P and S) syphilis cases interviewed within 7, 14, and 30 calendar days from the date of specimen collection.

3. Number of contacts prophylactically treated or newly diagnosed and treated within 7, 14 and 30 calendar days from day of interview of index case, per case of P and S syphilis.

4. Number of "associates" or "suspects" tested, per case of P and S syphilis.

5. Number of "associates" or "suspects" treated for newly diagnosed syphilis, per case of P and S syphilis.

6. Proportion of "priority" gonorrhea cases interviewed within 7, 14 and 30 days from the date of specimen collection. Priority population(s) is to be locally determined (e.g., pregnant women, women aged 15–19 years, women of child-bearing age, resistant gonorrhea, MSM, etc.)

7. Proportion of reported cases of gonorrhea, chlamydia, P and S syphilis, EL syphilis, and congenital syphilis sent to CDC via NETSS that have complete data for age, race, sex, county, and date of specimen collection.

8. Proportion of reported cases of gonorrhea, chlamydia, P and S syphilis, EL syphilis, and congenital syphilis sent to CDC via NETSS within 30 and 60 days from the date of specimen collection.

9. Among clients of IPP family planning clinics, the proportion of women with positive CT tests that are

treated within 14 and 30 days of date of specimen collection.

10. Among clients of IPP family planning clinics, the proportion of women with positive gonorrhea tests that are treated within 14 and 30 days of date of specimen collection.

11. Proportion of providers or partnerships delivering continuing care for >50 HIV+ individuals, who have written protocols for screening those clients for syphilis.

12. Proportion of female admittees entering selected project area adult city and county jails that were tested for syphilis.

2. Financial status report is due March 31 of each year.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be sent 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 Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Kim Seechuk, Deputy Branch Chief, Program Development and Support Branch, Division of STD Prevention, 1600 Clifton Road, MS E–27, Atlanta, GA 30333, Telephone: 404–639–8339, E-mail: *kgs0@cdc.gov*.

For financial, grants management or budget assistance, contact: Gladys Gissentanna, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2753, E-mail: *GGissentanna@cdc.gov*.

VIII. Other Information

Appendices can be found with this announcement on the CDC Web site at *http://www.cdc.gov/od/pgo/funding/grantmain.htm* Appendix contains:

(1) Description of SMART Objectives

(2) Quality Initiative: Examples of Interventions to Evaluate

(3) Outline for Grant Application

(4) List of 21 adult city and 30 selected county jails

(5) Percentage DA/FA Staff Time Attributed to STD and HIV Activities

(6) State and Local Contribution for STD Prevention by Budget Category

See *http://www.nchstp.cdc.gov/std/* for: (1) Division of STD Program Operations Guidelines, (2) National Plan to Eliminate Syphilis from the United States, and (3) Regional Infertility Plan Guidance.

Dated: July 15, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–16545 Filed 7–20–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Case-Cohort Study of Cancer and Related Disorders Among Benzene-Exposed Workers In China (OMB No. 0925–0454)

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for the opportunity for public comment on the proposed data collection projects, the National Cancer Institute (NCI), 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

Title: Case-Cohort Study of Cancer and Related Disorders Among Benzene-Exposed Workers in China.

Type of Information Collection: Revised.

Need and Use of Information: A case-cohort study will examine the relationship between exposure to benzene and the risk of lymphohematopoietic malignancies and related disorders, benzene poisoning, and lung cancer in Chinese workers. Cases and controls will be selected from participants in a cohort study of benzene-exposed and unexposed workers in China. The data will be used by NCI to examine risk among workers exposed at low levels of benzene exposure, and to characterize the dose and time-specific relationship between benzene exposure and disease risk.

Frequency of Response: One-time study.

Affected Public: Individuals or households.

Type of Respondents: Workers.

The annual reporting burden is as follows:

Estimated Number of Respondents: 2156.

Estimated Number of Responses per Respondent: One.

Average Burden Hours per Response: 0.37

Estimated Total Annual Burden Hours Requested: 317.

There are no Capital Costs to report. There are also no Operating and/or Maintenance Costs to report.

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 or 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; (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: Dr. Richard Hayes, Project Officer, OEB/EBP/DCEG/NCI 6120 Executive Blvd., EPS Room 8114, Bethesda, MD 20892–7364, or call non-toll-free number 301–435–3974 or fax your request to 301–402–1819 or e-mail your request, including your address to: *HayesR@mail.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: July 13, 2004.

Rachelle Ragland Greene,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 04–16517 Filed 7–20–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group; Subcommittee D—Clinical Studies.

Date: August 4–5, 2004.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: William D. Merritt, PhD, Scientific Review Administrator, Research Programs Review Branch, National Cancer Institute, Division of Extramural Activities, 6116 Executive Blvd., 8th Floor, Bethesda, MD 20892–8328, 301–496–9767, *wm63f@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 13, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–16493 Filed 7–20–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; SBIR: Topic 183, "Particle-Based Flow Cytometer for Detection and Quantification of Viral Antibodies".

Date: August 4, 2004.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Gerald G. Loving, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8101, Rockville, MD 20892–7405, 301/496–7987.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 13, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–16496 Filed 7–20–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee E—Cancer Epidemiology, Prevention & Control.

Date: August 4, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Mary C. Fletcher, PhD, Scientific Review Administrator, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Rm 8115, Bethesda, MD 20892, (301) 496–7413.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 13, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–16499 Filed 7–20–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel SBIR Topic 181.

Date: July 27, 2004.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: C. Michael Kerwin, PhD, MPH, Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8057, MSC 8329, Bethesda, MD 20892–8329, 301–496–7421, *kerwinm@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 13, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–16500 Filed 7–20–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee C—Basic & Preclinical.

Date: August 3–5, 2004.

Time: 4 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael B. Small, PhD, Scientific Review Administrator, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8127, Bethesda, MD 20892, 301–402–0996, *small@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 13, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–16511 Filed 7–20–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel Clinical Research.

Date: August 4, 2004.

Time: 8 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Linda C. Duffy, Scientific Review Administrator, Office of Review, NCRR, National Institutes of Health, 6701 Democracy Blvd, Room 10882, Bethesda, MD 20892, (301) 435–0810, *duffyl@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: July 13, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–16507 Filed 7–20–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, and the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel; Comparative Medicine.

Date: July 20, 2004.

Time: 1 p.m. Adjournment.

Agenda: To review and evaluate grant applications.

Place: Office of Review, One Democracy Plaza, 6701 Democracy Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Harold L. Watson, PhD, Scientific Review Administrator, Office of Review, NCRR, National Institutes of Health, 6701 Democracy Boulevard, 1 Democracy Plaza, Room 1078, Bethesda, MD 20892, 301–435–0813, *watsonh@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Center for Research Resources Special Emphasis Panel; Clinical Research.

Date: July 21, 2004.

Time: 3 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Office of Review, One Democracy Plaza, 6701 Democracy Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Harold L. Watson, PhD, Scientific Review Administrator, Office of Review, NCRR, National Institutes of Health, 6701 Democracy Boulevard, 1 Democracy Plaza, Room 1078, MSC 4874, Bethesda, MD 20892–4874, 301–435–0813, *watsonh@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure,

93.306, 93.333, National Institutes of Health, HHS)

Dated: July 13, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–16508 Filed 7–20–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center on Minority Health and Health Disparities Special Emphasis Panel, ZMD1 (05) RIMI-Research Infrastructure in Minority Institutions Programs.

Date: August 8–10, 2004.

Time: 5 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Merlyn M. Rodrigues, PhD, MD, Director, Office of Extramural Activities, National Center On Minority Health, and Health Disparities, National Institutes of Health, 6707 Democracy Blvd. Suite 800, Bethesda, MD 20894, 301–402–1366, *rodrigm1@mail.nih.gov.*

Dated: July 13, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–16509 Filed 7–20–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secretes or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Review of RFP: NHLBI–HB–05–07 (REDS–II).

Date: August 3, 2004.

Time: 1:30 p.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Chitra Krishnamurti, PhD, Scientific Review Administrator, Review Branch, Room 7206, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892, 301–435–0398.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 13, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–16513 Filed 7–20–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Development of Literacy in Spanish Speaking Children.

Date: July 23, 2004.

Time: 9 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Marita R. Hopmann, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Building, Room 5B01, Bethesda, MD 20892, (301) 435–6911, *hopmannm@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.364, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: July 13, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–16492 Filed 7–20–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential

trade secrets or commercial property such as patentable material, and person information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Superfund Basic Research and Training Program.

Date: October 18–21, 2004.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Raleigh Durham Airport, 4810 Old Page Road, Research Triangle Park, NC 27709.

Contact Person: Sally Eckert-Tilotta, PhD, National Inst. of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–1446, *eckertt1@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: July 13, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–16494 Filed 7–20–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; 05–06, Review of R21s.

Date: August 5, 2004.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rebecca Roper, MS, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, National Inst of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr., room 4AN32E, Bethesda, MD 20892, 301 451–5096.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Disease and Disorders Research, National Institutes of Health, HHS)

Dated: July 14, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–16495 Filed 7–20–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Unsolicited P01.

Date: August 11, 2004.

Time: 1 p.m. to 5 p.m.

Agenda: To review an evaluate grant applications.

Place: National Institutes of Health, 6700 B Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Annie Walker-Abbey, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, RM. 3266, Bethesda, MD 20892–7616, 301–451–2671, *aabbey@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 13, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–16497 Filed 7–20–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the AIDS Research Advisory Committee, NIAID.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: AIDS Research Advisory Committee, NIAID.

Date: August 17, 2004.

Time: 1 p.m. to 5 p.m.

Agenda: Members of the AIDS Research Advisory Committee will convene to discuss and vote on the concepts for the restructuring of the Division of AIDS clinical research effort. DAIDS leadership will identify the key changes that were made to the concepts since the May 24th meeting and reviewers will share their specific comments. The Committee will formally vote on the concepts for the Domestic and International Sites for HIV Vaccine, Prevention and Therapeutic Clinical Trials and the Leadership for HIV and AIDS Clinical Trials Networks.

Place: National Institutes of Health, 6700B Rockledge Drive, Room 1205, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, 6700–B Rockledge Drive, Room 4139, Bethesda, MD 20892–7601, 301–435–3732.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or profession affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology,

and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 13, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–16498 Filed 7–20–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging, Special Emphasis Panel, Multiple Diseases and Gamma Secretase.

Date: July 26–27, 2004.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Alessandra M. Bini, Ph.D., Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7708.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: July 13, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–16501 Filed 7–20–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences, Special Emphasis Panel, Collaborative Centers for Parkinson's Disease Environmental Research.

Date: August 12, 2004.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, 3446, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Linda K. Bass, Ph.D., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: July 13, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–16503 Filed 7–20–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Social Determinants of Health: Beyond Individual Factors.

Date: August 10,2004.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, 122 Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–0752.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel 7th Annual Midwest DNA Repair Symposium.

Date: August 10, 2004.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, 122 Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–0752.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Toxicology for Teachers.

Date: August 10,2004.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–0752.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: July 13, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–16504 Filed 7–20–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences, Special Emphasis Panel, Superfund Basic Research and Training Program.

Time: October 4–7, 2004.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Raleigh Durham Airport, 4810 Old Page Road, Research Triangle Park, NC 27709.

Contact Person: Janice B. Allen, Ph.D., Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Science, P.O. Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709, 919/541–7556.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: July 13, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–16505 Filed 7–20–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Violence Processes and Intervention Efficacy.

Date: August 5, 2004.

Time: 9 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: The Hotel George, 15 E Street, NW., Washington, DC 20001.

Contact Person: Marita R. Hopmann, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, 6100 Building, Room 5B01, Bethesda, MD 20892, (301) 435–6911, *hopmannm@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: July 13, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–16506 Filed 7–20–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Earda Review Meeting.

Date: August 5–6, 2004.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Carla T. Walls, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6898, *wallsc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: July 13, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–16510 Filed 7–20–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; NCDDG–PANEL 1.

Date: August 3, 2004.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *psherida@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 13, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–16512 Filed 7–20–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, HIV/AIDS Research Training.

Date: July 27, 2004.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Martha Ann Carey, PhD, RN, Scientific review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, 301–443–1606, *mcarey@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 13, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–16514 Filed 7–20–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Superfund Basic Research and Training Program.

Date: October 4–7, 2004.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Raleigh Durham Airport, 4810 Old Page Road, Research Triangle Park, NC 27709.

Contact Person: Sally Eckert-Tilotta, PhD, National Inst. of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–1446, *eckertt1@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: July 13, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–16516 Filed 7–20–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Acute, Critical and Traumatic Brain and Neural Cell Injury.

Date: July 16, 2004.

Time: 5 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Embassy Row Hotel, 2100 Massachusetts Avenue, NW., Washington, DC 20008.

Contact Person: David L. Simpson, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5192, MSC 7846, Bethesda, MD 20892, (301) 435–1278, *simpsond@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Miscellaneous Musculoskeletal Topics.

Date: July 19, 2004.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mehrdad M. Tondravi, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20982, (301) 435–1173, *tondravm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, EAR.

Date: July 27, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Joseph Kimm, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20982, (301) 435–1249, *kimmj@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, MDCN SEP—Neuroregulation.

Date: July 29, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Carole L. Jelsema, PhD, Chief and Scientific Review Administrator, MDCN Scientific Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7850, Bethesda, MD 20892, (301) 435–1248, *jelsemac@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel AIDS and Alternative Medicine.

Date: August 2, 2004.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Abraham P. Bautista, MS, PhD, Scientist Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, (301) 435–1506, *bautista@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel T-Cell Signaling Mechanism.

Date: August 2, 2004.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Angela Y. Ng,PhD, MBA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804 (For courier delivery, use MD 20817), Bethesda, MD 20892, (301) 435–1715, *nga@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel SBIR Grant Applications Review.

Date: August 3, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Mark P. Rubert, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, (301) 435–1775, *rubertm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Hyperaccelerated Award/Mechanisms in Immunomodulation Trials.

Date: August 3, 2004.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Samuel C. Edwards, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7812, Bethesda, MD 20892, (301) 435–1152, *edwardss@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 AARR E (04) Review of AIDS Overflow Application.

Date: August 4, 2004.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Kenneth A. Roebuck, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Cardioprotective Effects of PDE–5 Inhibitors.

Date: August 6, 2004.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anshumali Chaudhari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435–1210, *chaudhaa@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel ODCS Special Emphasis Panel

Date: August 6, 2004.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: J. Terrell Hoffeld, PhD, DDS, Dental Officer, USPHS, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781, *hoffeldt@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 13, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–16502 Filed 7–20–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Musculosketal Biomechanics & Rehabilitation.

Date: July 14, 2004.

Time: 1:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Daniel F. McDonald, PhD, Scientific Review Administrator, Chief, Musculoskeletal, Oral and Skin Sciences IRG, Center for Scientific Review, NIH, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, (301) 435–1215, *mcdonald@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Dental Sciences.

Date: July 21, 2004.

Time: 10:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Daniel F. McDonald, PhD, Scientific Review Administrator, Chief, Musculoskeletal, Oral and Skin Sciences IRG, Center for Scientific Review, NIH, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, (301) 435–1215, *mcdonald@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Communicative Disorders and Cognitive Processes.

Date: July 21, 2004.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Dana Jeffrey Plude, PhD, Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3192, MSC 7848, Bethesda, MD 20892, 301–435–2309, *pluded@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Psychiatric Genetics Review.

Date: July 21, 2004.

Time: 4:30 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Cheryl M. Corsaro, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, *corsaroc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fogarty International Programs.

Date: July 26, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008.

Contact Person: Dan D. Gerendasy, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5132, MSC 7843, Bethesda, MD 20892, (301) 594–6830, *gerendad@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Behavioral Genetics and Psychiatric Disorders.

Date: July 26, 2004.

Time: 9 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Ann Guadagno, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7770, Bethesda, MD 20892, (301) 451–8011, *guadagma@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Circadian Rhythms in Plants, Flies, and Crustaceans.

Date: July 26, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Lawrence Baizer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7850, Bethesda, MD 20892, (301) 435–1257, *baizerl@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Tooth Development.

Date: July 27, 2004.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787, *chenp@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bone Biology.

Date: July 27, 2004.

Time: 4:45 p.m. to 6:45 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787, *chenp@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Emphasis Panel, Rehabilitative Neuroscience SBIR.

Date: July 28, 2004.

Time: 10:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Daniel F. McDonald, PhD, Scientific Review Administrator, Chief, Musculoskeletal, Oral and Skin Sciences IRG, Center for Scientific Review, NIH, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, (301) 435–1215, *mcdonald@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 13, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–16515 Filed 7–20–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Understanding the Establishment and Maintenance of Pioneering Transition Programs—New—SAMHSA's Center for Mental Health Services will seek information about the establishment and maintenance of programs funded in part by state child mental health agencies that prepare youth from these agencies for adult functioning, and can provide these services continuously beyond the upper age limit of state child mental health eligibility. Many, if not most, of the youth served in state child mental health systems cannot access state adult mental health services; thus, the ability to provide continuing transition support services to this population throughout the period of transition, roughly to the age of 25, is critical to the likelihood of adult success.

The small number of pioneering programs in the country that have successfully negotiated the system to achieve this status have much to teach those trying to develop better transition support systems. In particular, the history of how the program was established, what it takes to maintain the program, the challenges the programs have faced in providing transition supports and their solutions to these problems can help others, and prevent needless duplication of trial and error. This project will begin the development of guidelines for other attempting to bridge this important service gap through discovering shared and unique approaches to establishing and maintaining pioneering transition programs, and the challenges that they face in providing services to this grossly underserved population.

Nine such programs have been identified. Another four programs, that have not been maintained, will also be identified, yielding a total of 13 programs that will be examined. Examination will occur primarily through telephone interview of multiple stakeholders per program. Program information will also be requested electronically. Stakeholders from each program will consist of the following: 2 state-level child mental health administrators, 2 program-level administrators/staff, and up to an additional 3 key stakeholders that are identified during the process of interviewing the first 4 stakeholders. Stakeholders will be asked about 3 issues: (1) How the program was established; (2) efforts to keep the program open and funded; and (3) factors that facilitated or inhibited its opening or maintenance. Sufficient detail will be sought to determine the unique efforts needed for these kinds of programs, as opposed to common efforts made to establish any new program. Two questionnaires will be used to obtain this information, one for program administrators or staff and the other for other stakeholders.

The following table summarizes the estimated response burden for this project.

Respondent	Number of respondents	Responses/ respondents	Total responses	Hours per response	Total hour burden
Pioneering Programs: Staff/Administrators	26	1	26	1.5	39
Pioneering Programs: Stakeholders	52	1	52	1.0	52
Total	78	1	3978		91

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received by September 20, 2004.

Dated: July 14, 2004.

Anna Marsh,

Executive Officer, SAMHSA.

[FR Doc. 04–16546 Filed 7–20–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[USCG–2004–18474]

Pearl Crossing LNG Terminal LLC, Liquefied Natural Gas Deepwater Port License Application

AGENCY: Coast Guard, DHS; and Maritime Administration, DOT.

ACTION: Notice of application.

SUMMARY: The Coast Guard and the Maritime Administration (MARAD) give notice, as required by the Deepwater Port Act of 1974, as amended, that they have received an application for the licensing of a liquefied natural gas (LNG) deepwater port, and that the application appears to contain the required information. This notice summarizes the applicant's plans and the procedures that will be followed in considering the application.

DATES: Any public hearing held in connection with this application must be held no later than March 18, 2005, and it would be announced in the **Federal Register**. A decision on the application must be made within 90 days after the last public hearing held on the application.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2004–18474 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Web Site: http://dms.dot.gov.*

(2) *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

(3) *Fax:* 202–493–2251.

(4) *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. The telephone number is 202–366–9329.

(5) *Federal eRulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call Lieutenant Ken Kusano at 202–267–1184, or e-mail at *KKusano@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

You may submit comments concerning this application. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use their Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this rulemaking (USCG–2004–18474), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 81/2 by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Receipt of application; determination. On May 25, 2004, the Coast Guard and MARAD received an application from Pearl Crossing LNG Terminal LLC, 800 Bell Street, Houston, TX 77002 for all federal authorizations required for a license to own, construct and operate a deepwater port off the coast of Louisiana with associated pipeline facilities. On July 8, 2004, we determined that the application contains all information required by the Deepwater Port Act of 1974, as amended, 33 U.S.C. 1501 *et seq.* (the Act). The application and related documentation supplied by the applicant (except for certain protected information specified in 33 U.S.C. 1513) will be available in the public docket (*see* **ADDRESSES**).

Background. According to the Act, a deepwater port is a fixed or floating manmade structure other than a vessel, or a group of structures, located beyond State seaward boundaries and used or intended for use as a port or terminal for the transportation, storage, and further handling of oil or natural gas for transportation to any State.

A deepwater port must be licensed, and the Act provides that a license applicant submit detailed plans for its facility to the Secretary of Transportation, along with its application. The Secretary has delegated the processing of deepwater port applications to the Coast Guard and MARAD. The Act allows 21 days following receipt of the application to determine if it appears to contain all required information. If it does, we must publish a notice of application in the **Federal Register** and summarize the plans. This notice is intended to meet those requirements of the Act and to provide general information about the procedure that will be followed in considering the application.

Application procedure. The application is considered on its merits. Under the Act, we must hold at least one public hearing within 240 days from the date this notice is published. A separate **Federal Register** notice will be published to notify interested parties of any public hearings that are held. At least one public hearing must be held in each adjacent coastal state. Pursuant to 33 U.S.C. 1508, we designate Louisiana as the adjacent coastal state for this application. Other states may apply for adjacent coastal state status in

accordance with 33 U.S.C. 1508 (a)(2). After the last public hearing, Federal agencies and the adjacent coastal State have 45 days in which to comment on the application, and approval or denial of the application must follow within 90 days of the last public hearing. Details of the application process are described in 33 U.S.C. 1504 and in 33 CFR part 148.

The Coast Guard and MARAD plan to prepare an environmental impact statement (EIS) for this project. The EIS will also assess the environmental impact of an onshore pipeline that is part of the project proposal, even though an affiliate of Pearl Crossing LNG Terminal LLC must separately apply for and receive an authorization from the Federal Energy Regulatory Commission (FERC) for that onshore pipeline. We have consulted with FERC and understand that the affiliate applied to FERC for onshore pipeline authorization under Docket Number CP04–374–000, CP04–375–000 and CP04–376–000. All comments related to this project, including the onshore pipeline, may be submitted in accordance with the guidance under **ADDRESSES.**

Summary of the application. The application plan calls for the proposed deepwater port to be located outside State waters in the Gulf of Mexico on the U.S. Outer Continental Shelf (OCS), approximately 41 miles (66 kilometers) south of the Louisiana coast in West Cameron Block 220. It will be located in a water depth of approximately 62 feet (19 meters). The proposed Pearl Crossing LNG Terminal is a concrete Gravity Based Structure (GBS). The terminal proposes to install two integral liquefied natural gas storage tanks and serve as the platform for vessels to offload and regasify LNG.

The proposed GBS is a double-walled concrete structure, rectilinear in shape, that would measure approximately 590 feet (180 meters) long by 295 feet (90 meters) wide. The structure would rest on the seabed with a total terminal footprint (GBS plus jacket structures) area of approximately 12 acres (5 hectares). The terminal would include LNG storage tanks, equipment for receiving and vaporization of LNG, electric power generation, water purification, nitrogen generation, sewage treatment and accommodations for up to 60 persons. The total net working capacity of the two integral LNG storage tanks would be 250,000 cubic meters (m^3).

Pearl Crossing would have the ability to accommodate two LNG carriers alongside that will have capacities ranging from 125,000 to 250,000 m^3 per vessel. This would allow one incoming LNG carrier to be secured to prepare to offload cargo, while another LNG carrier is completing an offloading cycle.

Ship cargo transfer will use two loading arm packages (one on each side of the terminal), each consisting of five 16-inch-diameter (40-centimeter) loading arms. LNG carriers would offload through four of the loading arms. Offloading rates are expected to equal 14,000 m^3 per hour of LNG. The fifth loading arm would be dedicated to vapor return from the terminal for pressure equalization between an LNG carrier and the storage tanks of Pearl Crossing.

The regasification process would be accomplished through thirteen electric pumps that will supply 13,200 gallons per minute (50,000 liters per minute) of seawater for the open rack vaporizers. The intakes will utilize passive, cylindrical wedge-wire-type screens with an automated air backwash system. The slot size would be 0.25 inch (6.4 millimeters) or less to minimize impingement or entrainment of marine organisms. Seawater would be treated with hypochlorite produced by an electrolytic chlorination unit prior to entering the seawater pump intake lines.

The applicant proposes to install two dedicated 42-inch-diameter (1,100 mm) offshore pipelines that will originate at the terminal and traverse the Gulf of Mexico in a northwesterly direction to the high water mark near Johnsons Bayou in Cameron Parish, Louisiana. Each offshore pipeline would have a throughput capacity of 1.4 billion standard cubic feet per day (Bscfd) for a total peak capacity of 2.8 Bscfd. Thereafter, the pipelines will continue onshore to multiple gas delivery points in Louisiana and come under FERC jurisdiction.

Pearl Crossing Pipeline LLC will transport natural gas from the terminal's two offshore pipelines for further transportation. Gas will be transported to a metering and distribution station in Johnsons Bayou for delivery to several interstate and intrastate pipelines near the station. Once onshore, an additional 63.75 miles of 42-inch-diameter pipeline and five additional meter stations would be constructed. The pipeline would terminate near Starks, Louisiana, and requires separate permitting by FERC. There are no proposals for onshore storage.

Dated: July 16, 2004.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security, and Environmental Protection, U.S. Coast Guard.

H. Keith Lesnick,

Senior Transportation Specialist, Deepwater Ports, Program Manager, U.S. Maritime Administration.

[FR Doc. 04–16590 Filed 7–20–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Renewal Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; OMB Control Number 1018–0092, Applications for Permits/Licenses

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (We) has submitted the collection of information described below to OMB for approval under the provisions of the Paperwork Reduction Act of 1995. A description of the information collection requirement is included in this notice. If you wish to obtain copies of the information collection requirements, related forms, or explanatory material, contact the Service Information Collection Clearance Officer at the address or telephone number listed below.

DATES: OMB has up to 60 days to approve or disapprove information collections but may respond after 30 days. Therefore, to ensure maximum consideration, you must submit comments on or before August 20, 2004.

ADDRESSES: Submit your comments on this information collection renewal to the Desk Officer for the Department of the Interior at OMB–OIRA via facsimile or e-mail using the following fax number or e-mail address: (202) 395–6566 (fax); *OIRA_DOCKET@omb.eop.gov* (e-mail). Please provide a copy of your comments to the Fish and Wildlife Service's Information Collection Clearance Officer, 4401 N. Fairfax Dr., MS 222 ARLSQ, Arlington, VA 22207; (703) 358–2269 (fax); or *anissa_craghead@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, related forms, or explanatory material, contact Anissa Craghead at telephone number (703)

358–2445, or electronically at *anissa_craghead@fws.gov*.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)).

We have submitted a request to OMB to renew its approval of the collection of information included in Form 3–200–1, the general permit application form; Form 3–200–2, Designated Port Exception permit application form; and Form 3–200–3, Import/Export license application form.

All three of these forms are approved under OMB control number 1018–0092, which expires on July 31, 2004. We are requesting a three year term of approval for this information collection activity. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The Endangered Species Act (ESA)(16 U.S.C. 1531 *et seq.*) makes it unlawful to import or export fish, wildlife, or plants without obtaining prior permission as deemed necessary for enforcing the ESA or upholding the Convention on International Trade in Endangered Species (CITES) (see 16 U.S.C. 1538(e)).

The U.S. Fish and Wildlife Service's Form 3–200–1, Permit Application Form, is the general application form for all permitted activities authorized by the Service. In the interest of making the application process simpler for the public, we have previously modified the format of the first page of Form 3–200, creating a sequence of forms such as Form 3–200–1, 3–200–2, 3–200–3, *etc.* This enables the public to use a specific application form when requesting permission to conduct a certain otherwise unauthorized activity. Each specific application form contains questions that are specific to the requested activity. This makes the application process easier for the public by eliminating the need to use one application form, with standard questions, to apply for any number of otherwise unauthorized activities, many of which are distinctly different from one another and could not be adequately or fairly evaluated using standard questions. In the above mentioned sequence of forms, the general Permit Application Form is designated as Form 3–200–1. Since this form has been modified for applications for specific activities as described above, it is rarely, if ever used by itself. Therefore, the annual responses and the annual burden hours resulting from the use of this form are essentially zero. Though this form is rarely, if ever, used by itself, we intend to maintain this form in the event that a general permit application form is needed at some point in the future for an unanticipated activity, one that was not provided for in the development of the sequence of forms described above.

The Service's Form 3–200–2, Designated Port Exception permit application form is the application form to request an import or export of wildlife or wildlife products at a port other than a port designated in 50 CFR 14.12. Title 50, of the Code of Federal Regulations, § 14.11 (50 CFR 14.11) makes it unlawful to import or export wildlife or wildlife products at a port other than a designated port listed in 50 CFR 14.12, unless you qualify for one of the exceptions that allow you to import or export your wildlife or wildlife products at a different port. These exceptions allow you to import or export wildlife or wildlife products at a nondesignated port for the following reasons: (1) For use as scientific specimens; (2) to minimize deterioration or loss; and (3) to relieve economic hardship. We recognize the limitations that the requirement to use a designated port may place on certain individuals, businesses or scientific organizations. The issuance of a Designated Port Exception permit can relieve these limitations for certain qualified individuals, businesses or scientific organizations. Our estimates of the total annual responses and the total annual burden hours for Form 3–200–2 contained in our notice published in the **Federal Register** on March 16, 2004 (69 FR 12343), were in error. The estimates contained in that notice were based only upon our data for new applicants using Form 3–200–2. The estimates contained in this notice are based upon our data for new applicants and renewal applicants using Form 3–200–2. It will take an average of one hour for each respondent to complete the application for a designated port exception permit, whether it is a new application or an application to renew an existing designated port exception permit.

The Service's Form 3–200–3, Import/Export license application form, is the application form to request an import/export license. Title 50, of the Code of Federal Regulations, § 14.11 (50 CFR 14.91) makes it unlawful to import or export wildlife or wildlife products for commercial purposes without first having obtained an import/export license. This authority allows us to ensure that protected species are not being used in commercial trade. We use the information obtained from Form 3–200–3 as an enforcement tool and management aid in monitoring the international wildlife market and detecting trends and changes in the commercial trade of wildlife and wildlife products. Our estimates of the total annual responses and the total annual burden hours for Form 3–200–3 contained in our notice published in the **Federal Register** on March 16, 2004 (69 FR 12343), were in error. The estimates contained in that notice were based only upon our data for new applicants using Form 3–200–3. The estimates contained in this notice are based upon our data for new applicants and renewal applicants using Form 3–200–3. It will take an average of one hour for each respondent to complete the application for an import/export license, whether it is a new application or an application to renew an existing import/export license. Import/export licensees are required to maintain records that accurately describe each importation or exportation of wildlife or wildlife products made under the license, and any additional sale or transfer of the wildlife or wildlife products. In addition, licensees are required to make these records and the corresponding inventory of wildlife or wildlife products available for our inspection at reasonable times, subject to applicable limitations of law. However, these recordkeeping requirements will not result in additional burden to import/export licensees because these records already exist. Form 3–177, Declaration for Importation or Exportation of Fish or Wildlife, which is required for all imports or exports of wildlife or wildlife products, provides an accurate description of these imports and exports. Form 3–177 is approved under OMB control number 1018–0012, which expires December 31, 2006. Normal business practices should produce records, such as invoices or bills of sale, that describe additional sales or transfers of the wildlife or wildlife products.

Title: Permit application form.

Approval Number: 1018–0092.

Service Form Number: 3–200–1.

Frequency of Collection: Rarely, if ever used, for reasons described above.

Description of Respondents: Scientific institutions, businesses or individuals that request permission to conduct any number of otherwise unauthorized activities.

Total Annual Responses: 0.

Total Annual Burden Hours: 0.

Title: Designated Port Exception permit application form.

Approval Number: 1018–0092.

Service Form Number: 3–200–2.

Frequency of Collection: On occasion, whenever permission is requested to import wildlife or wildlife products at a nondesignated port for use as scientific specimens, to minimize deterioration or loss, or to relieve economic hardship.

Description of Respondents: Scientific institutions, businesses or individuals that import or export scientific specimens, wildlife, or wildlife products.

Total Annual Responses: Approximately 1,164.

Total Annual Burden Hours: The total annual burden is approximately 1,164 hours. We estimate the reporting burden to average one hour per response.

Title: Import/Export license application form.

Approval Number: 1018–0092.

Service Form Number: 3–200–3.

Frequency of Collection: On occasion, whenever permission is requested to import or export wildlife or wildlife products for commercial purposes.

Description of Respondents: Businesses or individuals that import or export wildlife or wildlife products for commercial purposes.

Total Annual Responses: Approximately 6,886.

Total Annual Burden Hours: The total annual burden is approximately 6,886 hours. We estimate the reporting burden to average one hour per response.

We again invite comments concerning this renewal on: (1) Whether the collection of information is useful and necessary for us to do our job, (2) the accuracy of our estimate of the burden on the public to complete the form; (3) ways to enhance the quality and clarity of the information to be collected; and (4) ways to minimize the burden of the collection on respondents, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. This information collection is part of a system of records covered by the Privacy Act (5 U.S.C. 552(a)).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the record, which we will honor to the extent allowable by law. There may also be limited circumstances in which we would withhold a respondent's identity from the rulemaking record, as allowable by law. If you wish us to withhold your name and/or address, you must state this clearly at the beginning of your comment. We will not consider anonymous comments. We generally make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: July 15, 2004.

Anissa Craghead,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. 04–16606 Filed 7–20–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; 5-Year Review of Holy Ghost Ipomopsis and Kuenzler Hedgehog Cactus

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review.

SUMMARY: The U.S. Fish and Wildlife Service (Service), announces a 5-year review of Holy Ghost Ipomopsis (*Ipomopsis sancti-spiritus*) and Kuenzler hedgehog cactus (*Echinocereus fendleri* var. *kuenzleri*) under section 4(c)(2)(A) of the Endangered Species Act of 1973 (Act) (16 U.S.C. 1531 *et seq.*). The purpose of reviews conducted under this section of the Act is to ensure that the classification of species as threatened or endangered on the List of Endangered and Threatened Wildlife and Plants (List) is accurate.

The 5-year review is an assessment of the best scientific and commercial data available at the time of the review. Therefore, we are requesting submission of any new information (best scientific and commercial data) on Holy Ghost Ipomopsis and Kuenzler hedgehog cactus since their original listings as endangered species in 1994 (59 FR 13836) and 1979 (44 FR 61924), respectively. If the present classification of either of these species is not consistent with the best scientific and commercial information available, the Service will recommend whether or not a change is warranted in the Federal classification of Holy Ghost Ipomopsis or Kuenzler hedgehog cactus. Any change in Federal classification would require a separate final rule-making process.

DATES: Information submitted for our consideration must be received on or before August 20, 2004.

ADDRESSES: Information submitted on either species should be sent to the U.S. Fish and Wildlife Service, Endangered Species Division, Chief, Attention: 5-year Review, 500 Gold St. SE., Albuquerque, New Mexico, 87103. Information received in response to this notice and review will be available for public inspection by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Wendy Brown or Tracy Scheffler at the above address, or at 505/248–6920.

SUPPLEMENTARY INFORMATION:

Why Is a 5-year Review Conducted?

Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. We are then, under section 4(c)(2)(B) and the provisions of subsections (a) and (b), to determine, on the basis of such a review, whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened, or from threatened to endangered. Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of Holy Ghost Ipomopsis and Kuenzler hedgehog cactus.

What Information Is Considered in the Review?

A 5-year review considers all new information available at the time of the review. These reviews will consider the best scientific and commercial data that has become available since the current listing determination or most recent status review of each species, such as:

A. Species biology including, but not limited to, population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions including, but not limited to, amount, distribution, and suitability;

C. Conservation measures that have been implemented to benefit the species;

D. Threat status and trends (see five factors under heading "How do we determine whether a species is endangered or threatened?"); and

E. Other new information, data, or corrections including, but not limited to, taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

How Are Holy Ghost Ipomopsis and Kuenzler Hedgehog Cactus Currently Listed?

The List is found in 50 CFR 17.11 (wildlife) and 17.12 (plants).

Amendments to the List through final rules are published in the **Federal Register.** The List is also available on our internet site at *http://endangered.fws.gov/wildlife.html#Species.* In Table 1 below, we provide a summary of the listing information for both species.

TABLE 1.—SUMMARY OF THE LISTING INFORMATION FOR HOLY GHOST IPOMOPSIS AND KUENZLER HEDGEHOG CACTUS

Common name	Scientific name	Status	Where listed	Final listing rule
Holy Ghost Ipomopsis	*Ipomopsis sancti-spiritus.*	Endangered	NM	1994; 59 FR; 13836 13840
Kuenzler hedgehog cactus	*Echinocereus fendleri* var. *kuenzleri.*	Endangered	NM	1979; 44 FR; 61924 61927

Definitions Related to This Notice

The following definitions are provided to assist those persons who contemplate submitting information regarding the species being reviewed:

A. *Species* includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any species of vertebrate, which interbreeds when mature.

B. *Endangered* means any species that is in danger of extinction throughout all or a significant portion of its range.

C. *Threatened* means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

How Do We Determine Whether a Species Is Endangered or Threatened?

Section 4(a)(1) of the Act establishes that we determine whether a species is endangered or threatened based on one or more of the five following factors:

A. The present or threatened destruction, modification, or curtailment of its habitat or range;

B. Overutilization for commercial, recreational, scientific, or educational purposes;

C. Disease or predation;

D. The inadequacy of existing regulatory mechanisms; or

E. Other natural or manmade factors affecting its continued existence.

Section 4(a)(1) of the Act requires that our determination be made on the basis of the best scientific and commercial data available.

What Could Happen as a Result of This Review?

If we find that there is new information concerning either Holy Ghost Ipomopsis or Kuenzler hedgehog cactus indicating a change in classification may be warranted, we may propose a new rule that could do one of the following: (a) reclassify the species from endangered to threatened; or (b) remove the species from the List. If we determine that a change in classification is not warranted for either species, Holy Ghost Ipomopsis and Kuenzler hedgehog cactus will remain on the List under their current status.

Public Solicitation of New Information

We request any new information concerning the status of Holy Ghost Ipomopsis or Kuenzler hedgehog cactus. See "What information is considered in the review?" heading for specific criteria. Information submitted should be supported by documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources. Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home addresses from the supporting record, which we will honor to the extent allowable by law. There also may be circumstances in which we may withhold from the supporting record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will not consider anonymous comments, however. 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.

Authority

This document is published under the authority of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: June 14, 2004.

Regional Director, Region 2, Fish and Wildlife Service.

[FR Doc. 04–16489 Filed 7–20–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Tribal Consultation on Indian Education Topics

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of tribal consultation meetings.

SUMMARY: This notice announces that the Bureau of Indian Affairs (BIA) will conduct consultation meetings to obtain oral and written comments concerning potential issues in Indian Education Programs. The potential issues will be set forth and described in a tribal consultation booklet to be issued before the meetings by the Office of Indian Education Programs (OIEP). The proposed topics are: implementation of a recommendation proposed by the General Accounting Office (GAO) to modify the accounting codes used for the expenditure of funds in schools; developing a high school curriculum to provide high schools students with essential life skills and financial management training to better prepare them for success as adults; establishing a pilot school to test an alternative school model for a Center of Excellence (Leadership Academy) designed to provide students with additional training in leadership; and the upcoming Facility Maintenance and Construction Negotiated Rulemaking, as required by Public Law 107–110, Sec. 1125, 115 Stat 2021.

DATES: August 16 through 21, 2004, for all locations listed. All meetings will begin at 9 a.m. and continue until 3 p.m. (local time) or until all meeting participants have an opportunity to make comments.

ADDRESSES: Send or hand-deliver written comments to Edward Parisian, Director, Office of Indian Education Programs, Bureau of Indian Affairs, MS Room 3512–MIB, 1849 C St., NW., Washington, DC 20240. Submissions by

facsimile should be sent to (202) 273–0030.

FOR FURTHER INFORMATION CONTACT: Mr. Garry Martin, (202) 208–2472.

SUPPLEMENTARY INFORMATION: The meetings are a follow-up to similar meetings conducted by the OIEP/BIA since 1990. The purpose of the consultation, as required by 25 U.S.C. 2011(b), is to provide Indian tribes, school boards, parents, Indian organizations and other interested parties with an opportunity to comment on potential issues raised during previous consultation meetings or being considered by the BIA on Indian education programs.

MEETING SCHEDULE

Date	Location	Local Contact	Phone Numbers
August 16	Minneapolis, MN	Terry Portra	(612) 713–4400 ext. 1090
August 16	Portland, OR	John Reimer	(503) 872–2743
August 17	Gallup, NM	Beatrice Woodward	(505) 786–6152
August 17	Nashville, TN	Ernest Clark	(615) 695–4101
August 18	Aberdeen, SD	Dr. Cherie Farlee	(605) 964–8722
August 18	Billings, MT	Levon French	(406) 247–7953
August 19	Phoenix, AZ	Kevin Skenandore	(928) 338–5442
August 19	Oklahoma City, OK	Joy Martin	(405) 605–6051
August 20	Sacramento, CA	Fayetta Babby	(916) 978–6058
August 20	Albuquerque, NM	Dr. Jennie Jimenez	(505) 753–1465

A consultation booklet for the meetings is being distributed to federally-recognized Indian tribes, Bureau Regional and Agency Offices and Bureau-funded schools. The booklets will also be available from local contact persons at each meeting.

Public Comment Availability

Comments, including names, street addresses, and other contact information of respondents, will be available for public review at the address listed under the **ADDRESSES** section during regular business hours (7:45 a.m. to 4:15 p.m. e.s.t.), Monday through Friday, except Federal holidays. Individual respondents may request confidentiality. If you wish us to withhold your name, street address, and other contact information (such as fax or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. We will honor your request to the extent allowable by law. We will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

Authority

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Principal Deputy Assistant Secretary—Indian Affairs by 209 DM 8.1.

Dated: July 13, 2004.

Aurene M. Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 04–16615 Filed 7–20–04; 8:45 am]

BILLING CODE 4310–6W–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–010–1020–PK; HAG 04–0215]

Council Meeting Notice

AGENCY: Bureau of Land Management (BLM), Lakeview District.

ACTION: Meeting Notice for the Southeast Oregon Resource Advisory Council.

SUMMARY: The Southeast Oregon Resource Advisory Council (SEORAC) will hold an all day field tour on Monday, August 23, 2004 starting at 7 a.m. Pacific Time (PT) at the Lakeview District Office. Tuesday, August 24, 2004 the meeting will be from 8 a.m. to 5 p.m. (PT). Members of the public are invited to attend the Lakeview meeting in person at the Lakeview District Office, Conference Room, 1301 South G Street, Lakeview, Oregon 97630. Public comment is scheduled for 9:15 a.m. on Tuesday, August 24, 2004. Information from the public, to be distributed to the Council members is requested in written format 10 days prior to the Council meeting.

The meeting topics that may be discussed by the Council include a discussion of issues within Southeast Oregon related to: Tour of Beaty Butte Allotment and review; Welcome to New Members and RAC Administration duties; RAC Charter review for possible boundary changes; Budget Process update; Healthy Forest Initiative (HFI)—Healthy Forest Restoration Act projects (HFRA) and determining the RAC participation with District and Forest projects; The RAC role with Business Plan for the Lakeview Resource Management Plan; Standards and Guidelines update; Differences in agencies Off Road Vehicles policies; Sub committee reports and status; Federal Officials' update and other issues that may come before the Council.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the SEORAC tour or meeting may be obtained from Pam Talbott, Contact Representative, Lakeview Interagency Office, 1301 South G Street, Lakeview, OR 97630 (541) 947–6107, or *ptalbott@or.blm.gov* and/or from the following Web site *http://www.or.blm.gov/SEOR-RAC.*

Dated: July 7, 2004.

M. Joe Tague,

Associate District Manager.

[FR Doc. 04–16491 Filed 7–20–04; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–910–0777–XP–241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council meeting notice.

SUMMARY: This notice announces a meeting and tour of the Arizona Resource Advisory Council (RAC).

The business meeting will be held on August 18, 2004, at the Bureau of Land Management National Training Center located at 9828 North 31st Avenue; Phoenix, Arizona. It will begin at 9 a.m. and conclude at 4 p.m. The agenda items to be covered include: Review of the May 26, 2004, Meetings Minutes; BLM State Director's Update on

Statewide Issues; Presentations on BLM Stewardship Contracting; BLM Antiquities Act Celebration Update; University of Arizona Project on Collecting and Interpreting Rangeland Monitoring Data; and Arizona Land Use Planning Updates; RAC Questions on Written Reports from BLM Field Managers; Field Office Rangeland Resource Team Proposals; Reports by the Standards and Guidelines, Recreation, Off-Highway Vehicle Use, Public Relations, Land Use Planning and Tenure, and Wild Horse and Burro Working Groups; Reports from RAC members; and Discussion of future meetings. A public comment period will be provided at 11:30 a.m. on August 18, 2004, for any interested publics who wish to address the Council.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, (602) 417–9215.

Lonna O'Neal,

Acting Arizona State Director.

[FR Doc. 04–16547 Filed 7–20–04; 8:45 am]

BILLING CODE 4310–32–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–508]

Certain Absorbent Garments; Notice of A Commission Determination Not To Review an Initial Determination Granting a Motion To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ") initial determination ("ID") granting complainants' motion to amend the complaint and notice of investigation in the above-captioned investigation to add ABS Bienes de Capital S.A. de C.V. as a respondent to this investigation.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3152. Copies of the ID and all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: The Commission instituted this patent-based section 337 investigation on May 7, 2004, based on a complaint filed by Tyco Healthcare Retail Group, Inc. and Paragon Trade Brands, Inc. of King of Prussia, Pennsylvania. 69 FR 25609. The respondents named in the investigation are Grupo ABS Internacional, S.A. de C.V. and Absormex S.A. de C.V. of Mexico, and Absormex USA, Inc. of Laredo, Texas. The complaint alleged that respondents violated section 337 of the Tariff Act of 1930 by importing into the United States, selling for importation, and/or selling within the United States after importation certain absorbent garments by reason of infringement of certain claims of U.S. Patent Nos. 5,275,590; 5,403,301; and 4,892,528.

On June 16, 2004, complainants filed a motion for leave to amend their complaint to add ABS Bienes de Capital S.A. de C.V. as a respondent to the investigation.

On June 22, 2004, the ALJ issued an ID (Order No. 4) granting complainants' unopposed motion to amend the complaint and notice of investigation.

No petitions for review of the ID were filed.

The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: July 12, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–16528 Filed 7–20–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

July 13, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Student Data Form.

OMB Number: 1218–0172.

Frequency: On occasion.

Type of Response: Reporting.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; Federal

Government; and State, Local, or Tribal Government.

Number of Respondents: 5,000.

Number of Annual Responses: 5,000.

Estimated Time Per Response: 5 minutes.

Total Burden Hours: 417.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Student Data Form (OSHA Form 182) is used to collect student group and emergency information from Training Institutes students. This information is used to contact designated persons in the event of an emergency; for student group data reports; and for tuition receipt.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–16537 Filed 7–20–04; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

July 14, 2004.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Mine Safety and Health Administration (MSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Hazardous Conditions Complaints.

OMB Number: 1219–0014.

Frequency: On occasion.

Type of Response: Reporting.

Affected Public: Business or other for-profit.

Number of Respondents: 1,003.

Number of Annual Responses: 1,003.

Estimated Time Per Response: 12 minutes.

Total Burden Hours: 201.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Section 103(g) of the Federal Mine Safety and Health Act of 1977 (Pub. L. 91–173, as amended by Pub. L. 95–164) (Mine Act), states that a representative of miners, or any individual miner where there is no representative of miners, may submit a written or oral notification of alleged violation of the Mine Act or a mandatory standard or of an imminent danger. Such notification requires MSHA to make an immediate inspection. A copy of the notice must be provided to the operator.

30 CFR, part 43, implements section 103(g) of the Mine Act. It provides the procedures for submitting notification of the alleged violation and the actions which MSHA must take after receiving the notice.

Agency: Mine Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Ventilation Plan and Main Fan Maintenance Record.

OMB Number: 1219–0016.

Frequency: On occasion and annually.

Type of Response: Recordkeeping and reporting.

Affected Public: Business or other for-profit.

Number of Respondents: 258.

Number of Annual Responses: 267.

Estimated Time Per Response: Varies from 24 hours to develop a new or revise an existing mine ventilation plan to 1.5 hours to develop or revise a main ventilation fan maintenance schedule.

Total Burden Hours: 6,206.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: 30 CFR 57.8520 and 57.8525 requires mine operators to install and maintain a properly operating ventilation system and to maintain main fans according to either the manufacturers recommendations or a written periodic schedule developed by the mine operator.

Agency: Mine Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Slope and Shaft Sinking Plans.

OMB Number: 1219–0019.

Frequency: On occasion.

Type of Response: Reporting.

Affected Public: Business or other for-profit.

Number of Respondents: 78.

Number of Annual Responses: 78.

Estimated Time Per Response: 20 hours.

Total Burden Hours: 1,560.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $1,170.

Description: 30 CFR 77.1900 requires coal mine operators to submit to MSHA for approval, a plan that will provide for the safety of workmen in each slope or shaft that is commenced or extended.

Agency: Mine Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Safety Defects; Examination, Correction and Records.

OMB Number: 1219–0089.

Frequency: On occasion; Annually; and each shift.

Type of Response: Reporting.

Affected Public: Business or other for-profit.

Number of Respondents: 12,163.

Information collection requirement	Annual responses	Average response time (hours)	Annual burden hours
30 CFR 56/57.13015	3,238	0.17	540
30 CFR 56/57.13030	488	0.17	81
30 CFR 56/57.14100			
Small Mines	4,243,837	0.08	339,507
Large Mines	4,756,020	0.08	380,482
30 CFR 56/57.18002	2,438,987	0.20	487,797
Total:	11,442,570	//////	1,208,407

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: 30 CFR 56/57.14100, 56/57.13015, 56/57.13030, and 56/57.18002 requires equipment operators to inspect equipment, machinery, and tools that are to be used during a shift for safety defects before the equipment is placed in operation. Reports of uncorrected defects are required to be recorded by the mine operator and retained for MSHA review until the defect has been corrected.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–16538 Filed 7–20–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

July 15, 2004.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or email: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment Standards Administration.

Type of Review: Extension of currently approved collection.

Title: Request for State or Federal Workers' Compensation Information.

OMB Number: 1215–0060.

Frequency: On occasion.

Type of Response: Reporting.

Affected Public: State, Local, or Tribal Government and Federal Government.

Number of Respondents: 1;600.

Number of Annual Responses: 1,600.

Estimated Time Per Response: 15 minutes.

Total Burden Hours: 400.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $640.

Description: The Federal Mine Safety and Health Act of 1977, as amended (30 U.S.C. 901) and 20 CFR 725.535, directs that DOL Black Lung benefit payments to a beneficiary for any month be reduced by any other payments of State or Federal benefits for workers' compensation due to pneumoconiosis. The information collected by the Form CM–905 allows DOL to determine the amounts of black lung benefits paid to beneficiaries. Black Lung amounts are reduced dollar for dollar, for other black lung related workers' compensation awards the beneficiary may be receiving from State or Federal programs.

Agency: Employment Standards Administration.

Type of Review: Extension of currently approved collection.

Title: Labor Standards for Federal Service Contracts—Regulations 29 CFR, part 4.

OMB Number: 1215–0150.

Frequency: On occasion.

Type of Response: Reporting and recordkeeping.

Affected Public: Business or other for-profit and Federal Government.

Number of Respondents: 83,854.

Information collection requirement	Annual responses	Average response time (hours)	Annual burden hours
Vacation Benefit Seniority List	82,149	1.00	82,149
Conformance Record	200	0.50	100
Collective Bargaining Agreement	1,505	0.08	125
Total:	83,854	//////////	82,374

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Service Contract Act (SCA) and Regulation 29 CFR part 4 impose certain recordkeeping and incidental reporting requirements applicable to employers with employees performing on service contracts within the Federal government. The basic payroll recordkeeping requirements contained in this regulation, Sec. 4.6(g)(1)(i) through (iv), have been previously approved under OMB–1215–0017, which constitutes the basic recordkeeping regulations for all laws administered by the Wage and Hour Division. This information collection contains three requirements not cleared under the above information collection. They are: A vacation benefit seniority list, which is used by the contractor to determine vacation fringe benefit entitlements earned and accrued by service contract employees who were employed by predecessor contractors; a conformance record report, which is used by Wage and Hour to determine the appropriateness of the conformance and compliance with the SCA and its regulations; and a collective bargaining agreement, submitted by the contracting agency to Wage and Hour to be used in the issuance of wage determinations for successor contracts subject to section 2(a) and 4(c) of the SCA.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. 04–16540 Filed 7–20–04; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed collection; comment request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Report of Construction Contractor's Wage Rates (WD–10). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before September 20, 2004.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW, Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, *Email bell.hazel@dol.gov.* Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION

I. Background

The Davis-Bacon Act (40 U.S.C. 3141, *et seq.*) provides that every contract in excess of $2,000 to which the United States or the District of Columbia is a party for construction, alteration, and/or repair which requires or involves the employment of mechanics and/or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages that will be determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the city, town, village or other civil subdivision of the State in which the work is to be performed. Further, Section 1.3 of Regulations 29 CFR part 1 provides that the Administrator of the Wage and Hour Division (WHD), through a delegation of authority, is responsible for making these wage determinations. Form WD–10 is used by the U.S. Department of Labor to elicit construction project data from contractor associations, contractors and unions. The wage data is used to determine locally prevailing wages under the Davis-Bacon and Related Acts. This information collection is currently approved for use through February 28, 2005.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Wage and Hour Division seeks the approval of the extension of this information collection to obtain wage data in order to determine current prevailing wage rates in the various localities throughout the country.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Report of Construction Contractor's Wage Rates.

OMB Number: 1215–0046.

Agency Number: WD–10.

Affected Public: Business or other for-profit.

Total Respondents: 37,500.

Total Annual Responses: 75,000.

Time Per Response: 20 minutes.

Estimated Total Burden Hours: 25,000.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 15, 2004.

Sue R. Blumenthal,

Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 04–16539 Filed 7–20–04; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of

existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Consolidation Coal Company

[Docket No. M–2004–025–C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.312(c) and (d) (Main mine fan examinations and records) to its Loveridge No. 22 Mine (MSHA I.D. No. 46–01433) located in Marion County, West Virginia. The petitioner requests a modification of the existing standard to permit testing at least every 31 days of the automatic closing door(s) and the automatic fan signal device without shutting down the fan and without removing miners from the mine. The petitioner proposes to provide the fans with an alarm system consisting of a mechanical switch that will be mounted to the fan housing and designed to activate a relay in the fan monitoring panel when the air reversal prevention door is in the closed position. The relay will activate a warning light near the door location and provide an audible and visible alarm at a location where a responsible person will always be on duty when miners are working underground, and will have two-way communication with working sections. The petitioner states that a magnetic switch may be used if approved by the District Manager. The petitioner has listed in this petition for modification specific terms and conditions that will be used when the proposed alternative method is implemented. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Ohio County Coal Company

[Docket No. M–2004–026–C]

Ohio County Coal Company, PO Box 39, Centertown, Kentucky 42328 has filed a petition to modify the application of 30 CFR 75.1103–4 (Automatic fire sensor and warning device systems; installation; minimum requirements) to its Big Run Underground Mine (MSHA I.D. No. 15–18552) located in Ohio County, Kentucky. The petitioner proposes to install a carbon monoxide monitoring system as an early warning fire detection system near the center and in the upper third of the belt entry in a location that would not expose personnel working on the system to unsafe situations. The petitioner has listed in this petition for modification specific terms & conditions that will be used when the proposed alternative method is implemented. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Snyder Coal Company

[Docket No. M–2004–027–C]

Snyder Coal Company, 66 Snyder Lane, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 49.2 (Availability of mine rescue teams) to its No. 1 Rock Slope (MSHA I.D. No. 36–09256) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit the reduction of two mine rescue teams with five members and one alternate each, to two mine rescue teams of three members with one alternate for either team. The petitioner asserts that an attempt to utilize five or more rescue team members in the mine's confined working places would result in diminution of safety to both the miners at the mine and members of the rescue team, and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. Snyder Coal Company

[Docket No. M–2004–028–C]

Snyder Coal Company, 66 Snyder Lane, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1100–2(a) (Quantity and location of firefighting equipment) to its No. 1 Rock Slope (MSHA I.D. No. 36–09256) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit use of only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage equipped with three (3) ten quart pails is not practical. The petitioner proposes to use two (2) portable fire extinguishers near the slope bottom and an additional portable fire extinguisher within 500 feet of the working face for equivalent fire protection for the No. 1 Rock Slope Mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

5. Snyder Coal Company

[Docket No. M–2004–029–C]

Snyder Coal Company, 66 Snyder Lane, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1200(d) & (i) (Mine map) to its No. 1 Rock Slope Mine (MSHA I.D. No. 36–09256) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 foot intervals of advance from the intake slope; and to limit the required mapping of the mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnels. The petitioner asserts that due to the steep pitch encountered in mining anthracite coal veins, contours provide no useful information and their presence would make portions of the map illegible. The petitioner further asserts that use of cross-sections in lieu of contour lines has been practiced since the late 1800's thereby providing critical information relative to the spacing between veins and proximity to other mine workings which fluctuate considerably. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

6. Snyder Coal Company

[Docket No. M–2004–030–C]

Snyder Coal Company, 66 Snyder Lane, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1202 and 75.1202–1(a) (Temporary notations, revisions, and supplements) to its No. 1 Rock Slope Mine (MSHA I.D. No. 36–09256) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps annually instead of every 6 months as required, and to update maps daily by hand notations. The petitioner also proposes to conduct surveys prior to commencing retreat mining and whenever either a drilling program under 30 CFR 75.388 or plan for mining into inaccessible areas under 30 CFR 75.389 is required. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

7. Eastern Associated Coal Corporation

[Docket No. M–2004–031–C]

Eastern Associated Coal Corporation, 1970 Barrett Court, PO Box 1990, Henderson, Kentucky 42419 has filed a petition to modify the application of 30 CFR 75.364(b)(7) (Weekly examination) to its Federal No. 2 Mine (MSHA I.D. No. 46–01456) located in Monogalia County, West Virginia. The petitioner requests a modification of the existing standard to permit the use of a 480-volt 3 phase alternating current electric

power circuit for its non-permissible deep well submersible pump that would: (i) Contain either a direct or derived neutral resistor at the source transformer or power center, and a grounding circuit originating at the grounded side of the grounding resistor extended along with the power conductors and serve as the grounding conductor for the frame of the pump; (ii) contain a grounding resistor that limits the ground fault current to not more than 15 amperes, and rated for the maximum fault current available and insulated from the ground for a voltage equal to the phase-to-phase voltage of the system; (iii) provide protection by suitable circuit breaker of adequate interrupting capacity with devices to provide protection against under voltage, grounded phase, short-circuit, and overload; (iv) contain a disconnecting device installed in conjunction with the circuit breaker to provide visual evidence that the power is disconnected; and (v) provide controls to shut the pumps down in low flow conditions. The petitioner states that the controls will monitor for low current which is an indication of low flow conditions; that a certified person will conduct weekly electrical checks; and that the monthly examination of electrical equipment required by 30 CFR 77.502 will include a functional test of the grounded phase protective devices to determine the proper operation and record. The results of the functional tests will be recorded in the approved "Examination of Electrical Equipment" record books. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

8. Cotter Corporation

[Docket No. M–2004–007–M]

Cotter Corporation, 7800 E. Dorado Place, Suite 210, Englewood, Colorado 80111 has filed a petition to modify the application of 30 CFR 57.11055 (Inclined escapeways) to its C-JD–9 Mine (MSHA I.D. No. 05–03066) located in Montrose County, Colorado. The petitioner requests modification of the existing standard to permit the portable emergency hoisting facility (truck) to be stored in a safe area at the Nucla, Colorado office and yard and transported to the mine site when necessary for the emergency escape of the miners, and allow the provisions of 30 CFR 57.11050(b) to be used until the emergency hoisting facility is located over the borehole and ready to evacuate the miners. The petitioner has listed in this petition specific terms and conditions that will be applied when the proposed alternative method is implemented. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments: Persons interested in these petitions are encouraged to submit comments via e-mail to *comments@msha.gov*, by fax at (202) 693–9441, or by regular mail to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before August 20, 2004. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 15th day of July 2004.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 04–16481 Filed 7–20–04; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04–091]

National Environmental Policy Act; Development of Advanced Radioisotope Power Systems

AGENCY: National Aeronautics and Space Administration.

ACTION: Extension of the scoping period.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and NASA's policy and procedures (14 CFR subpart 1216.3), NASA announced its intent to conduct scoping and to prepare a Tier I Environmental Impact Statement (EIS) for the development of advanced Radioisotope Power Systems (RPSs) on April 22, 2004 in the **Federal Register** (69 FR 21867). This notice is to inform the public that the scoping period for the Advanced Radioisotope Power Systems EIS has been extended through July 30, 2004.

NASA, in cooperation with the U.S. Department of Energy (DOE), proposes to develop two types of advanced RPSs to satisfy a wide of range of future space exploration mission requirements. These advanced RPSs would be capable of functioning in the vacuum of space and in the environments encountered on the surfaces of the planets, moons and other solar system bodies. These power systems would be based upon the General Purpose Heat Source (GPHS) previously developed by DOE and used in the Radioisotope Thermoelectric Generators for the Galileo, Ulysses, and Cassini missions. The advanced RPSs would be capable of providing long-term, reliable electrical power to spacecraft across the range of conditions encountered in space and planetary surface missions. The Tier I EIS will address in general terms the development and qualification for flight of advanced RPSs using passive or dynamic systems to convert the heat generated from the decay of plutonium to electrical energy, and research and development of technologies that could enhance the capability of future RPS systems. This development activity would include, but not necessarily be limited to: (1) New power conversion technologies to more efficiently use the heat energy from the GPHS module, and (2) improving the versatility of the RPS so that it would be capable of operating for extended periods both in the vacuum of space and in planetary atmospheres. For more detailed information see the original **Federal Register** notice cited above.

DATES: Interested parties are invited to submit comments on environmental concerns in writing on or before July 30, 2004, to assure full consideration during the scoping process.

ADDRESSES: Comments should be addressed to Dr. George Schmidt, NASA Headquarters, Code S, Washington, DC 20546–0001. While hardcopy comments are preferred, comments may be sent by electronic mail to: *rpseis@nasa.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. George Schmidt, NASA Headquarters, Code S, Washington, DC 20546–0001, by telephone at 202–358–0113, or by electronic mail at *rpseis@nasa.gov*.

Jeffrey E. Sutton,

Assistant Administrator for Institutional and Corporate Management.

[FR Doc. 04–16592 Filed 7–20–04; 8:45 am]

BILLING CODE 7501–01–P

NATIONAL COUNCIL ON DISABILITY

Cultural Diversity Advisory Committee Meetings (Teleconference)

Time and Date: 1 p.m. e.d.t., August 20, 2004.

Place: National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC.

AGENCY: National Council on Disability (NCD).

Status: All parts of this meeting will be open to the public. Those interested in participating in this meeting should contact the appropriate staff member listed below. Due to limited resources, only a few telephone lines will be available for the call.

Agenda: Roll call, announcements, reports, new business, adjournment.

FOR FURTHER INFORMATION CONTACT: Geraldine (Gerrie) Drake Hawkins, Ph.D., Program Analyst, NCD, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), *ghawkins@ncd.gov.*

Cultural Diversity Advisory Committee Mission: The purpose of NCD's Cultural Diversity Advisory Committee is to provide advice and recommendations to NCD on issues affecting people with disabilities from culturally diverse backgrounds. Specifically, the committee will help identify issues, expand outreach, infuse participation, and elevate the voices of underserved and unserved segments of this nation's population that will help NCD develop federal policy that will address the needs and advance the civil and human rights of people from diverse cultures.

Dated: July 16, 2004.

Ethel D. Briggs,

Executive Director.

[FR Doc. 04–16614 Filed 7–20–04; 8:45 am]

BILLING CODE 6820–MA–P

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

Proposed Collection, Comment Request, Analysis of Impact of Museum and Library Services

AGENCY: Institute of Museum and Library Services.

ACTION: Notice, request for comments.

SUMMARY: The Institute of Museum and Library Services, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and federal agencies to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3508 (2)(A)]. This pre-clearance comment opportunity helps to ensure that: requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Institute of Museum and Library Services is currently soliciting comments concerning anticipated analyses of the impact of museum and library services.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before September 20, 2004.

IMLS is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collocation of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

ADDRESSES: Send comments to: Karen Motylewski, Research Officer, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW., Room 223, Washington, DC 20506. Ms Motylewski can be reached by fax: 202–606–0395; or by e-mail at *Kmotylewski@imls.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Institute of Museum and Library Services is charged with promoting the improvement of library and museum services for the benefit of the public. Through grantmaking and leadership activities, IMLS seeks to assure that libraries and museums are able to play an active role in cultivating an educated and engaged citizenry. IMLS builds the capacity of libraries and museums by encouraging the highest standards in management, public service, and education; leadership in the use of technology; strategic planning for results, and partnerships to create new networks that support lifelong learning and the effective management of assets.

According to its strategic plan, IMLS is dedicated to creating and sustaining a nation of learners by helping libraries and museum service their communities. IMLS believes that libraries and museums are key resources for education in the United States and promotes the vision of a learning society in which learning is seen as a community-wide responsibility supported by both formal and informal educational entities.

Current Actions

The reauthorization of the Museum and Library Services Act in 2003 creates new authority for IMLS to carry out and publish analyses of the impact of museum and library services. The Act stipulates that these analyses should be conducted in ongoing consultation with stakeholders including "State Library Administrative Agencies; state, regional, and national library and museum organizations and other relevant agencies."

The Act further states that these analyses "shall identify national needs for and trends of museum and library services provided with IMLS support, * * * report on the impact and effectiveness of programs conducted with funds made available by the Institute in addressing such needs, * * * and identify, and disseminate information on, the best practices of such program."

IMLS is developing a plan to address the requirements of the statute. As a first step, IMLS is requesting public comment to identify national needs for and trends in museum and library service. These comments will be used to identify areas in which analyses would be useful. The following questions are intended to assist stakeholders in identifying high priority areas that IMLS should explore through further research and study. Following this collection of public comment, IMLS will contact up to 50 key members of stakeholder groups for structured interviews regarding the list of possible topics for analysis. Both the public comment and results of the structured interviews will provide the foundation for IMLS to use in fulfilling this new requirement.

To comment please examine the following list. How would further exploration of these issues improve library and museum services in the United States? Which issues are of the greatest importance? Are there additional issues that should be added to the list?

A. How do changing community expectations impact library and museum services? How can libraries and museum respond to these expectations?

Representative issues:

- Altered patterns of information-seeking and learning.
- Changing educational patterns.

- Evolving roles of libraries and museums.
- Expectations for multi-institution and cross-disciplinary collaboration.
- Competition from alternative venues.

B. How do digital technology and the Web impact library and museum services? How can libraries and museums respond to challenges and benefit the public?

Representative issues:

- User expectations for seamless access to resources across organizational boundaries.
- Requirements for building and maintaining technology systems, products, and services.
- Desirability of integrating technology in management functions and services.
- Changing staff skill and knowledge requirements.
- Budget implications.
- Need to accommodate visitor/user skills and equipment needs (*e.g.*, technical support, on-site equipment access, off-site equipment and connectivity).

C. What are the impacts of growing community diversity on library and museum service? How can museums and libraries respond to them?

Representative issues:

- Changing demography of local, regional, and national audiences.
- Altered educational norms.
- Institutional need to reflect visitor/user diversity.
- Need to address language and cultural diversity.
- Expanding definitions of access and barriers (*e.g.*, ADA, Limited English Proficiency).

D. How do changes in requirements for institutional infrastructure that have occurred or are emerging impact library and museum service? How can museums and libraries respond to them?

Representative issues:

- Requirements for creation, maintenance, management, and accessibility of learning resources.
- Leadership and professional development, evolving requirements for staff skills.
- Development and fundraising challenges.
- Need to sustain public safety and security in parallel with public confidentiality and privacy.
- Need to provide broad access to resources in parallel with protection of intellectual property rights.

E. What are the challenges of developing and communicating a public value role for libraries and museums? How can museums and libraries respond to them?

Representative issues:

- Developing a strategy to be part of the community fabric to address unmet needs.
- Need to develop practical results-oriented evaluation tools and capacities.
- Expectations for outcomes- and impact-based reporting.
- Need to persuade policy and other decision-makers of competitive priority of museum/library services.
- Need to attract non-users and infrequent users; need to expand audiences.

F. What is the perception of educators, business leaders, community leaders and public policy makers on the impact of library and museum service in creating an educated and informed citizenry?

- Contribution to formal education.
- Contribution to civic engagement.
- Contribution to lifelong learning.
- Contribution to quality of community life.
- Contribution to family life.

Agency: Institute of Museum and Library Services.

Title: Analysis of Impact of Museum and Library Services.

OMB Number: n/a.

Agency Number: 3137.

Frequency: One time.

Affected Public: Museums, libraries and archives.

Number of Respondents: 50.

Estimated Time Per Respondent: 1 hour.

Total Burden Hours: 50.

Total Annualized capital/startup costs: 0.

Total Annual costs: 0.

Contact: Karen Motylewski, Research Officer, Office of Research and Technology, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, e-mail *kmotylewski@imls.gov*, telephone (202) 606–5551.

Dated: July 15, 2004.

Rebecca Danvers,

Director, Office of Research and Technology.

[FR Doc. 04–16533 Filed 7–20–04; 8:45 am]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–220 and 50–410]

Constellation Energy Group, Nine Mile Point Nuclear Station, Units 1 and 2; Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of Facility Operating license Nos. DPR–63 and NPF–69 for an Additional 20-Year Period

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering application for the renewal of Operating License Nos. DPR–63 and NPF–69, which authorize the Constellation Energy Group Inc., to operate the Nine Mile Point Nuclear Station, Units 1 and 2 at 1850 megawatts thermal for Unit 1 and 3467 megawatts thermal for Unit 2. The renewed licenses would authorize the applicant to operate the Nine Mile Point Nuclear Station, Units 1 and 2, for an additional 20 years beyond the period specified in the current licenses. The current operating license for the Nine Mile Point Nuclear Station, Unit 1 expires on August 22, 2009, and the current operating license for the Nine Mile Point Nuclear Station, Unit 2 expires on October 31, 2026.

The Commission's staff has received an application dated May 26, 2004, from Constellation Energy Group Inc., pursuant to 10 CFR Part 54, to renew the Operating License Nos. DPR–63 and NPF–69 for Nine Mile Point Nuclear Station, Units 1 and 2, respectively. A Notice of Receipt and Availability of the license renewal application, "Constellation Energy Group; Nine Mile Point Nuclear Station, Units 1 and 2; Notice of Receipt and Availability of Application for Renewal Facility Operating License Nos. DPR–63 and NPF–69 for an Additional 20-Year Period," was published in the **Federal Register** on June 8, 2004 (69 FR 32069).

The Commission's staff has determined that Constellation Energy Group has submitted sufficient information in accordance with 10 CFR 54.19, 54.21, 54.22, 54.23, and 51.53(c) that is acceptable for docketing. The current Docket Nos. 50–220 and 50–410 for Operating License Nos. DPR–63 and NPF–69, respectively, will be retained. The docketing of the renewal application does not preclude requesting additional information as the review proceeds, nor does it predict whether the Commission will grant or deny the application.

Before issuance of each requested renewed license, the NRC will have made the findings required by the

Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. In accordance with 10 CFR 54.29, the NRC will issue a renewed license on the basis of its review if it finds that actions have been identified and have been or will be taken with respect to: (1) Managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified as requiring aging management review, and (2) time-limited aging analyses that have been identified as requiring review, such that there is reasonable assurance that the activities authorized by the renewed licenses will continue to be conducted in accordance with the current licensing basis (CLB), and that any changes made to the plant's CLB comply with the Act and the Commission's regulations.

Additionally, in accordance with 10 CFR 51.95(c), the NRC will prepare an environmental impact statement that is a supplement to the Commission's NUREG–1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants," dated May 1996. Pursuant to 10 CFR 51.26, and as part of the environmental scoping process, the staff intends to hold a public scoping meeting. Detailed information regarding this meeting will be the subject of a separate **Federal Register** notice.

Within 60 days after the date of publication of this **Federal Register** notice, the requestor/petitioner may file a request for a hearing, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene with respect to the renewal of the licenses. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852 and is accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR reference staff at 1–800–397–4209, or by e-mail at *pdr@nrc.gov*. If a request for a hearing or a petition for leave to intervene is filed within the 60-day period, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order. In the event that no request for a hearing or petition for leave to intervene is filed within the 60-day period, the NRC may, upon completion of its evaluations and upon making the findings required under 10 CFR parts 51 and 54, renew the licenses without further notice.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding, taking into consideration the limited scope of matters that may be considered pursuant to 10 CFR parts 51 and 54. The petition must specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the requestor's/petitioner's right under Act to be made a party to the proceeding; (2) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases of each contention and a concise statement of the alleged facts or the expert opinion that supports the contention on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the requestor/petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The requestor/petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the action under consideration. The contention must be one that, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups and all like subject-matters shall be grouped together:

1. Technical—primarily concerns issues relating to technical and/or health and safety matters discussed or referenced in the Nine Mile Nuclear Station, Units 1 and 2 safety analysis for the application (including issues related to emergency planning and physical security to the extent that such matters are discussed or referenced in the application).

2. Environmental—primarily concerns issues relating to matters discussed or referenced in the Environmental Report for the license renewal application.

3. Miscellaneous—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more requestors/petitioners seek to co-sponsor a contention or propose substantially the same contention, the requestors/petitioners will be required to jointly designate a representative who shall have the authority to act for the requestors/petitioners with respect to that contention within ten (10) days after advised of such contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to participate fully in the conduct of the hearing. A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary,

[1] To the extent that the application contains attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel to discuss the need for a protective order.

U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at 301–415–1101, verification number is 301–415–1966. A copy of the request for hearing and petition for leave to intervene must also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsiinile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee. Attorney for the Applicant: David R. Lewis, Esq., Shaw Pittman, 2300 N Street, NW., Washington, DC 20037.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition, request and/or contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

Detailed information about the license renewal process can be found under the Nuclear Reactors icon at *http://www.nrc.gov/reactors/operating/licensing/renewal.html* on the NRC's website. Copies of the application to renew the operating licenses for the Nine Mile Point Nuclear Station, Units 1 and 2, are available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852–2738, and at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications* the NRC's website while the application is under review. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html* under ADAMS accession number ML041490211. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, may contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

The staff has verified that a copy of the license renewal application is also available to local residents near the Nine Mile Point Nuclear Station at the Penfield Library (Selective Depository), Reference and Documents Department, State University of New York, Oswego, New York 13126.

Dated in Rockville, Maryland, this the 15th day of July 2004.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 04–16531 Filed 7–20–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–327 and 50–328]

Tennessee Valley Authority, Sequoyah Nuclear Plant, Unit Nos. 1 and 2; Exemption

1.0 Background

The Tennessee Valley Authority (TVA, the licensee) is the holder of Facility Operating License Nos. DPR–77 and DPR–79, which authorize operation of the Sequoyah Nuclear Plant (facility or SQN), Unit Nos. 1 and 2, respectively. The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two pressurized water reactors located in Hamilton County, Tennessee.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR) part 50, Appendix G requires that pressure-temperature (P–T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak rate testing conditions. TVA requested that they be able to use Westinghouse Report WCAP–15315, "Reactor Vessel Closure Head/Vessel Flange Requirements Evaluation for Operating PWR [Pressurized-Water Reactor] and BWR [Boiling-Water Reactor] Plants" in lieu of 10 CFR, Appendix G, Footnote 2 to Table 1.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security, and (2) when special circumstances are present. Therefore, in determining the acceptability of the licensee's exemption request, the staff has performed the following regulatory, technical, and legal evaluations to satisfy the requirements of 10 CFR 50.12 for granting the exemption.

3.1 Regulatory Evaluation

It is stated in 10 CFR part 50, Appendix G that "[t]he minimum temperature requirements * * * pertain to the controlling material, which is either the material in the closure flange or the material in the beltline region with the highest reference temperature * * * the minimum temperature requirements and the controlling material depend on the operating condition (*i.e.*, hydrostatic pressure and leak tests, or normal operation including anticipated normal operational occurrences), the vessel pressure, whether fuel is in the vessel, and whether the core is critical. The metal temperature of the controlling material, in the region of the controlling material which has the least favorable combination of stress and temperature, must exceed the appropriate minimum temperature requirement for the condition and pressure of the vessel specified in Table 1 [of 10 CFR Part 50, Appendix G]." Footnote 2 to Table 1 in 10 CFR part 50, Appendix G specifies that RPV minimum temperature requirements related to RPV closure flange considerations shall be based on "[t]he highest reference temperature of the material in the closure flange region that is highly stressed by bolt preload."

In order to address provisions of amendments to modify SQN Units 1 and 2 Technical Specifications (TSs) to implement a pressure-temperature limits report (PTLR) for each unit, TVA requested in its submittal dated September 6, 2002, that the staff exempt SQN Units 1 and 2 from the application of specific requirements of 10 CFR part 50, Appendix G, as they pertain to the establishment of minimum temperature requirements, for all modes of operation addressed by 10 CFR part 50, Appendix G, based on the material properties of the material of the RPV closure flange region that is highly stressed by the bolt preload. The licensee's initial technical basis for this exemption request was submitted on December 19, 2002. The requirements from which TVA requested that SQN Units 1 and 2 be exempted shall be referred to for the purpose of this exemption as "those requirements related to the application of Footnote 2 to Table 1 of 10 CFR Part 50, Appendix G." The proposed action is in accordance with the licensee's

application for exemption contained in its September 6, 2002, submittal, and is needed to support the TS amendments that are contained in the same submittal. The proposed amendments will revise the SQN Units 1 and 2 TSs to permit the implementation of a PTLR for each unit.

TVA's final, complete technical basis for the requested exemption was submitted to the NRC by letters dated June 24, 2003, and December 18, 2003. The licensee's June 24, 2003, letter included as an attachment Westinghouse report WCAP–15984–P, Revision 1, "Reactor Closure Head/Vessel Flange Requirements Evaluation for SQN Units 1 and 2." This revision of WCAP–15984 updated information provided in WCAP–15984–P, Revision 0, which had been submitted to the staff on December 19, 2002. The licensee's December 18, 2003, letter provided responses to specific questions raised by the NRC staff to clarify information in WCAP–15984–P, Revision 1.

3.2 Technical Evaluation

WCAP–15984–P, Revision 1 included a fracture mechanics analysis of postulated flaws in SQN Units 1 and 2 RPV closure flange regions under boltup, 100 degrees Fahrenheit per hour (°F/hr) heatup, 100 °F/hr cooldown, and steady-state conditions, with the heatup and cooldown transients being modeled in accordance with what would be permissible using P–T limit curves based on SQN Units 1 and 2 beltline materials. Westinghouse performed finite element modeling to calculate the stresses present at critical locations within the flange region and determined that the 100 °F/hr heatup transient was the most severe condition with the upper head-to-flange weld being the most limiting location. With these stresses, Westinghouse calculated the applied stress intensity ($K_{I\ applied}$) for semi-elliptical, outside diameter initiated, surface breaking flaws with an aspect ratio (length vs. depth) of 6:1, and with depths ranging from 0 to 90 percent of the thickness of the component wall. The $K_{I\ applied}$ values were calculated in accordance with the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) Section XI, Appendix G, subparagraph G–2220 requirements for the analysis of flange locations. Westinghouse then compared these $K_{I\ applied}$ values to ASME Code lower bound static crack initiation fracture toughness (K_{IC}) values determined from the nil-ductility transition reference temperature (RT_{NDT}) values for the SQN Units 1 and 2 RPV closure flange materials. Westinghouse also provided an assessment of the potential for changes in the material RT_{NDT} values for the SQN Units 1 and 2 RPV closure flange materials due to thermal aging resulting from exposure to the RPV operating environment.

The use of ASME Code K_{IC} as the material property for the fracture mechanics analysis represents the most significant change between the analysis provided in WCAP–15984–P, Revision 1 and the analysis which was performed as the basis for establishing the minimum temperature requirements in 10 CFR part 50, Appendix G. The minimum temperature requirements related to Footnote 2 to Table 1 of 10 CFR part 50, Appendix G were incorporated into the Code of Federal Regulations in the early 1980s and were based on analyses which used ASME Code lower bound crack arrest/dynamic test fracture toughness (K_{IA}) as the parameter for characterizing a material's ability to resist crack initiation and propagation. The use of ASME Code K_{IA} is always conservative with respect to the use of ASME Code K_{IC} for fracture mechanics evaluations, and its use in the evaluations which established the requirements in 10 CFR part 50, Appendix G was justified based on the more limited knowledge of RPV material behavior that was available in the early eighties. However, the use of ASME Code K_{IC}, not ASME Code K_{IA}, is consistent with the actual physical processes that would govern flaw initiation under conditions of normal RPV operation, including RPV heatup, cooldown, and hydrostatic and leak testing. Based on our current understanding of the behavior of RPV materials, the NRC staff has routinely approved licensees utilization of ASME Code K_{IC} as the basis for evaluating RPV beltline materials to demonstrate compliance with the intent of 10 CFR part 50, Appendix G through the licensees use of ASME Code Cases N–640 and N–641.

The minimum K_{IC} value given in ASME Code for a RPV steel, regardless of material RT_{NDT} value or temperature, is 33.2 ksi$\sqrt{in}$. This value represents the "lower shelf" of the ASME Code K_{IC} curve. Based on information in WCAP–15984–P, Revision 1 and the licensee's December 18, 2003, response to NRC staff questions, it is apparent that the $K_{Iapplied}$ for any flaw up to ¼ of the wall thickness (¼T) at the limiting location (refer to WCAP–15984–P, Revision 1, Figure 4–2), would not exceed 33.2 ksi$\sqrt{in}$ (including staff consideration of ASME Code structural factors) until between 1 and 2 hours into the 100°F/hr heatup transient. The temperature at the tip of postulated flaws up to ¼ T size would be adequate at that point in time to ensure that the limiting SQN flange materials would exhibit fracture toughness properties in excess of ASME Code "lower shelf" behavior.

Hence, the analysis provided in WCAP–15984–P, Revision 1 has demonstrated that, for the most limiting transient addressed by 10 CFR Part 50, Appendix G, the combination of factors which would have to exist (high stresses in the RPV flange region along with the metal of the flange region being at low temperature) cannot exist simultaneously, and the structural integrity of the SQN Units 1 and 2 RPV closure flange materials will not be challenged by facility operation in accordance with P–T limit curves based consideration of SQN Units 1 and 2 beltline materials. Therefore, the more conservative minimum temperature requirements related to Footnote 2 to Table 1 of 10 CFR part 50, Appendix G are not necessary to meet the underlying intent of 10 CFR part 50, Appendix G, to protect SQN Units 1 and 2 RPVs from brittle failure during normal operation under both core critical and core non-critical conditions and RPV hydrostatic and leak test conditions.

3.3 Legal Basis for Exemption

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. The staff accepts the licensee's determination that an exemption would be required to permit TVA to not meet those requirements related to the application of Footnote 2 to Table 1 of 10 CFR part 50, Appendix G. The staff examined the licensee's rationale to support the exemption request and agrees that based on the information provided in WCAP–15984–P, Revision 1 and TVA's December 18, 2003, letter, an acceptable technical basis has been established to exempt SQN Units 1 and 2 from requirements related to the application of Footnote 2 to Table 1 of 10 CFR part 50, Appendix G. The technical basis provided by TVA has established that an adequate margin of safety against brittle failure would continue to be maintained for SQN Units 1 and 2 RPVs without the application of those requirements related to the application of Footnote 2 to Table 1 of 10 CFR part 50, Appendix G, for normal operation under both core critical and core non-

critical conditions and RPV hydrostatic and leak test conditions. Hence, the staff concludes that, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of 10 CFR part 50, Appendix G will be achieved without the application of those requirements related to the application of Footnote 2 to Table 1 of 10 CFR part 50, Appendix G. Therefore, the staff concludes that requesting the exemption under the special circumstances of 10 CFR 50.12(a)(2)(ii) is appropriate, and should be granted to TVA such that those requirements related to the application of Footnote 2 to Table 1 of 10 CFR part 50, Appendix G need not be applied to SQN Units 1 and 2.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants TVA an exemption from those requirements related to the application of Footnote 2 to Table 1 of 10 CFR part 50, Appendix G, for SQN Units 1 and 2.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant effect on the quality of the human environment (69 FR 32372).

This exemption is effective upon issuance.

Dated in Rockville, Maryland, this 7th day of July, 2004.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–16532 Filed 7–20–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Renewal Notice

AGENCY: Nuclear Regulatory Commission.

ACTION: This notice is to announce the renewal of the Advisory Committee on Nuclear Waste (ACNW) for a period of two years.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC) has determined that the renewal of the charter for the Advisory Committee on Nuclear Waste for the two year period commencing on July 15, 2004, is in the public interest, in connection with duties imposed on the Commission by law. This action is being taken in accordance with the Federal Advisory Committee Act, after consultation with the Committee Management Secretariat, General Services Administration.

The purpose of the Advisory Committee on Nuclear Waste is to report to and advise the Nuclear Regulatory Commission (NRC) on nuclear waste management. The bases of ACNW reviews include 10 CFR Parts 20, 40, 50, 60, 61, 63, 70, 71 and 72, and other applicable regulations and legislative mandates. In performing its work, the Committee will examine and report on those areas of concern referred to it by the Commission and may undertake studies and activities on its own initiative, as appropriate. Emphasis will be on protecting the public health and safety in the disposal of nuclear waste. The Committee will undertake studies and activities related to nuclear waste management such as transportation, storage and disposal facilities, the effects of low levels of ionizing radiation, decommissioning, materials safety, application of risk-informed, performance-based regulations, and evaluation of licensing documents, rules and regulatory guidance. The Committee will interact with representatives of the public, NRC, ACRS, other Federal agencies, State and local agencies, Indian Tribes, and private, international and other organizations as appropriate to fulfill its responsibilities.

FOR FURTHER INFORMATION CONTACT: John T. Larkins, Executive Director of the Committee, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7360.

Dated July 15, 2004.

Andrew L. Bates,

Federal Advisory Committee Management Officer.

[FR Doc. 04–16530 Filed 7–20–04; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act; Public Hearing

July 22, 2004.

OPIC's Sunshine Act notice of its public hearing was published in the **Federal Register** (Volume 69, Number 127, Page 40421) on July 2, 2004. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public hearing in conjunction with OPIC's July 29, 2004 Board of Directors meeting scheduled for 10 AM on July 29, 2004 has been cancelled.

FOR FURTHER INFORMATION CONTACT: Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via email at *cdown@opic.gov*.

Dated: July 19, 2004.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 04–16674 Filed 7–19–04; 10:32 am]

BILLING CODE 3210–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50019; File No. SR–Amex–2004–48]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto by American Stock Exchange LLC Relating to the Listing and Trading of Notes Linked to the Performance of the Standard and Poor's 500 Index

July 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 June 14, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in items I and II below, which items have been prepared by the Exchange. On July 12, 2004, the Amex 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 and is approving the proposal on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jeffrey Burns, Associate General Counsel, Amex, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 7, 2004 ("Amendment No. 1"). In Amendment No. 1, the Amex elaborated on the size of the initial issuance and clarified that the dissemination of the value of the S&P 500 would be over the Consolidated Tape Association's Network B. In addition, in Amendment No. 1, the Amex clarified certain adjustments that will be made to the methodology of calculating the value of the S&P 500.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade notes, the performance of which is linked to the Standard and Poor's 500 Index ("S&P 500" or "Index"). The text of the proposed rule change, as amended, is available at the Office of the Secretary, the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item III below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Under Section 107A of the Amex Company Guide ("Company Guide"), the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[4] The Amex proposes to list for trading under Section 107A of the Company Guide notes linked to the performance of the S&P 500 (the "S&P 500 Notes" or "Notes").[5] Morgan Stanley will issue the Notes under the name "PLUS℠." The S&P 500 is determined, calculated and maintained solely by Standard and Poor's.[6] At maturity, the Notes will provide for a multiplier of any positive performance of the S&P 500 (the "Upside Leverage Factor") during such term subject to a maximum payment amount or ceiling to be determined at the time of issuance (the "Capped Value").

The S&P 500 Notes will conform to the initial listing guidelines under Section 107A[7] and continued listing guidelines under Sections 1001–1003[8] of the Company Guide. The Notes are senior non-convertible debt securities of Morgan Stanley. The Notes will have a term of no more than ten (10) years. Morgan Stanley will issue the Notes in denominations of whole units (a "Unit"), with each Unit representing a single Note. The original public offering price will be $10 per Unit, and the size of the initial issuance will be $77.18 million.[9] The Notes will entitle the owner at maturity to receive an amount based upon the percentage change of the S&P 500. The Notes will not have a minimum principal amount that will be repaid, and accordingly, payment on the Notes prior to or at maturity may be less than the original issue price of the Notes.[10] The Notes are also not callable by the issuer, Morgan Stanley, or redeemable by the holder.

The payment that a holder or investor of a Note will be entitled to receive (the "Redemption Amount") will depend on the relation of the level of the S&P 500 at the close of the market on the second scheduled trading day prior to maturity of the Notes (the "Final Level") and the closing value of the Index on the date the Notes are priced for initial sale to the public (the "Initial Level"). If there is a "market disruption event[11] when

[4] *See* Securities Exchange Act Release No. 27753 (March 1, 1990). 55 FR 8626 (March 8, 1990) (order approving File No. SR–Amex–89–29).

[5] Morgan Stanley and Standard & Poor's, a division of the McGraw-Hill Companies, Inc. ("S&P") have entered into a non-exclusive license agreement providing for the use of the S&P 500 by Morgan Stanley and certain affiliates and subsidiaries in connection with certain securities including these Notes. S&P is not responsible for and will not participate in the issuance and creation of the Notes.

[6] The S&P 500 Index is a broad-based stock index, which provides an indication of the performance of the U.S. equity market. The Index is a capitalization-weighted index reflecting the total market value of 500 widely-held component stocks relative to a particular base period. The Index is computed by dividing the total market value of the 500 stocks by an Index divisor. The Index Divisor keeps the Index comparable over time to its base period of 1941–1943 and is the reference point for all maintenance adjustments. The securities included in the Index are listed on the Amex, New York Stock Exchange, Inc. ("NYSE") or traded through NASDAQ. The Index reflects the price of the common stocks of 500 companies without taking into account the value of the dividend paid on such stocks.

The S&P indices are presently a "full" market-capitalization weighted index. That is, the value of the Index is calculated by, for each component, multiplying the total number of shares outstanding of the component by the price per share of the component. The result is then divided by the divisor. S&P announced on March 1, 2004 that it intends to shift its major indexes to "float-adjusted" market capitalization weights. That is, the value of the Index will be calculated by, for each component, multiplying the number of shares in the public float of the component by the price per share of the component. The result is then divided by the divisor. Thus, the "float adjusted" market capitalization methodology will exclude blocks of stocks that do not trade from the weighting determination for a stock in the index.

The transition from full market-cap weighting to float-adjusted weighting will be implemented over an 18 month period. In September 2004, S&P will publish procedures and float adjustment factors, and begin calculation of provisional float adjusted indexes. The float adjustment factors will include, among other things, information regarding the adjustments that will be made to each component in order to determine what each component's float will be. At that time, S&P will start calculating a provisional index alongside of the regular index. It is not expected that any securities or futures exchange will trade products on this or any provisional index during the transition period. S&P has stated that, notwithstanding the simultaneous calculation of provisional indexes, there will still be only one official set of S&P indexes. In March 2005, the non-provisional S&P indexes will shift to partial float adjustment, using float adjustment factors that represent half of the total adjustment, based on the information published in September 2004. In September 2005, the shift to float adjustment will be completed, the official indexes will be fully float-adjusted, and the provisional indexes will be discontinued. Float adjustment factors will be reviewed annually in September. During the transition period, S&P will adjust the divisor of the indexes in order to maintain continuity across the adjustments. Therefore, as a result of the divisor adjustments, the Index value will maintain continuity immediately following both adjustments (in March 2005 and September 2005). S&P does not expect any companies to be removed from the Index as a result of the adjustments. Also S&P does not expect a change in the value of the derivative based on the index, due to adjustments S&P can make to the index divisor; however, none of this is guaranteed.

[7] The initial listing standards for the Notes require: (1) A minimum public distribution of one million units; (2) a minimum of 400 shareholders; (3) a market value of at least $4 million; and (4) a term of at least one year. In addition, the listing guidelines provide that the issuer has assets in excess of $100 million, stockholder's equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer which is unable to satisfy the earning criteria stated in Section 1010 of the Company Guide, the Exchange will require the issuer to have the following: (1) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (2) assets in excess of $100 million and stockholders' equity of at least $20 million.

[8] The Exchange's continued listing guidelines are set forth in Sections 1001 through 1003 of Part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the Notes, the Exchange will rely, in part, on the guidelines for bonds in Section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than $400,000.

[9] *See* Amendment No. 1.

[10] A negative return of the S&P 500 will reduce the redemption amount at maturity with the potential that the holder of the Note could lose his entire investment amount.

[11] A "market disruption event" is defined as (i) the occurrence of a suspension, absence or material limitation of trading of 20% or more of the component stocks of the Index on the primary market for more than two hours of trading or during the one-half hour period preceding the close of the principal trading session on such primary market; (ii) a breakdown or failure in the price and trade reporting systems of any primary market as a result of which the reported trading prices for 20% or more of the component stocks of the Index during the last one-half hour preceding the close of the

determining the Final Level of the Index, the Final Level will be determined on the next available trading day during which no "market disruption event" occurs.

If the percentage change of the Index is positive (*i.e.*, the Final Level is greater than the Initial Level), the Redemption Amount per Unit will equal:

$$\$10 + \left[\$10 \times \left(\frac{\text{Final Level} - \text{Initial Level}}{\text{Initial Level}}\right) \times \text{Upside Leverage Factor}\right], \text{ not to exceed the Capped Value.}$$

The Upside Leverage Factor, determined at the time of issuance, is expected to be 200% of the percent increase in the Final Level of the S&P 500, which will be subject to the Capped Value of approximately $11.80 or 118% of the issue price.

If the percentage change of the Index is zero or negative (*i.e.*, the Final Level is less than or equal to the Initial Level), the Redemption Amount per Unit will equal:

$$\$10 \times \left(\frac{\text{Final Level}}{\text{Initial Level}}\right)$$

Thus, if the Final Level of the S&P 500 is less than the Initial Level, an investor would receive less than his initial $10 per share investment. However, the Notes are not leveraged on the downside; the return would be directly proportional to the decline in the S&P 500. The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive a portfolio security, dividend payments or any other ownership right or interest in the portfolio or index of securities comprising the S&P 500. The Notes are designed for investors who want to participate in or gain enhanced upside exposure to the S&P 500, subject to the Capped Value, and who are willing to forego principal protection and market interest payments on the Notes during such term. The Commission has previously approved the listing of securities and related options linked to the performance of the S&P 500 Index.[12]

As of June 9, 2004, the market capitalization of the securities included in the S&P 500 ranged from a high of $318 billion to a low of $757 million. The average daily trading volume for these same securities for the last six (6) months ranged from a high of 62.4 million shares to a low of 130,000 shares. The Index value will be disseminated at least once every fifteen (15) seconds throughout the trading day.

Because the Notes are issued in $10 denominations, the Amex's existing equity floor trading rules will apply to the trading of the Notes. First, pursuant to Amex Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes.[13] Second, the Notes will be subject to the equity margin rules of the Exchange.[14] Third, the Exchange will, prior to trading the Notes, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Notes and highlighting the special risks and characteristics of the Notes. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes: (1) To determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction. In addition, Morgan Stanley will deliver a prospectus in connection with initial sales of the Notes.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, the Amex will rely on its existing surveillance procedures governing equities, which have been deemed adequate under the Act. In addition, the Exchange also has a general policy which prohibits the distribution of material, non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6[15] of the Act in general and furthers the objectives of section 6(b)(5)[16] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not receive any written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

principal trading session on such primary market are materially inaccurate; (iii) the suspension, material limitation or absence of trading on any major securities market for trading in futures or options contracts or exchange traded funds related to the Index for more than two hours of trading or during the one-half hour period preceding the close of the principal trading session on such market, and (iv) a determination by Morgan Stanley & Co., Incorporated that any event described in clauses (i)–(iii) above materially interfered with the ability of Morgan Stanley or any of its affiliates to unwind or adjust all or a material portion of the hedge position with respect to the Notes.

[12] *See e.g.*, Securities Exchange Act Release Nos. 19907 (June 24, 1983), 48 FR 30814 (July 5, 1983) (approving the listing and trading of options on the S&P 500 Index); 31591 (December 18, 1992), 57 FR 60253 (December 18, 1992) (approving the listing and trading of Portfolio Depositary Receipts based on the S&P 500 Index); 27382 (October 26, 1989), 54 FR 45834 (October 31, 1989) (approving the listing and trading of Exchange Stock Portfolios based on the value of the S&P 500 Index); 30394 (February 21, 1992), 57 FR 7409 (March 2, 1992) (approving the listing and trading of a unit investment trust linked to the S&P 500 Index) (SPDR); 47911 (May 22, 2003), 68 FR 32558 (May 30, 2003) (approving the listing and trading of notes (Wachovia TEES) linked to the S&P 500); 47983 (June 4, 2003), 68 FR 35032 (June 11, 2003) (approving the listing and trading of a CSFB Accelerated Return Notes linked to S&P 500); 48152 (July 10, 2003), 68 FR 42435 (July 17, 2003) (approving the listing and trading of a UBS Partial Protection Note linked to the S&P 500) and 48486 (September 11, 2003), 68 FR 54758 (September 18, 2003) (approving the listing and trading of CSFB Contingent Principal Protection Notes on the S&P 500).

[13] Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts, relative to every customer and to every order or account accepted.

[14] *See* Amex Rule 462 and Section 107B of the Company Guide.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2004–48 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–2004–48. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of such filing also will be available for inspection and copying at the principal office of the 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–2004–48 and should be submitted on or before August 11, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b)(5) of the Act.[17] The Commission has approved the listing of securities with a structure similar to that of the Notes.[18] Accordingly, the Commission finds that the listing and trading of the Notes based on the Index is consistent with the Act and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions securities, and, in general, protect investors and the public interest consistent with section 6(b)(5) of the Act.[19]

The Notes will provide investors who are willing to forego market interest payments during the term of the Notes with a means to participate or gain exposure to the Index, subject to the Capped Value. The Notes are non-convertible debt securities whose price will be derived and based upon the Initial Level. The Commission notes that the Notes will not have a minimum principal investment amount that will be repaid, and payment on the Notes prior to or at maturity may be less than the original issue price of the Notes. At maturity, if the Final Value of the S&P 500 is greater than the Initial Value, the performance of the Note is leveraged on the "upside." In other words, the investor will receive, for each $10 principal amount, a payment equal to $10 plus 200% of the percent increase in the value of the S&P 500, subject to the Capped Value of approximately $11.80 or 118% of the issue price. However, if the S&P 500 declines from the Initial Value, then the investors will receive proportionately less than the original issue price of the Notes. The return on the notes, however, is not leveraged on the downside.

Thus, the Notes are non-principal protected instruments, but are not leveraged on the downside. The level of risk involved in the purchase or sale of the Notes is similar to the risk involved in the purchase or sale of traditional common stock. Because the final level of return of the Notes is derivatively priced and based upon the performance of an index of securities; because the Notes are debt instruments that do not guarantee a return of principal; and because investors' potential return is limited by the Capped Value, if the value of the Index has increased over the term of such Note, there are several issues regarding the trading of this type of product. However, for the reasons discussed below, the Commission believes the Exchange's proposal adequately addresses the concerns raised by this type of product.

The Commission notes that the protections of Amex Rule 107A were designed to address the concerns attendant on the trading of hybrid securities like the Notes. In particular, by imposing the hybrid listing standards, suitability, disclosure and compliance requirements noted above, the Commission believes that Amex has addressed adequately the potential problems that could arise from the hybrid nature of the Notes. The Commission notes that Amex will distribute a circular to its membership calling attention to the specific risks associated with the Notes. The Commission also notes that Morgan Stanley will deliver a prospectus in connection with the initial sales of the notes. In addition, the Commission notes that Amex will incorporate and rely upon its existing surveillance procedures governing equities, which have been deemed adequate under the Act.

In approving the product, the Commission recognizes that the Index is a capitalization-weighted index[20] of 500 companies listed on Nasdaq, the NYSE, and the Amex. The Exchange represents that the Index will be determined, calculated, and maintained by S&P. As of June 9, 2004, the market capitalization of the securities included in the S&P 500 ranged from a high of $757 billion to a low of $318 million. The average daily trading volume for these same securities for the last six (6) months ranged from a high of 62.4 million shares to a low of 130,000 shares.

Given the large trading volume and capitalization of the compositions of the stocks underlying the Index, the Commission believes that the listing and

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[17] 15 U.S.C. 78f(b)(5).

[18] *See* Securities Exchange Act Release Nos. 48152 (July 10, 2003), 68 FR 42435 (July 17, 2003) (approving the listing and trading of the UBS Partial Protection Note linked to the Index); 47983 (June 4, 2003), 68 FR 35032 (June 11, 2003) (approving the listing and trading of a CSFB Accelerated Return Notes linked to Index); 47911 (May 22, 2003), 68 FR 32558 (May 30, 2003) (approving the listing and trading of notes (Wachovia TEES) linked to the Index); 31591 (December 18, 1992), 57 FR 60253 (December 18, 1992) (approving the listing and trading of Portfolio Depositary Receipts based on the Index); 30394 (February 21, 1992), 57 FR 7409 (March 2, 1992) (approving the listing and trading of a unit investment trust linked to the Index)(SPDR); 27382 (October 26, 1989), 54 FR 45834 (October 31, 1989) (approving the listing and trading of Exchange Stock Portfolios based on the value of the Index); and 19907 (June 24, 1983), 48 FR 30814 (July 5, 1983) (approving the listing and trading of options on the Index).

[19] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C.78c(f).

[20] *See supra* note 6.

trading of the Notes that are linked to the Index should not unduly impact the market for the underlying securities comprising the Index or raise manipulative concerns.[21] As discussed more fully above, the underlying stocks comprising the Index are well-capitalized, highly liquid stocks. Moreover, the issuers of the underlying securities comprising the Index are subject to reporting requirements under the Act, and all of the component stocks are either listed or traded on, or traded through the facilities of, U.S. securities markets. Additionally, the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

Furthermore, the Commission notes that the Notes are depending upon the individual credit of the issuer, Morgan Stanley. To some extent this credit risk is minimized by the Exchange's listing standards in Section 107A of the Company Guide which provide the only issuers satisfying substantial asset and equity requirements may issue securities such as the Notes. In addition, the Exchange's "Other Securities" listing standards further require that the Notes have a market value of at least $4 million.[22] In any event, financial information regarding Morgan Stanley in addition to the information on the 500 common stocks comprising the Index will be publicly available.[23]

The Commission also has a systemic concern, however, that a broker-dealer such as Morgan Stanley, or a subsidiary providing a hedge for the issuer will incur position exposure. However, as the Commission has concluded in previous approval orders for other hybrid instruments issued by broker-dealers,[24] the Commission believes that this concern is minimal given the size of the Notes issuance in relation to the net worth of Morgan Stanley.

Finally, the Commission notes that the value of the Index will be disseminated at least once every fifteen seconds throughout the trading day. The Commission believes that providing access to the value of the Index at least once every fifteen seconds throughout the trading day is extremely important and will provide benefits to investors in the product.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. The Exchange has requested accelerated approval because this product is similar to several other instruments currently listed and traded on the Amex.[25] The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Notes promptly. Additionally, the Notes will be listed pursuant to Amex's existing hybrid security listing standards as described above. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[26] to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[27] that the proposed rule change (SR–Amex–2004–48) and Amendment No. 1 thereto is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–16554 Filed 7–20–04; 8:45 am]

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[21] The issuer Morgan Stanley disclosed in the prospectus that the original issue price of the notes includes commissions (and the secondary market prices are likely to exclude commissions) and Morgan Stanley's costs of hedging its obligations under the notes. These costs could increase the initial value of the Notes, thus affecting the payment investors receive at maturity. The Commission expects such hedging activity to be conducted in accordance with applicable regulatory requirements.

[22] *See* Company Guide Section 107A.

[23] The Commission notes that the 500 component stocks that comprise the Index are reporting companies under the Act, and the Notes will be registered under Section 12 of the Act.

[24] *See* Securities Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (order approving the listing and trading of notes whose return is based on the performance of the Nasdaq-100 Index) (File No. SR–NASD–2001–73); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (order approving the listing and trading of notes whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index) (File No. SR–Amex–2001–40); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) (order approving the listing and trading of notes whose return is based on a weighted portfolio of healthcare/biotechnology industry securities) (File No. SR–Amex–96–27).

[25] *See supra* note 18.

[26] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[27] 15 U.S.C. 78o–3(b)(6) and 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50016; File No. SR–Amex–2004–43]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the American Stock Exchange LLC Relating to the Listing and Trading of Notes Linked to the Performance of the Nikkei 225 Index

July 14, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 3, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade notes linked to the performance of the Nikkei 225 ("Nikkei 225" or "Index"). The text of the proposed rule change is available at the Office of the Secretary, the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Under Section 107A of the Amex Company Guide ("Company Guide"), the Exchange may approve for listing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240. 19b–4.

and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[3] The Amex proposes to list for trading under Section 107A of the Company Guide notes linked to the performance of the Nikkei 225 (the "Nikkei Notes" or "Notes").[4] Morgan Stanley will issue the Notes under the name "PLUS℠." The Nikkei 225 is determined, calculated and maintained solely by NKS.[5] The Notes will provide an uncapped multiplier in the positive performance of the Nikkei 225 during their term. The Notes will not be subject to a maximum payment amount or ceiling.

The Nikkei 225 Notes will conform to the initial listing guidelines under Section 107A[6] and continued listing guidelines under Sections 1001–1003[7] of the Company Guide. The Notes are senior non-convertible debt securities of Morgan Stanley. The Notes will have a term of not less than one year but no more than ten (10) years and are expected to mature on June 30, 2009. Morgan Stanley will issue the Notes in denominations of whole units (a "Unit"), with each Unit representing a single Note. The original public offering price will be $10 per Unit. The Notes will entitle the owner at maturity to receive an amount based upon the percentage change of the Nikkei 225. The Notes will not have a minimum principal amount that will be repaid, and accordingly, payment on the Notes prior to or at maturity may be less than the original issue price of the Notes.[8] The Notes are also not callable by the issuer, Morgan Stanley, or redeemable by the holder.

The payment that a holder or investor of a Note will be entitled to receive (the "Redemption Amount") will depend on the relation of the level of the Nikkei 225 at the close of the market on the second trading day[9] prior to maturity of the Notes (the "Final Level") and the closing value of the Index on the trading day immediately following the day the Notes are priced for initial sale to the public (the "Initial Value"). At maturity, if the Final Level is greater than the Initial Value, the investor will receive for each $10 principal amount of PLUS that he holds, a payment equal to $10 plus the percentage increase in the value of the Nikkei 225 Index multiplied by the "Upside Leverage Factor," which is expected to be 170–180% of the Initial Value. If the Final Value is equal to the Initial Value, the investor will receive a payment of $10 equal to the principal amount invested for each PLUS. If the Final Value declines from the Initial Value, the investor will receive proportionally less at maturity than the $10 principal invested. Thus, the Notes are not principal protected because the payment at maturity is linked to the performance of the Nikkei 225 Index. If there is a "market disruption event"[10] when determining the Final Level of the Index, the Final Level will be determined on the next available trading day during which no "market disruption event" occurs.

Thus, if the percentage change of the Index is positive (*i.e.*, Final Level is greater than the Initial Level), the Redemption Amount per Unit will equal:

$$\$10 + \left[\$10 \times \left(\frac{\text{Final Level} - \text{Initial Level}}{\text{Initial Level}}\right) \times \text{Upside Leverage Factor}\right]$$

[3] *See* Securities Exchange Act Release No. 27753 (March 1, 1990). 55 FR 8626 (March 8, 1990) (order approving File No. SR–Amex–89–29).

[4] Morgan Stanley and Nihon Keizai Shimbun, Inc. ("NKS") have entered into a non-exclusive license agreement providing for the use of the Nikkei 225 by Morgan Stanley and certain affiliates and subsidiaries in connection with certain securities including these Notes. NKS is not responsible and will not participate in the issuance and creation of the Notes.

[5] The Nikkei 225 is calculated, published and disseminated by NKS. The Notes are not sponsored, endorsed, sold or promoted by NKS. NKS is a recognized service with business information in Japan and publishes a large business daily, The Nihon Keizai Shimbon, and four other financial newspapers. NKS is not affiliated with a securities broker or dealer. The Index measures the composite price performance of selected Japanese stocks. The Index is currently based on the 225 Underlying Stocks trading on the Tokyo Stock Exchange ("TSE") and represents a broad cross-section of Japanese industry. All 225 of the stocks underlying the index are stocks listed in the First Section of the TSE. Stocks listed in the First Section are among the most actively traded stocks on the TSE. The Index is a modified, price-weighted index. Each component stock's weight in the Index is based on its price per share rather than the total market capitalization of the issuers. NKS calculates the Index by multiplying the per share price of a component stock by the corresponding weighting factor for the stock (a "Weight Factor"), calculating the sum of all these products and dividing that sum by a divisor. The divisor, initially set on May 16, 1949 at 225, was 23.156 as of June 1, 2004, and is subject to periodic adjustments. Each Weight Factor is computed by dividing ¥50 by the par value of the relevant component stock, so that the share price of each component stock when multiplied by its Weight Factor corresponds to a share price based on a uniform par value of ¥50. Each Weight Factor represents the number of shares of the related component stock, which are included in one trading unit of the Index. The stock prices used in the calculation of the Index are those reported by a primary market for the component stocks, which is currently the TSE.

[6] The initial listing standards for the Notes require: (1) a minimum public distribution of one million units; (2) a minimum of 400 shareholders; (3) a market value of at least $4 million; and (4) a term of at least one year. In addition, the listing guidelines provide that the issuer has assets in excess of $100 million, stockholder's equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer which is unable to satisfy the earning criteria stated in Section 101 of the Company Guide, the Exchange will require the issuer to have the following: (1) assets in excess of $200 million and stockholders' equity of at least $10 million; or (2) assets in excess of $100 million and stockholders' equity of at least $20 million.

[7] The Exchange's continued listing guidelines are set forth in Sections 1001 through 1003 of Part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the Notes, the Exchange will rely, in part, on the guidelines for bonds in Section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than $400,000.

[8] A negative return of the Nikkei 225 will reduce the redemption amount at maturity with the potential that the holder of the Note could lose his entire investment amount.

[9] A "trading day" is generally a day on which trading is conducted on the TSE and on any exchange on which futures or options related to the Index are traded, other than a day on which trading on any such exchange is scheduled to close prior to its regular final weekday closing time.

[10] A "market disruption event" is defined as (i) the occurrence of a suspension, absence, or material limitation of trading of 20% or more of the component stocks of the Index on the primary market for more than two hours of trading or during the one-half hour period preceding the close of the principal trading session on such primary market; (ii) a breakdown or failure in the price and trade reporting systems of any primary market as a result of which the reported trading prices for 20% or more of the component stocks of the Index during the last one-half hour preceding the close of the principal trading session on such primary market are materially inaccurate; (iii) the suspension, material limitation, or absence of trading on any major securities market for trading in futures or options contracts or exchange traded funds related to the Index for more than two hours of trading or during the one-half hour period preceding the close of the principal trading session on such market; and (iv) a determination by Morgan Stanley & Co., Incorporated that any event described in clauses (i)–(iii) above materially interfered with the ability of Morgan Stanley or any of its affiliates to unwind or adjust all or a material portion of the hedge position with respect to the Notes.

The Upside Leverage Factor, determined at the time of issuance, is expected to be between 170–180%.

If the percentage change of the Index is zero or negative (*i.e.*, Final Level is less than or equal to the Initial Level), the Redemption Amount per Unit will equal:

$$\$10 \times \left(\frac{\text{Final Level}}{\text{Initial Level}}\right)$$

The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive a portfolio security, dividend payments or any other ownership right or interest in the portfolio or index of securities comprising the Nikkei 225. The Notes are designed for investors who want to participate in and gain enhanced upside exposure to a broad representation of the Japanese stock market and who are willing to forego principal protection and market interest payments on the Notes during such term. The Securities and Exchange Commission ("Commission" or "SEC") has previously approved the listing of securities linked in whole, or in part, to the performance of the Nikkei 225 on the Exchange.[11]

As of June 1, 2004, the market capitalization of the securities included in the Nikkei 225 ranged from a high of approximately 14.512 trillion yen ($131.118 billion) to a low of approximately 31.331 billion yen ($283.082 million). The average daily trading volume for these same securities for the last six (6) months ranged from a high of approximately 5.996 million shares to a low of approximately 1.190 million shares. The Index is composed of 225 securities and is broad-based. The highest weighted stock has a weight of 3.483% while the top five (5) stocks in the Index account for 14.283%. The level or value of the Index is calculated once per minute during TSE Trading hours [12] and is readily accessible to U.S. investors at *http://www.nni.nikkei.co.jp* and *http://www.bloomberg.com*. NKS is under no obligation to continue the calculation and dissemination of the Index. In the event that NKS ever ceases to maintain the Index, the Exchange will contact the Commission staff to consider prohibiting the continued trading of the Notes.[13]

In order to maintain continuity in the level of the Index in the event of certain changes due to non-market factors affecting the Underlying Stocks, such as the addition or deletion of stocks, substitution of stocks, stock dividends, stock splits or distributions of assets to stockholders, the divisor used in calculating the Index is adjusted in a manner designed to prevent any instantaneous change or discontinuity in the level of the Index. The divisor remains at the new value until a further adjustment is necessary as the result of another change. As a result of each change affecting any Underlying Stock, the divisor is adjusted in such a way that the sum of all share prices immediately after the change multiplied by the applicable Weight Factor and divided by the new divisor, *i.e.*, the level of the Index immediately after the change, will equal the level of the Index immediately prior to the change.[14]

Because the Notes are issued in $10 denominations, the Amex's existing equity floor trading rules will apply to the trading of the Notes. First, pursuant to Amex Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes.[15] Second, the Notes will be subject to the equity margin rules of the Exchange.[16] Third, the Exchange will, prior to trading the Notes, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Notes and highlighting the special risks and characteristics of the Notes. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes: (1) To determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction. In addition, Morgan Stanley will deliver a prospectus in connection with initial sales of the Notes in accordance with its standard prospectus delivery procedures.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, the Amex will rely on its existing surveillance procedures governing equities that include additional monitoring on key pricing dates,[17] which have been deemed adequate under the Act. In addition, the Exchange has an effective surveillance sharing agreement with the TSE that may be used as a basis for listing and trading securities linked to the Nikkei 225.[18] The Exchange also notes that the TSE is a member of the Intermarket Surveillance Group ("ISG").[19] As a result, the Exchange asserts that market surveillance information is available from the TSE, if necessary, due to regulatory concerns that may arise in connection with the component stocks. In the event that it becomes necessary, the Exchange will seek the Commission's assistance pursuant to

[11] *See* Securities Exchange Act Release Nos. 49670 (May 7, 2004), 69 FR 27959 (May 17, 2004) (approving the listing and trading of Accelerated Return Notes linked to the Nikkei 225); 38940 (August 15, 1997), 62 FR 44735 (August 22, 1997) (approving the listing and trading of notes based on the Major 11 International Index); 34821 (October 11, 1994), 59 FR 52568 (October 18, 1994) (approving the listing and trading of warrants on the Nikkei 300); and 27565 (December 22, 1989), 55 FR 376 (January 4, 1990) (approving the listing and trading of warrants based on the Nikkei 225).

[12] TSE Trading hours are currently 9:00 a.m. to 11:00 a.m. and from 12:30 p.m. to 3:00 p.m. Tokyo time, Monday through Friday. Due to time zone differences, on any normal trading day the TSE will close prior to the opening of business in New York City on the same calendar day. Therefore, the closing level of the Index on a trading day will generally be available in the U.S. by the opening of business on the same calendar day.

[13] Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, dated July 12, 2004.

[14] Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, dated July 12, 2004 (pertaining to discussion of the continuity of the level of the Index). Underlying Stocks may be deleted or added by NKS. However, to maintain continuity in the Index, the policy of NKS is generally not to alter the composition of the Underlying Stocks except when an Underlying Stock is deleted in accordance with the following criteria. Any stock becoming ineligible for listing in the First Section of the TSE due to any of the following reasons will be deleted from the Underlying Stocks: bankruptcy of the issuer; merger of the issuer into, or acquisition of the issuer by, another company; delisting of the stock or transfer of the stock to the "Seiri-Post" because of excess debt of the issuer or because of any other reason; or transfer of the stock to the Second Section of the TSE. Upon deletion of a stock from the Index, NKS will select, in accordance with certain criteria established by it, a replacement for the deleted Underlying Stock. In an exceptional case, a newly listed stock in the First Section of the TSE that is recognized by NKS to be representative of a market may be added to the Underlying Stocks. As a result, an existing Underlying Stock with low trading volume and not representative of a market will be deleted.

[15] Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts, relative to every customer and to every order or account accepted.

[16] See Amex Rule 462 and Section 107B of the Company Guide.

[17] Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, dated July 12, 2004 (pertaining to key pricing dates).

[18] *See* Information Sharing Agreement between the Amex and the TSE dated September 25, 1990.

[19] ISG membership obligates an exchange to compile and transmit market surveillance information and resolve in good faith any disagreements regarding requests for information or responses thereto.

memoranda of understanding or similar inter-governmental agreements or arrangements that may exist between the Commission and the Japanese securities regulators.

The Exchange also has a general policy that prohibits the distribution of material, non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act[20] in general and furthers the objectives of Section 6(b)(5)[21] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not solicit or receive any written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2004–43 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-2004–43. 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 offices of 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–2004–43 and should be submitted on or before August 11, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

Amex has asked the Commission to approve the proposal on an accelerated basis to accommodate the timetable for listing the Notes. The Commission notes that it has previously approved the listing of securities the performance of which have been linked to, or based on, the Index.[22] The Commission has also previously approved the listing of securities with a structure similar to that of the Notes.[23]

After careful consideration, 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, and, in particular, with the requirements of Section 6(b)(5) of the Act,[24] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.[25] The Commission believes that the Notes will provide investors with a means to participate in any percentage increase in the Index that exists at the maturity of the Notes.

The Notes are non-principal protected debt instruments, the price of which will be derived from and based upon the value of the Nikkei 225 Index. The Notes do not have a minimum principal amount that will be repaid at maturity, and the payments of the Notes prior to or at maturity may be less than the original issue price of the Notes. Accordingly, the level of risk involved in the purchase or sale of the Notes is similar to the risk involved in the purchase or sale of traditional common stock. Because the final rate of return of the Notes is derivatively priced, based on the performance of the 225 common stocks underlying the Nikkei 225 Index, and because the Notes are instruments that do not guarantee a return of principal, there are several issues regarding the trading of this type of product. However, for the reasons discussed below, the Commission believes that Amex's proposal adequately addresses the concerns raised by this type of product.

The Commission notes that the protections of Amex Rule 107A were designed to address the concerns attendant to the trading hybrid securities like the Notes. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes that Amex has addressed adequately the potential problems that could arise from the hybrid nature of the Notes. The Commission notes that Amex will distribute a circular to its membership calling attention to the specific risks

[20] 15 U.S.C. 78f.

[21] 15 U.S.C. 78f(b)(5).

[22] *See* Securities Exchange Act Release Nos. 49999 (July 9, 2004) (approving the listing and trading of Contingent Principal Protection Notes Linked to the Performance of the Nikkei 225 Index); 49670 (May 7, 2004), 69 FR 27959 (May 17, 2004) (approving the listing and trading of Accelerated Return Notes linked to the Nikkei 225 for Nasdaq); and 38940 (August 15, 1997), 62 FR 44735 (August 22, 1997) (approving the listing and trading of Market Index Target-Term Securities the return on which is based on changes in the value of a portfolio of 11 foreign indexes, including the Nikkei 225 Index).

[23] *See* Securities Exchange Act Release Nos. 47464 (March 7, 2003), 68 FR 12116 (March 13, 2003) (approving the listing and trading of Market Recovery Notes Linked to the S&P 500 Index); 47009 (December 16, 2002), 67 FR 78540 (December 24, 2002) (approving the listing and trading of Market Recovery Notes linked to the Nasdaq-100 Index); and 46883 (November 21, 2002), 67 FR 71216 (November 29, 2002) (approving the listing and trading of Market Recovery Notes linked to the Dow Jones Industrial Average).

[24] 15 U.S.C. 78f(b)(5).

[25] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

associated with the Notes. The Commission also notes that Morgan Stanley will deliver a prospectus in connection with the initial sales of the Notes. In addition, the Commission notes that Amex will incorporate and rely upon its existing surveillance procedures governing equities, which have been deemed adequate under the Act.

In approving the product, the Commission recognizes that the Index is a stock index calculated, published and disseminated by NKS, which measures the composite price performance of selected Japanese stocks. The Index is currently based on 225 common stocks traded on the TSE and represents a broad cross-section of Japanese industry. All 225 underlying stocks are listed in the First Section of the TSE and are, therefore, among the most actively traded stocks on the TSE. The Nikkei is a modified, price-weighted index, which means a component stock's weight in the Nikkei is based on its price per share rather than total market capitalization of the issuers. NKS calculates the Index by multiplying the per share price of a component stock by the corresponding weighting factor for the stock, calculating the sum of all these products, and dividing that sum by a divisor.

As stated above, NKS is under no obligation to continue the calculation and dissemination of the Index. In the event the calculation and dissemination every minute of the Index is discontinued, Amex represents that it will contact Commission staff and consider prohibiting the continued listing of the Notes. The Commission notes that the changes in the composition of the Nikkei 225 Index is made solely by NKS. The changes to these common stocks tend to be made infrequently with most substitutions the result of mergers and other extraordinary corporate actions. As of June 1, 2004, the market capitalization of the securities included in the Nikkei 225 ranged from a high of approximately 14.512 trillion yen ($131.118 billion) to a low of approximately 31.331 billion yen ($283.082 million). The average daily trading volume for these same securities for the last six (6) months ranged from a high of approximately 5.996 million shares to a low of approximately 1.190 million shares. The Index is composed of 225 securities and is broad-based. The highest weighted stock has a weight of 3.483% while the top five (5) stocks in the Index account for 14.283%. Given the composition of the stocks underlying the Nikkei 225 Index, the Commission believes that the listing and trading of the Notes that are linked to the Nikkei 225 Index should not unduly impact the market for the underlying securities comprising the Nikkei 225 Index or raise manipulative concerns.[26] As discussed more fully above, the underlying stocks comprising the Nikkei 225 Index are well-capitalized, highly liquid stocks.

In light of the fact that the Nikkei is a foreign index, the Commission believes adequate surveillance sharing agreements between the Amex and the TSE is a necessary prerequisite to deter and detect potential manipulations or other improper or illegal trading involving the Notes. While many of the issuers of the underlying securities comprising the Nikkei 225 are not subject to reporting requirements under the Act, Amex represents that an adequate surveillance sharing agreement exists through the ISG between the Amex and the TSE to deter and detect potential manipulations or other improper trading in the underlying components. Therefore, Amex's surveillance procedures will serve to deter as well as detect any potential manipulation. This agreement obligates the Amex and TSE to compile and transmit market surveillance information and resolve in good faith any disagreements regarding requests for information. Accordingly, the Commission believes that the surveillance sharing Agreement through ISG is adequate for the Amex to surveil the components of the Nikkei 225 for potential manipulation or other trading abuses between the markets with respect to the trading of the Notes based on the Nikkei 225.

Furthermore, the Commission notes that the Notes are dependent upon the individual credit of the issuer, Morgan Stanley. To some extent this credit risk is minimized by the Amex's listing standards in Amex Rule 107A, which provide the only issuers satisfying substantial asset and equity requirements may issue securities such as the Notes. In addition, the Amex's hybrid listing standards further require that the Notes have a market value of at least $4 million. In any event, financial information regarding Morgan Stanley, in addition to the information on the 225 common stocks comprising the Nikkei 225 Index, including the dissemination of the Index value once per minute, will be publicly available.[27]

The Commission also has a systemic concern, however, that a broker-dealer such as Morgan Stanley, or a subsidiary providing a hedge for the issuer will incur position exposure. However, as the Commission has concluded in previous approval orders for other hybrid instruments issued by broker-dealers,[28] the Commission believes that this concern is minimal given the size of the Notes issuance in relation to the net worth of Morgan Stanley.

Finally, as the Commission noted, the value of the Nikkei 225 Index will be disseminated at least once every minute throughout the trading day. Because the Nikkei 225 Index contains foreign securities and is composed of highly liquid and well-capitalized securities, the Commission believes that providing access to the value of the Index at least once every minute throughout the trading day is sufficient and will provide benefits to investors in the product.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Notes promptly. In addition, the Commission notes that it has previously approved the listing and trading of other derivative securities based on the Index and securities with a structure similar to that of the Notes.[29] Accordingly, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act,[30] to approve the proposal, on an accelerated basis.

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[26] The issuer Morgan Stanley disclosed in the prospectus that the original issue price of the Notes includes commissions, and the secondary market prices are likely to exclude commissions, and Morgan Stanley's costs of hedging its obligations under the Notes. These costs could increase the Initial Value of the Notes, thus affecting the payment investors receive at maturity. The Commission expects such hedging activity to be conducted in accordance with applicable regulatory requirements.

[27] *See http://www.nni.nikkei.co.jp* and *http://www.bloomberg.com*.

[28] *See, e.g.*, Securities Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (order approving the listing and trading of notes whose return is based on the performance of the Nasdaq-100 Index) (File No. SR–NASD–2001–73); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (order approving the listing and trading of notes whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index) (File No. SR–Amex–2001–40); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) (order approving the listing and trading of notes whose return is based on a weighted portfolio of healthcare/biotechnology industry securities) (File No. SR–Amex–96–27).

[29] *See supra* notes 22 and 23.

[30] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[31] that the proposed rule change (SR–Amex–2004–43) is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[32]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–16555 Filed 7–20–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50028; File No. SR–CBOE–2004–16]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Approval to a Proposed Rule Change and Amendment No. 1 Thereto Relating to an Interpretation of Paragraph (b) of Article Fifth of Its Certificate of Incorporation and an Amendment to Rule 3.16(b)

July 15, 2004.

I. Introduction

On March 4, 2004, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt an interpretation, embodied in an agreement dated December 17, 2003 ("2003 Agreement"), between the CBOE and the Board of Trade of the City of Chicago, Inc. ("CBOT"), of paragraph (b) of Article Fifth of the CBOE Certificate of Incorporation ("Article Fifth(b)") and CBOE Rule 3.16, pertaining to the right of the 1,402 Full Members of CBOT to become members of CBOE without having to purchase a CBOE membership ("Exercise Right"). On April 9, 2004, the CBOE filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on May 3, 2004.[4] The Commission received one comment letter on the proposed rule change.[5] On May 25, 2004, the CBOE submitted a response to the comment letter,[6] and the commenter replied to CBOE's response in a second comment letter submitted on June 16, 2004.[7] This order approves the proposed rule change, as amended.

II. Description of the Proposed Rule Change

The CBOE is proposing to interpret Article Fifth(b) to explain how it will apply, upon the distribution by the CBOT to each of its 1,402 Full Members upon their individual request, to a separately transferable interest representing the Exercise Right component of each CBOT Full Membership. According to the CBOE, the CBOT's willingness to issue transferable Exercise Right interests is reflected in the 2003 Agreement. Because CBOE Rule 3.16 currently refers to certain terms that were previously interpreted and defined in an agreement between CBOE and the CBOT in 1992 ("1992 Agreement"), and the terms are now further interpreted and defined in the 2003 Agreement, the proposed rule change also amends CBOE Rule 3.16 to add a reference in the 2003 Agreement.

The 2003 Agreement contemplates the issuance by the CBOT of a separately transferable interest representing the Exercise Right component of a CBOT Full Membership in advance of the consummation of the CBOT's proposed corporate restructuring, which contemplates a similar separately transferable interest structure.[8] In addition, the CBOE represents that the CBOT's membership has approved changes to the CBOT Rules and Regulations, pursuant to the terms of the 2003 Agreement, to give effect to a structure providing for the issuance of these interests. Thus, the interpretation, embodied in the 2003 Agreement, constitutes the substance of the proposed rule change.

The interpretation of Article Fifth(b), embodied in the 2003 Agreement, includes definitions of who will be "Eligible CBOT Full Members" and "Eligible CBOT Full Member Delegates" entitled to exercise after the CBOT has issued separately transferable interests representing the Exercise Right component of CBOT Full Memberships to those CBOT Full Members who request them. The interests are referred to in the 2003 Agreement and in this filing as "Exercise Right Privileges."

The CBOE represents that, under these definitions, to become a member of the CBOE by virtue of the Exercise Right, the holder or delegate (*i.e.*, a lessee under CBOT Rules and Regulations) of one of the 1,402 outstanding CBOT Full Memberships in which an Exercise Right Privilege has been issued must possess one Exercise Right Privilege, whether bundled or unbundled[9] from the related CBOT Full Membership. In addition, the CBOE believes that a CBOE exerciser member must also possess all of the other rights or privileges appurtenant to a CBOT Full Membership; meet the applicable membership and eligibility requirements of the CBOT; and be deemed to be a "CBOT Full Member" or a "CBOT Full Member Delegate" under the CBOT Rules and Regulations.

The 2003 Agreement also provides that the CBOT will adopt and maintain rules and procedures acceptable to the CBOE governing the issuance and subsequent transfer of Exercise Right Privileges and CBOT Full Memberships, to enable the CBOE to administer the operation of the Exercise Right in a manner consistent with the interpretation embodied in the 2003 Agreement. In addition, the 2003 Agreement states that the CBOE intends to make an offer to CBOT Full Members that, subject to the terms and conditions of the offer, will allow the CBOE to purchase Exercise Right Privileges from those CBOT Full Members that accept the offer.[10] Further, as provided in the

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[31] 15 U.S.C. 78s(b)(2).

[32] 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 Arthur B. Reinstein, Deputy General Counsel, CBOE, to Lisa N. Jones, Special Counsel, Division of Market Regulation ("Division"), Commission, dated April 8, 2004 ("Amendment No. 1").

[4] Securities Exchange Act Release No. 49620 (April 26, 2004), 69 FR 24205.

[5] Letter from Thomas A. Bond, Member, CBOE, *et al.*, to Jonathan G. Katz, Secretary, Commission, dated April 28, 2004.

[6] Letter from Joanne Moffic-Silver, General Counsel and Corporate Secretary, CBOE, to Jonathan G. Katz, Secretary, Commission, dated May 24, 2003.

[7] Letter from Thomas A. Bond, Member, CBOE, *et al.*, to Jonathan G. Katz, Secretary, Commission, dated June 8, 2004 ("June 8th Letter").

[8] The CBOE noted that the CBOT's proposed restructuring has not yet been consummated and that it remains uncertain when the proposed restructuring will occur. Indeed, the 2003 Agreement specifically states that the CBOT is not obligated to consummate the contemplated restructuring or any other restructuring. The CBOE also noted that the CBOT's proposal to issue a separately transferable interest representing the Exercise Right as part of its restructuring was the subject of a prior proposed interpretation by the CBOE of Article Fifth(b), which was filed with the Commission as a proposed rule change in File No. SR–CBOE–2002–01. On April 7, 2004, the CBOE withdrew this filing. *See* letter from Arthur B. Reinstein, Deputy General Counsel, CBOE, to Lisa N. Jones, Special Counsel, Division, Commission, dated April 6, 2004.

[9] According to the CBOE, under the proposed interpretation of Article Fifth(b) embodied in the 2003 Agreement, Exercise Right Privileges may be separately bought and sold and bundled and rebundled with the other rights and privileges of CBOT Full Membership for purposes of making the holder of an Exercise Right Privilege eligible to exercise.

[10] In addition, the 2003 Agreement states that CBOE's offer would have no effect on a CBOT Full Member's right to exercise on the CBOE if the CBOT Full Member chooses not to accept CBOE's offer,

2003 Agreement, the CBOT and the CBOE have each agreed to provide to the other certain current information regarding the status of their members, including exercisers and persons who own or lease an Exercise Right Privilege.

The CBOE represents that the proposed interpretation of Article Fifth(b) is consistent with the language of Article Fifth(b), and that the interpretation does not propose to amend Article Fifth(b) in any respect; it only interprets how Article Fifth(b) would apply in circumstances that were not envisioned when Article Fifth(b) was adopted, and therefore were not addressed in the language of Article Fifth(b).[11] The CBOE also believes that the proposed interpretation of Article Fifth(b) is consistent with the interpretation of the Exercise Right embodied in the 1992 Agreement.[12]

Finally, the CBOE represents that the interpretation of Article Fifth(b), embodied in the 2003 Agreement, is intended to apply solely in the circumstances involving the issuance of Exercise Right Privileges to some or all of its 1,402 Full Members as described in the 2003 Agreement, so as to make it clear that the interpretation is not intended to cover any other circumstances that might arise and also have an impact on the Exercise Right.

III. Summary of Comments

As noted above, the Commission received comments on the proposed rule change[13] from several members of the CBOE.[14] In general, the commenters believe that the Commission should not approve the proposed rule change because the interpretation, embodied in the 2003 Agreement, constitutes an amendment to Article Fifth(b) and thus should be subject to a membership vote.[15] According to the commenters, Article Fifth(b) was established (and approved by the Commission) to provide a mechanism for CBOE members and CBOT members who exercise on the CBOE ("CBOE exerciser members") to: (1) Decide on whether changes in the definition or structure of a CBOT member would affect the Exercise Right, and (2) protect one class of CBOE membership from adversely affecting the other.

Regarding CBOT's proposed restructuring, the commenters believe that the CBOT's proposed restructuring necessitates an amendment to Article Fifth(b), and not an interpretation, because once the CBOT demutualizes, it will no longer be a membership organization. In particular, the commenters state that, changing from a membership structure, in which CBOE and its members have information on actions of the CBOT that affect the Exercise Right and the number of CBOE exerciser members, to a demutualized stock corporation affects the governance and operations of the CBOT. The commenters also express concern that, along with CBOT's proposed restructuring, committee structures, petition processes, and representation on the board of directors would also change. Therefore, the commenters believe that the CBOT's restructuring warrants an Article Fifth(b) vote. The commenters further note that the definition of a "member of the Board of Trade" is being amended in the CBOT's proposed restructuring, which should be subject to an Article Fifth(b) vote. The commenters are also concerned that, if the CBOT demutualizes, the Exercise Right could be negated by the CBOE; they cite to a provision in the 1992 Agreement that states that, if the CBOT, among other things, is acquired by another entity (and the surviving entity is not a registered exchange), then Article Fifth(b) would not apply.

In response to the commenters' concerns, the Exchange maintains that the CBOT's issuance of the Exercise Right Privileges is separate and distinct from the CBOT's pending restructuring.[16] The Exchange believes that the commenters' concerns primarily refer to changes in the structure or governance of the CBOT resulting from a demutualization—a circumstance not subject to this filing. In addition, the Exchange notes that the proposed interpretation provides that, although the Exercise Right Privilege would be a transferable interest, the holder of the Exercise Right Privilege would not have the right to exercise on the CBOE unless the holder also possess a CBOT Full Membership.

The commenters also express concern that the proposed interpretation states that certain disputes concerning the definition of a CBOT member as it pertains to the Exercise Right will be subject to arbitration as opposed to the membership vote provided in Article Fifth(b). Further, the commenters believe that according to the 1992 Agreement, a CBOE exerciser member does not have the right to transfer (whether by sale, lease, gift, bequest, or otherwise) its CBOE regular membership or any other trading rights and privileges appurtenant thereto. The commenters interpret provisions of the 1992 Agreement to require that all equity and trading rights would have to be assembled to exercise if the CBOT's demutualization were to occur. Thus, the commenters are concerned that the proposed interpretation would allow the CBOT to demutualize into three classes of shares (A, B, and C) that can be split and sold separately, which constitutes an amendment to Article Fifth(b) and not an interpretation.[17]

In response to the commenter's concerns, the Exchange believes that the purpose of the Exercise Right Privilege is to create an interest that CBOE, or others, might purchase to reduce the number of outstanding Exercise Rights, and to give CBOT members a way to realize the value of the Exercise Right without having to sell their entire CBOT membership.[18] The Exchange believes that the proposed interpretation embodied in the 2003 Agreement is consistent with the language of Article Fifth(b) in that the Exercise Right would remain available to a person so long as he or she remains a member of the

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and that holders of the Exercise Right would continue to be entitled to become an exerciser member of the CBOE.

[11] By its terms, Article Fifth(b) may be amended only with the approval of 80% of CBOE's members admitted by exercise, and 80% of CBOE's members admitted other than by exercise, each voting as a separate class.

[12] The CBOE noted that the proposed interpretation of the Exercise Right that is the subject of this filing does not displace the interpretation embodied in the 1992 Agreement, except it provides that if there are any inconsistencies between the interpretation embodied in the 2003 Agreement and the interpretation embodied in the 1992 Agreement, then the interpretation embodied in the 2003 Agreement would control.

[13] The Commission notes that the commenters refer to two separate proposed rule changes filed by the CBOE—File No. SR–CBOE–2002–01 and SR–CBOE–2004–16. *But see supra* note 8 (noting that CBOE has withdrawn File No. SR–CBOE–2002–01).

[14] *See supra* notes 5 and 7.

[15] *See supra* note 11.

[16] In its June 8th Letter, the commenters replied that, although SR–CBOE–2002–01 was withdrawn, they believe that the CBOT restructuring will be occurring soon, and therefore the Commission should not separate the issues presented in both filings (citing to a letter from Charles P. Carey, Chairman, CBOT, which generally provides that, upon final court approval of a settlement agreement with plaintiffs in the minority member lawsuit, and the Commission declaring CBOT's registration statement effective, it can move forward with a membership vote and complete the restructuring). *See supra* note 7.

[17] The commenters also state that, under the CBOT's membership organization, the voting rights are joined with the trading rights and equity interests and are not separated. However, when CBOT is demutualized, the parts will be separated and consequently the parties holding the voting rights may be different and have different agendas than the parties having the trading rights.

[18] In response, commenters state that the proposed interpretation would create two classes of CBOT memberships—one with the Exercise Right and one without. Thus, CBOT members would be able to receive value for Exercise Right, which was not recognized in Article Fifth(b) and the 1992 Agreement. *See supra* note 7.

CBOT.[19] The Exchange notes that the 1992 Agreement provides that if a CBOT Full Membership is divided into separate parts, a person must hold all of the parts to exercise on the CBOE. The Exchange states that the interpretation does not amend Article Fifth(b), rather, as noted above, the interpretation describes how the Article would apply under circumstances that were not originally contemplated when Article Fifth(b) was adopted.

Further, the Exchange represents that it has been advised by its Delaware counsel that, under Delaware state law, it is within the general authority of CBOE's Board of Directors to interpret its governing documents when questions arise as to their application in these types of circumstances, so long as the interpretation adopted by the Exchange's Board of Directors is consistent with the terms of the governing documents themselves.[20] The Exchange represents that the interpretations do not constitute amendments to the governing documents, and thus are not subject to the procedures that would apply if they were actually being amended.[21]

IV. Discussion

After careful review of the proposal, the comments received, and CBOE's response to the comments, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[22] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[23] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, and in general to protect investors and the public interest, and Section 6(c)(3)(A) of the Act,[24] which permits, among other things, an exchange to examine and verify the qualifications of an applicant to become a member, and the natural persons associated with such applicant, in accordance with the procedures established by exchange rules.

The CBOE believes that the proposed interpretation should clarify a circumstance regarding the Exercise Right that was not originally envisioned by the CBOE and CBOT when Article Fifth(b) was adopted. The CBOE also represents that the CBOT will issue to each of its 1,402 Full Members, upon their individual request, a separately transferable interest representing the Exercise Right component of the CBOT Full Membership. Moreover, the CBOE represents that to be eligible as a CBOE exerciser member, one must hold a CBOT Full Membership, which would include one Exercise Right Privilege (representing the Exercise Right) in addition to all the other rights or privileges appurtenant to a CBOT Full Membership.

The Commission has considered the commenters' concerns about how the proposed interpretation could adversely affect the Exercise Right. In its decision to approve the proposal, the Commission is relying on CBOE's representation that the CBOT will adopt and maintain rules and procedures governing the issuance and transfer of the Exercise Right Privileges to enable the CBOE to administer the operation of the Exercise Right in a manner consistent with Exchange rules. Further, the Commission notes that CBOE has represented that both the CBOE and CBOT will provide each other with current information regarding the status of their members, including exerciser members and persons who own or lease an Exercise Right Privilege. The Commission believes that this open exchange of information regarding the Exercise Right should adequately address any concerns that the proposal will adversely affect CBOE regular membership, or any other trading rights and privileges thereof.

The Commission has also considered the commenters' concerns about the CBOT's proposed restructuring, and notes that CBOT's proposed restructuring has not yet been consummated. The Commission emphasizes that this order only approves CBOE's interpretation as it relates to the proposed changes to CBOE Rule 3.16. The Commission is not making a finding on any facts and circumstances surrounding CBOT's proposed restructuring under Delaware law.

In addition, the Commission is not approving or disapproving the terms of the 2003 Agreement; rather, the Commission is approving a proposed rule change filed by the CBOE which interprets CBOE's rules. Further, in approving this proposal, the Commission is relying on CBOE's representation that its interpretation is appropriate under Delaware state law,[25] and CBOE's Opinion of Counsel that it is within the general authority of its Board of Directors to interpret Article Fifth(b) when questions arise as to its application under certain circumstances, so long as the interpretation adopted by the Exchange's Board of Directors is made in good faith, consistent with the terms of the governing documents themselves, and not for inequitable purposes.[26] The Commission has not independently evaluated the propriety of CBOE's interpretation under Delaware state law.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[27] that the proposed rule change (SR–CBOE–2004–16), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–16559 Filed 7–20–04; 8:45 am]

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[19] The CBOE represents that, if and when the CBOT restructures and is no longer a membership organization, the CBOE will further interpret the Exercise Right to determine its application in light of the demutualization. Telephone conversation between Arthur B. Reinstein, Deputy General Counsel, CBOE, and Lisa N. Jones, Special Counsel, Division, Commission, on June 10, 2004.

[20] *See* letter from Michael D. Allen, Esq., Richards, Layton & Finger, to Joanne Moffic-Silver, General Counsel and Corporate Secretary, CBOE, dated June 29, 2004 (providing a legal opinion from Delaware counsel in connection with CBOE–2004–16) ("Opinion of Counsel").

[21] In its June 8th Letter, the commenters reply that, although the CBOE Board of Directors has the right to interpret changes in the CBOT membership, Article Fifth(b) requires both the CBOE member and the Exercise Right holder to decide if changes or amendments to Article Fifth(b) are permissible. Thus, the commenters believe that the CBOE Board of Directors is usurping members' rights by interpreting Article Fifth(b). *See supra* note 7.

[22] In approving this rule, the Commission has considered the impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78f(c)(3)(A).

[25] Telephone conversation among Arthur B. Reinstein, Deputy General Counsel, CBOE, Katherine A. England, Assistant Director, and Lisa N. Jones, Special Counsel, Division, Commission, on July 15, 2004.

[26] *See supra* note at p. 5.

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50013; File No. SR–CHX–2004–02]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to the Minimum Automatic Execution Threshold Size

July 14, 2004.

On February 11, 2004, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act

of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to eliminate the existing 100-share minimum automatic execution threshold and the rule governing the procedures by which specialists obtain permission to switch from automatic execution mode to manual execution mode. The proposed rule change was published for comment in the **Federal Register** on June 10, 2004.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.[4] Specifically, the Commission finds that the proposal is consistent with the requirements of Section 6(b) of the Act,[5] in general, and Section 6(b)(5) of the Act,[6] in particular, which requires that the rule of the Exchange be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange has represented that under its current rules, a CHX specialist is required to permit its MAX system to automatically execute an unlimited number of orders for 100 shares or less at the then-prevailing national best bid or offer ("NBBO"), until the consolidated quotation stream reflects a change in the NBBO price. The CHX believes that this requirement imposes virtually unlimited liability on its specialists to fill orders at the NBBO regardless of the aggregate number shares actually available at the NBBO. The Exchange believes that this is an unintended and unwarranted consequence of automatic execution guarantees such as the Exchange's current rule and that by eliminating the 100-share minimum automatic execution threshold, specialists will have the option to act as agent for an order or manually execute the order, rather than have an order execute against him automatically at the NBBO. Thus, the Commission believes that eliminating the 100-share minimum automatic execution threshold will give CHX specialists more flexibility in handling orders.

The Exchange has also represented that a number of CHX specialist firms have developed and are implementing a remote pricing functionality ("RFP") that permits specialists to respond to orders that are dropped for manual handling. The RFP functionality permits specialists to price individual orders. The RFP then provides the Exchange's MAX system with automated execution instructions for orders that otherwise would require further manual intervention of a CHX specialist. The Exchange believes that eliminating the 100-share minimum automatic execution threshold will grant specialists the option to handle more orders in this manner if they choose.

The Commission believes that the rule requiring specialists to guarantee automatic executions at the NBBO was one the CHX imposed on it specialists voluntarily in order to make its market more attractive to sources of order flow. The Commission believes that the business decision to potentially forego order flow by no longer requiring specialist to provide such automatic executions is a judgment the Act allows the CHX to make. The Commission notes, however, that specialists are required to handle all orders in accordance with their best execution obligations and the Commission Quote Rule[7] regardless of whether such orders are executed manually or automatically.

Finally, the Commission believes it is appropriate to delete the current CHX rule governing the procedures by which specialists are to obtain permission to switch from automatic execution mode to manual execution mode because the elimination of the 100-share minimum automatic execution threshold effectively permits CHX specialists to switch to manual execution mode at any time.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–CHX–2004–02) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–16557 Filed 7–20–04; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 49793 (June 2, 2004), 69 FR 32645.

[4] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 240.11Ac1–1.

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50024; File No. SR–CHX–2004–10]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Stock Exchange, Inc. Relating to Co-Specialist Assignments and Evaluations

July 15, 2004.

On February 3, 2004, the Chicago Stock Exchange, Inc. ("CHX") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to co-specialist assignments and evaluations. On May 12, 2004, CHX submitted Amendment No. 1 to the proposal.[3]

The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on May 24, 2004.[4] The Commission received no comment letters on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[5] and, in particular, the requirements of Section 6(b)(5) of the Act.[6] 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.

The Commission notes that the proposed rule change, among other things, seeks to modify the co-specialist assignment and evaluation processes to shift the emphasis from evaluation questionnaire responses to execution quality data results (specifically, data on effective spread and speed of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Ellen J. Nelly, Senior Vice President and General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated May 11, 2004 ("Amendment No. 1"). Amendment No. 1 superseded and replaced the original rule filing in its entirety.

[4] *See* Securities Exchange Act Release No. 49721 (May 18, 2004), 69 FR 29592.

[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

execution). Currently, execution quality data is not a factor for consideration during either the co-specialist assignment or evaluation processes. Instead such processes rely on the results of the co-specialist questionnaire, with substantial weight given to the questionnaire in the assignment process. Under the proposed rule change, the co-specialist questionnaire, while still a factor in the assignment process, would not be given substantial weight in the assignment process and would no longer be a factor in the evaluation process. Order execution quality data would be introduced as a factor in both the co-specialist assignment and evaluation processes and would be given substantial weight in the assignment process. The Commission believes that this change should help improve the quality of co-specialists serving on the CHX because it would require the CHX's Committee on Specialist Assignment and Evaluation ("CSAE") to make assignment and reallocation decisions based on objective, quantifiable performance criteria, rather than relying on the more subjective co-specialist questionnaire answers.

The proposed rule change also establishes a new process for evaluating co-specialists. Under this proposed evaluation process, on a quarterly basis, each co-specialist would be given an order execution quality score (derived from the execution quality data reported pursuant to Rule 11Ac1–5 under the Act[7]) and those co-specialists whose scores rank in the bottom 5% of all co-specialist scores would be required to participate in a special performance meeting with the CSAE. In the course of the special performance meeting, the CSAE would be permitted to take a variety of informal actions to encourage or assist the affected co-specialist. A special performance meeting could also be triggered by any of the factors considered in the assignment process (except the co-specialist questionnaire). If the informal actions from the special performance meeting do not result in improved co-specialist performance, the CSAE may conduct a formal hearing on the co-specialist's performance to determine whether to take action to reallocate the co-specialist's securities or suspend or terminate the co-specialist's registration in accordance with Rule 3, Article XVII of the CHX rules. In this regard, the Commission notes that a co-specialist may appeal the CSAE's decision by filing a request for review with the CHX's Executive Committee under Rule 4, Article XVII of the CHX rules.

The Commission also notes that the proposed rule change strives to streamline the co-specialist questionnaire by reducing the range of rating scores and eliciting further responses for negative performance ratings. The Commission believes this change should make the questionnaires easier for brokers to complete and the responses to the questionnaires more useful to the CSAE. Therefore, the Commission finds that the proposed rule change is consistent with the Act.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CHX–2004–10), as amended by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–16558 Filed 7–20–04; 8:45 am]

BILLING CODE 8010–01–P

[7] 17 CFR 240.11Ac1–5.

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50025; File No. SR–DTC–2004–04]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change To Establish a Valued Delivery Order Interface With the National Securities Clearing Corporation

July 15, 2004.

I. Introduction

On May 3, 2004, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change File No. SR–DTC–2004–04 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposed rule change was published in the **Federal Register** on June 2, 2004.[2] No comment letters were received. For the reasons discussed below, the Commission is now granting approval of the proposed rule change.

II. Description

The National Securities Clearing Corporation ("NSCC") currently creates receive and deliver instructions for "Balance Order Securities" and for "Special Trades" which NSCC members then have to manually enter into DTC as "Valued Delivery Orders" ("VDOs").[3] In connection with NSCC's project to update and revise its Continuous Net Settlement ("CNS") system ("CNS Rewrite"), NSCC requested DTC to establish an interface to automate and facilitate the processing and book-entry settlement of Balance Orders and Special Trades.[4]

DTC and NSCC currently have an automated VDO municipal bond interface known as the PDQ Automated Municipal Bond Settlement Facility ("PDQ Facility"). Pursuant to the PDQ Facility, NSCC members and NSCC municipal comparison only members ("MCOMs") that are also DTC participants ("common participants") or that clear through DTC participants may authorize NSCC to send to DTC their compared municipal bond transaction data in an automated file and may authorize DTC to accept and input such data as VDOs.

As a result of requests from common participants and based upon DTC's and NSCC's positive experience with the PDQ Facility, DTC and NSCC will expand the PDQ Facility to include all NSCC Balance Orders and Special Trades. The VDO Interface will automatically convey from NSCC to DTC VDO instructions for each common participant's Balance Orders and Special Trades pursuant to standing instructions given to NSCC by the common participant. For NSCC MCOMs that are not common participants, NSCC will create delivery versus payment VDO instructions for a MCOM's Special Trades if both the MCOM and its DTC clearing broker have each provided standing instructions to process such trades through the VDO Interface. The VDO Interface will incorporate the PDQ Facility's functionality and will replace the PDQ Facility.[5] DTC intends to implement the proposed rule change in conjunction with the implementation of NSCC's CNS Rewrite on or about August 6, 2004.[6]

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 34–49777 (May 26, 2004), 69 FR 31149.

[3] The terms Balance Order Securities and Special Trades are defined in Rule 1 of NSCC's Rules and Procedures. The term Valued Delivery Order refers to an order to deliver securities where delivery is to be made for payment as opposed to a Free Delivery which refers to an order to deliver securities free of any payment by the receiver.

[4] The Commission recently approved NSCC's CNS Rewrite. Securities Exchange Act Release No. 50026 (July 15, 2004) [File No. SR–NSCC–2004–01].

[5] Telephone conversation between Diane L. Brennan, Director of Risk Management, DTC, and staff of the Division of Market Regulation, Commission (May 21, 2004). Supplemented by letter from Diane L. Brennan, DTC (May 27, 2004).

[6] The date for implementation in the Notice has been adjusted. E-mail from Diane L. Brennan, DTC (June 23, 2004).

III. Discussion

Section 17A(b)(3)(F) of the Act requires among other things that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[7] The Commission finds that DTC's proposed rule change is consistent with this requirement because VDO Interface being established will promote the prompt and accurate clearance and settlement of securities transactions by providing greater efficiency in the processing and book-entry settlement of Balance Orders and Special Trades by providing greater functionality and by allowing members to focus less attention on exception processing.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–DTC–2004–04) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–16562 Filed 7–20–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50010; File No. SR–ISE–2004–25]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the International Securities Exchange, Inc., Relating to the Extension of the Linkage Fee Pilot Program

July 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 July 1, 2004, the International Securities Exchange, Inc. (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to extend until July 31, 2005 the current pilot program regarding transaction fees charged for trades executed through the intermarket options linkage ("Linkage"). Currently pending before the Commission is a filing to make such fees permanent.[3]

The proposed fee schedule is available at the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to extend for one year the pilot program establishing ISE fees for Principal ("P") Orders and Principal Acting as Agent ("P/A") Orders executed through Linkage. The fees currently are effective for a pilot program scheduled to expire on July 31, 2004,[4] and this filing would extend the fees through July 31, 2005. The three fees the ISE charges for P and P/A orders are: the basic execution fees for trading on the ISE, which range from $.12 to $.21 per contract/side depending on average daily trading volume on the Exchange; a $.10 surcharge per contract/side for trading certain licensed products; and a $.03 comparison fee contract/side (collectively "Linkage fees"). The Exchange represents that these are the same fees that all ISE Members pay for non-customer transactions executed on the Exchange. The ISE does not charge for the execution of Satisfaction Orders sent through Linkage and is not proposing to charge for such orders.

In the Permanent Fee Filing, the ISE discusses in detail the reasoning why it believes it is appropriate to charge fees for P and P/A Orders executed through Linkage. In sum, the ISE argues that market makers on competing exchanges can match a better price on the ISE; they are never obligated to send orders to the ISE through Linkage. However, if such market makers do seek the ISE's liquidity, whether through conventional orders or through the use of P or P/A Orders, the Exchange believes it is appropriate to charge ISE Members the same fees levied on other non-customer orders. The ISE appreciates that there has been limited experience with Linkage and that the Commission is continuing to study Linkage in general and the effect of fees on trades executed through Linkage. Thus, this filing would extend the status quo for ISE's Linkage fees for one year while the Commission considers the Permanent Fee Filing.

2. Statutory Basis

The ISE believes that the basis for this proposed rule change is the requirement under Section 6(b)(4) of the Act[5] that an exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. As discussed in more detail above, the ISE believes that this proposed rule change will equitably allocate fees by having all non-customer users of ISE transaction services pay the same fees. If the ISE were not to charge Linkage fees, the ISE believes that the Exchange's fee would not be equitable, in that ISE Members would be subsidizing the trading of their competitors, all of whom access the same trading services.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Moreover, the ISE believes that failing to adopt the proposed rule change would impose a burden on competition by requiring ISE Members to subsidize the trading of their competitors.

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[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* File No. SR–ISE–2003–30 (the "Permanent Fee Filing").

[4] See Securities Exchange Act Release No. 49009 (December 30, 2003), 69 FR 714 (January 6, 2004) (SR–ISE–2003–39).

[5] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2004–25 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–ISE–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 offices of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE–2004–25 and should be submitted on or before August 11, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange,[6] and, in particular, with the requirements of Section 6(b) of the Act[7] and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[8] which requires that the rules of the Exchange provide for the equitable allocation or reasonable dues, fees and other charges among its members and other persons using its facilities. The Commission believes that the extension of the Linkage fee pilot until July 31, 2005 will give the Exchange and the Commission further opportunity to evaluate whether such fees are appropriate.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[9] for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The Commission believes that granting accelerated approval will preserve the Exchange's existing pilot program for Linkage fees without interruption as the ISE and the Commission further consider the appropriateness of Linkage fees.

V. Conclusion

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act[10] that the proposed rule change (SR–ISE–2004–25) is hereby approved on an accelerated basis for a pilot period to expire on July 31, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–16556 Filed 7–20–04; 8:45 am]

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[6] In approving this rule, the Commission notes that it has considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(2).

[10] *Id.*

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50026; File No. SR–NSCC–2004–01]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change To Modify the National Securities Clearing Corporation's Continuous Net Settlement System

July 15, 2004.

I. Introduction

On February 23, 2004, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") and on March 26, 2004, amended proposed rule change File No. SR–NSCC–2004–01 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposed rule change was published in the **Federal Register** on May 24, 2004.[2] No comment letters were received. For the reasons discussed below, the Commission is now granting approval of the proposed rule change.

II. Description

As part of the securities industry's straight-through processing ("STP") initiative, NSCC has been engaged in a project to update and revise its Continuous Net Settlement ("CNS") system ("CNS Rewrite"). The major aspects of the CNS Rewrite include a completely new platform on which the CNS system will run that will accommodate real-time updates to the system, will improve access to CNS and depository information for members, and will provide the capability to add trades to the settlement process on a real-time basis until 11:30 a.m. on settlement day.

The new CNS system, with a targeted implementation date of August 2004, will be able to take in trades until 11:30 a.m. on settlement day and to net and settle them that day.[3] To support this, NSCC has developed new Supplemental Consolidated Trade Summaries that will report trades settling on settlement date.

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 49717 (May 17, 2004), 69 FR 29605.

[3] At the current time, trades in debt securities compared or recorded through NSCC's Real-Time Trade Matching ("RTTM") system will not utilize this same day settling capability. Instead, as-of trades in such securities compared or recorded through RTTM after its cutoff time on T+2 will not settle in the normal settlement cycle but will be assigned a new settlement date which will be the settlement day following the day the trade is compared or recorded by NSCC.

CNS will produce the Supplemental Consolidated Trade Summary at or about 2 a.m. and at or about 1 p.m. on each settlement date. In addition, so that members can update their CNS positions immediately, CNS will provide intraday messages for activity that occurs after the start of the day cycle as a result of settling trades and miscellaneous activity going into CNS on settlement date.[4] These messages will be optional to the member because the same information will also be reported in the second Supplemental Consolidated Trade Summary made available at 1 p.m. and in the Daytime Miscellaneous Activity Report issued later in the afternoon on each settlement date.[5] In addition, members will be able to view their CNS positions on a real-time basis using the Participant Browser Service ("PBS") developed by The Depository Trust Company ("DTC"). The CNS Cash Reconciliation Statement will be updated on a real-time basis and will be available on PBS after night cycle processing.

Another new STP feature available in the new CNS system will be the ability to create automated Deliver Orders ("DOs") for non-CNS, depository eligible securities.[6] Today, NSCC creates receive and deliver instructions, or balance orders, for non-CNS depository eligible securities. Its members then have to enter the balance orders as DOs at DTC. To automate and streamline the processing of trades in non-CNS, depository eligible issues, at the request of the member with the delivery obligation, NSCC will create delivery versus payment DOs that will automatically be transmitted to DTC for processing.[7] This is an optional feature that can be activated by the delivery of standing instructions to NSCC that will cover all of the deliverer's balance orders and special trades.[8]

Other new features that will be implemented include the enhancement of the CNS Stock Borrow Program to include acceptance of borrowing instructions for the day cycle and the acceptance and real-time application of CNS "Fully Paid For" securities instructions. The CNS Stock Borrow Program enhancement is intended to maximize the use of excess collateral and reduce the number of CNS fails. In addition to providing instructions for securities available for borrowing in the night cycle, members will now also be able to provide CNS with a new file of available excess collateral from 5 a.m. until 1 p.m. for use in the day cycle.

The real-time acceptance of CNS "Fully Paid For" instructions is intended to further facilitate members' compliance with securities law requirements concerning possession or control of customer securities. At the current time, a member that delivers securities in its possession or control in anticipation of receiving securities from CNS as a result of allocations during the night cycle may instruct NSCC to move the open CNS long position from its CNS A (long valued) Account to its Fully-Paid-For E Subaccount to meet its customer possession or control requirements. NSCC makes such movements at the end of the processing day and concurrently debits the member's settlement account for the value of the position in the E subaccount. NSCC then segregates the funds received as a result of such debit so that it constitutes a control location within the meaning of Securities Exchange Act Rule 15c3–3.[9]

The proposed CNS changes modify this procedure to (a) expand the capability of a member to utilize the Fully-Paid-For E Subaccount in anticipation of CNS allocations in the day cycle as well as in the night cycle and (b) permit fully-paid instructions to be received and applied on a real-time basis during the day cycle up through 2:45 p.m. By accepting such instructions on a real-time basis, any securities received into a member's Fully-Paid-For E subaccount can automatically be updated to the member's memo seg position at DTC on an intraday basis at the member's election through standing instructions.[10]

The following is a summary of NSCC rules that have to be changed to implement the modifications to the CNS system:

(1) Rule 11, "CNS System," is being amended to reflect the addition of the Supplemental Consolidated Trade Summaries that will be produced on each settlement day. Because of the new system's ability to take in trades, to net them, and to update CNS processing on a real-time basis on settlement day, Rule 11 is also being amended to make clear that with respect to trades settling on that day, a member's obligation to deliver or pay for and receive CNS securities will be fixed each time the member's net settling position is determined by CNS processing and the net settling position is made available by NSCC.

In addition, Section 9 of Rule 11 is being amended to provide the mechanism whereby a member with trades in CNS or Balance Order securities designated as "Special Trades" (which must be settled on a member-to-member basis) may issue NSCC standing instructions to provide automated DO instructions to DTC.[11] Any such instructions will cover all of the delivering member's balance orders and Special Trades.

(2) Rule 44, "Deliveries Pursuant to Balance Orders," is being amended to provide the mechanism whereby a delivering member can issue standing instructions to NSCC to provide automated delivery instructions to DTC. Any such instructions will cover all of the delivering member's balance orders and Special Trades.[12]

(3) Procedures II, "Trade Comparison Service," and III, "Trade Recording Service (Interface Clearing Procedures)," are being amended to make conforming changes to account for same day settling trades by indicating that the cutoff times for trade comparison and recording of as-of trades to settle on their originally designated settlement schedules will now be the cutoff time set on T+3 (instead of T+2). T+3 and older as-of trades received thereafter will be assigned a new settlement date, which will be the following settlement day.[13]

[4] In general, the day cycle currently begins at approximately 7 a.m. and ends at 3:10 p.m., and the night cycle begins at approximately 7 p.m. and ends at 12 a.m.

[5] The Daytime Miscellaneous Activity Report will also include corporate actions, stock borrows, and any other miscellaneous activity received in CNS after the start of the day cycle.

[6] Transactions in securities that are not eligible for CNS are processed through NSCC's Balance Order Accounting Operation. Such securities are referred to as "Balance Order Securities."

[7] The Commission recently approved DTC's establishing an interface to accommodate this transmission. Securities Exchange Act Release No. 50025 (July 15, 2004) [File No. SR–DTC–2004–04].

[8] All such DOs will be subject to DTC's applicable DO fees. The DO standing instructions will cover all of the member's NSCC balance orders and special trades. The delivering member can use DTC's Inventory Management System if it wishes to control the timing and flow of any particular balance order transaction.

[9] 17 CFR 240.15c3–3.

[10] For a description of DTC's memo seg service, refer to Securities Exchange Act Release No. 26250 (November 3, 1988), 53 FR 45638 [File No. SR–DTC–88–16].

[11] A technical change is also being made to this section to delete the reference to such trades having the status of "security balance orders." This deletion should have been made at the same time Rule 18 was amended in 2000 to clarify that Special Trades are to be settled directly between the members. Securities Exchange Act Release No. 42747 (May 2, 2000), 65 FR 30170 [File No. SR–NSCC–98–14].

[12] Once this functionality is implemented, NSCC will no longer provide the PDQ Automated Municipal Bond Settlement Facility. This service currently provides for automated DTC delivery instructions for compared municipal bond transactions.

[13] At this time, no corresponding change is being made to Procedure II.D. because both the Fixed Income Transaction System ("FITS") and its

Continued

(4) Procedure V, "Balance Order Accounting Operation," is being amended to reflect that security balance orders will be shown on the Consolidated Trade Summary and Supplemental Consolidated Trade Summaries issued on each settlement day. An indicator will be added to these reports to reflect any standing instructions given by the member for the issuance of DOs for balance orders and Special Trades.

(5) Procedure VII, "CNS Accounting Operation," is being amended to reflect (a) NSCC's ability to accept through 11:30 a.m. and process on a real-time basis on settlement date trades settling on that day, (b) the issuance of the two Supplemental Consolidated Trade Summaries on each settlement day, (c) the updated reports and methods of reporting information (including through real-time message updates, the web-based PBS screens which report updated CNS positions on a real-time basis, and additional Miscellaneous Activity Reports), and (d) certain conforming changes to properly reflect current processing.

In addition, the Fully-Paid-For Account procedures included in Procedure VII, "CNS Accounting Operation," are being amended to reflect the extension of this program to the day cycle allocation process, the real-time acceptance of instructions through the day cycle, and the real-time application of such instructions. Also the Note accompanying Procedure VII.E.5. is being modified because the portion relating to stock loan recalls is no longer applicable.[14]

(6) Addendum C, "NSCC Automated Stock Borrow Procedures," is being amended to reflect the extension of this service to the daytime processing cycle and to provide the mechanism whereby members can loan their available securities to NSCC during the morning of settlement day. These securities will be used for any shortfalls that the CNS system has in the day cycle.

The daytime stock borrow process will be separate from the nighttime stock borrow process. Securities that members make available for the nighttime process will not be applied in the daytime process. Members will have the option to participate in the nighttime stock borrow program, the daytime stock borrow program, or in both programs. The changes also reflect the member's ability to be advised of any borrows through intraday messages so that members have the ability to make movements into their Fully-Paid-For Accounts as needed.

(7) Addendum G, "Fully-Paid-For Account," is being amended to reflect that this application will be available to members on a real-time basis during the day cycle on each settlement day in order to facilitate members' compliance with their securities possession or control requirements.

At this time a clarification is also being made to Rule 12, "Settlement," consistent with NSCC's collection and segregation of amounts debited in connection with positions in the Fully-Paid-For E subaccount. It has always been understood that the movement into this subaccount was contingent upon the member's due payment of the funds debited with respect to the value of that position. It is the collection and segregation of such funds that permits NSCC to guarantee the position "free of payment" and thus constitute a valid "control location." Thus, Rule 12 is being amended to make clear that any movement of a long valued position to the Fully-Paid-For E subaccount will not become final until the member satisfies its end-of-day money settlement obligation.

(8) Addendum K, "Interpretation of the Board of Directors—Application of Clearing Fund," is being amended to reflect that with respect to trades received by NSCC after commencement of the nighttime processing cycle and prior to 11:30 a.m. on each settlement day, NSCC's trade guaranty will attach to such trades as of the completion of the trade comparison process or the trade recording process for such trades.

(9) Consistent with NSCC's extension of its trade guaranty to same day settling trades, Rule 15, "Financial Responsibility and Operational Capability," is being amended to make clear that additional clearing fund payments that may be assessed on members may also include charges relative to such same day settling trades.

In addition, the rule change makes a number of technical corrections, including the following:

(1) It defines the terms "Settlement Date" [15] and "settlement day" [16] which are used throughout NSCC's Rules & Procedures and makes clear that the Consolidated Trade Summary is issued on each day that is a settlement day.

(2) It revises Procedure I, "Introduction," to delete references to SIAC as NSCC's facilities manager and to codify NSCC's longstanding established practice of setting data submission thresholds to minimize data transmission errors and data field requirements.

(3) It changes the heading of Procedure II, "Trade Comparison Service," to "Trade Comparison and Recording Service" to reflect that this procedure covers trade recording as well as trade comparison.

NSCC intends to implement changes to the CNS system on or about August 6, 2004. At that time, all CNS Rewrite functionality will be implemented except for processing same day settling trades and the two Supplemental Consolidated Trade Summaries that support same-day trade settlement. NSCC intends to begin processing same day settling trades and the supporting Supplemental Consolidated Trade Summaries on or about August 19, 2004.[17]

III. Discussion

Section 17A(b)(3)(F) of the Act requires among other things that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[18] The Commission finds that NSCC's proposed rule change is consistent with this requirement because the changes being made to the NSCC's CNS system will promote the prompt and accurate clearance and settlement of securities transactions by providing greater functionality and capacity and by allowing members to focus less attention on exception processing.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

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successor, RTTM, do not have same day settling trade capability. They will continue to maintain their current T+2 cutoff times so that trades received for comparison or recording by FITS or RTTM after T+2 will be assigned a new settlement date, which will be the settlement day following the date the trade is compared or recorded. A subsequent rule filing will be made to make any necessary conforming changes at such time as the RTTM system is modified to accept and process same day settling trades.

[14] The portion of the Note relating to stock loan recalls was made inapplicable pursuant to a no-action letter to Robert J. Woldow, Senior Vice President and General Counsel, NSCC, from Michael Macchiaroli, Assistant Director, Division of Market Regulation, Securities and Exchange Commission (June 28, 1985).

[15] "Settlement Date" is defined as the date specified for a transaction to settle.

[16] "Settlement day" is defined as any business day on which settlement may be made through NSCC's facilities.

[17] The dates for implementation in the Notice have been adjusted. E-mails from Merrie Witkin, NSCC (June 10, 2004 and June 14, 2004).

[18] 15 U.S.C. 78q–1(b)(3)(F).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (File No. SR–NSCC–2004–01) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–16561 Filed 7–20–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50021; File No. SR–NYSE–2004–38]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Exempting Bonds from the Order Tracking System Requirements (NYSE Rule 132B)

July 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 7, 2004, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On July 13, 2004, the NYSE amended the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval of the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

This proposal is to amend NYSE Rule 132B to eliminate the requirement to capture order information for listed bonds. The text of the proposed rule change is below. Proposed new language is *italicized.*

Rule 132B Order Tracking Requirements

1. With respect to any security listed on the New York Stock Exchange *except bonds,* each member and member organization shall:

* * * * *

(Remainder of rule unchanged.)

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background. NYSE Rules 132A, B and C[4] ("OTS rules") require that members and member organizations record details of every customer and proprietary order in any security listed on the Exchange from the time of receipt or origination through the time of execution or cancellation. The purpose of these requirements is to provide a complete audit trail for orders in Exchange-listed securities. Thereby, the Exchange is able to provide an accurate, time-sequenced record of orders, quotations and transactions beginning with the receipt of an order by any NYSE member firm and further documenting the life of the order through the process of execution or cancellation of that order.

Rule 132A. NYSE Rule 132A requires members and member organizations to synchronize the business clocks used to record the date and time of any event that the Exchange requires to be recorded. The Exchange requires the date and time of orders in Exchange-listed securities to be recorded. The Rule also requires members and member organizations to maintain the synchronization of this equipment in conformity with procedures prescribed by the Exchange.

Rule 132B. NYSE Rule 132B prescribes requirements and procedures with respect to orders in any security listed on the Exchange received or originated by a member or member organization. It requires a member or member organization to immediately record data elements as detailed in the Rule. If an order is transmitted to another member or member organization, is transmitted to another department of the same member, or is modified or cancelled, information detailed in the Rule must be recorded. Additionally, the recipient of the order must record the order details as provided in the Rule.

Orders submitted to the Floor via an exchange or proprietary system that comply with existing NYSE Rule 123(e)[5] (requiring the electronic capture of orders on the floor via NYSE's Front End Systemic Capture Program) are exempt from recording the order details from the point at which the order arrives on the Floor. The transmitting and receiving floor members, however, are required to record the unique Order ID, the transmitting firm, and the recipient firm.

Rule 132C. Members and member organizations must record and retain the order details as required by the Rule, and upon Exchange request, submit such details to the Exchange. The Exchange makes requests for order tracking information on an as-needed basis in order for the Exchange to carry out its surveillance and regulatory functions. Members and member organizations are required to submit the data in an automated format.

Proposed Exemption for Listed Bonds. The Exchange proposes to exempt listed bonds from the requirements of the OTS rules. As adopted, the OTS rules apply to any security[6] listed on the Exchange, which includes bonds. However, at the time the OTS rules proposal was promulgated, the Exchange was focusing its attention on the application of the OTS rules to equity securities. The Exchange believes there are several reasons why the exclusion of bonds from the OTS rules would not be against the public interest and would not diminish the protection of investors. These are explained below.

Cost and Effectiveness. The Exchange represents that its member organizations would have to make extensive changes

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[19] 15 U.S.C. 78s(b)(2).

[20] 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 Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Commission, dated July 13, 2004 ("Amendment No. 1"). Amendment No. 1 revised the proposed rule text. Amendment No. 1 is incorporated into this notice.

[4] *See* Securities Exchange Act Release No. 47689 (April 17, 2003), 68 FR 20200 (April 24, 2003) (SR–NYSE–99–51) and NYSE Information Memo 03–26 (June 10, 2003) for further information on NYSE Rules 132A, B, and C.

[5] NYSE Rule 123, Record of Orders, requires that all orders in any security traded on the Exchange be entered into a database before they can be represented in the Exchange's auction market.

[6] NYSE Rule 3 defines the terms "security" and "securities" as having the meaning given those terms in the Act and the General Rules and Regulations thereunder. Section 3(a)(10) of the Act, in turn, defines "security" as any "note, stock, treasury stock, security future, *bond,* debenture," etc. (emphasis added).

to their existing systems to capture order details for listed bonds in an electronic system as required by the OTS rules. At this time, the Exchange understands that member organizations have not established automated order tracking mechanisms and protocols for debt securities trading. The Exchange represents that such changes would be expensive, especially since they would have to be accomplished in a short time frame.

In addition, the Exchange believes that the information that would be captured through such systems would not seem to provide a commensurate benefit in terms of increased compliance efforts. Trades on the Exchange in listed bonds are conducted through the Automated Bond System®, which electronically captures order and execution details of each bond trade, providing an audit trail for these trades independent of the requirements of the OTS rules. Thus, for bond transactions conducted on the Exchange, the Exchange believes that existing procedures provide adequate regulatory information substantially comparable to the requirements of the OTS rules.

In view of the fact that there are a significant number of bonds that are not listed and that the vast majority of transactions in bonds are conducted away from the Exchange, the Exchange believes that requiring member organizations to establish different systems and procedures for listed bonds and non-listed bonds would be costly and would not provide a significant improvement in regulatory capability.[7]

Given the reasons set forth above, the Exchange believes that exempting listed bonds from the OTS rules should not present any significant regulatory issues.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act[8] in general and furthers the objectives of section 6(b)(5) 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, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2004–38 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NYSE–2004–38. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2004–38 and should be submitted on or before August 11, 2004.

IV. Commission's 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.[10] The Commission finds that the proposed rule change is consistent with section 6(b) of the Act[11] in general and furthers the objectives of section 6(b)(5) of the Act[12] in particular in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market. Specifically, in light of the Exchange's representations that: (1) Existing procedures provide regulatory information that is adequate and comparable to the information required by the OTS rules, and (2) Nasdaq's Order Audit Trail System rules, which serve a similar purpose to the OTS rules, do not apply to debt securities,[13] the Commission finds that the proposed rule change is consistent with the Act.[14]

The Exchange has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act[15] for approving the proposed rule change, as amended, on an accelerated basis prior to the thirtieth day after its publication in the **Federal Register**. The provisions of Rule 132B are scheduled to be effective July 16, 2004. The Commission's grant of accelerated approval would help ensure that Exchange members are able to comply with the provisions of Rule 132B when it becomes effective. Further, Exchange

[7] The Exchange understands that the rules of the National Association of Securities Dealers ("NASD") regarding Nasdaq's Order Audit Trail System apply only to equity securities. See NASD Rule 6951(j) (defining "order").

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] *See* note 7 *supra*.

[14] The Commission notes, however, that should the trading environment for bonds listed on the NYSE change such that the Automated Bond System no longer captures information sufficient to create adequate audit trails for bond trades, or such that any of the Exchange's representations above under the subheading "Cost and Effectiveness" are no longer valid, then the Commission's analysis and conclusion may change.

[15] 15 U.S.C. 78s(b)(2).

members would not have to expend valuable resources to establish procedures that comply with the OTS rules for mandatory electronic capture of order information in listed bonds. As discussed above, the Exchange asserts that instituting OTS rules for listed bonds would not provide a significant improvement in regulatory capability, would be largely duplicative, and would be costly to Exchange members. Accordingly, the Commission finds good cause for approving the proposed rule change, as amended, on an accelerated basis prior to the thirtieth day after publication of notice in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[16] that the proposed rule change, as amended (SR–NYSE–2004–38), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–16560 Filed 7–20–04; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3585; Amdt. #5]

State of Indiana

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective July 14, 2004, the above numbered declaration is hereby amended to reopen the incident period. The incident period for this declared disaster is now May 25, 2004, through and including June 25, 2004.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is August 2, 2004, and for economic injury the deadline is March 3, 2005.

Dated: July 15, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–16599 Filed 7–20–04; 8:45 am]

BILLING CODE 8025–01–P

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

The Ticket to Work and Work Incentives Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of meetings.

DATES: August 17, 2004, 9 a.m.–4 p.m.*; August 18, 2004, 9 a.m.–5 p.m.; August 19, 2004, 9 a.m.–1 p.m.

*The full deliberative panel meeting ends at 4:45. The standing committees of the Panel will meet from 4 p.m. until 5:30 p.m.

ADDRESSES: Woodfin Suites Hotel, 5800 Shellmound Street, Emeryville, CA 94608, Phone: (510) 601–5880.

SUPPLEMENTARY INFORMATION:

Type of meeting: This is a quarterly meeting open to the public. The public is invited to participate by coming to the address listed above. Public comment will be taken during the quarterly meeting. The public is also invited to submit comments in writing on the implementation of the Ticket to Work and Work Incentives Improvement Act (TWWIIA) of 1999 at any time.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces a meeting of the Ticket to Work and Work Incentives Advisory Panel (the Panel). Section 101(f) of Public Law 106–170 establishes the Panel to advise the President, the Congress, and the Commissioner of SSA on issues related to work incentives programs, planning, and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of the TWWIIA. The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section 101(a) of that Act.

Interested parties are invited to attend the meeting. The Panel will use the meeting time to receive briefings, hear presentations, conduct full Panel deliberations on the implementation of TWWIIA, and receive public testimony.

The Panel will meet in person commencing on Tuesday, August 17, 2004 from 9 a.m. to 4 p.m. (standing committee meetings from 4 p.m. to 5:30 p.m.); Wednesday, August 18, 2004 from 9 a.m. to 5 p.m.; and Thursday, August 19, 2004 from 9 a.m. to 1 p.m.

Agenda: The Panel will hold a quarterly meeting. Briefings, presentations, full Panel deliberations and other Panel business will be held Tuesday, Wednesday and Thursday, August 17, 18, and 19, 2004. Public testimony will be heard in person Tuesday, August 17, 2004 from 3:30 p.m. to 4 p.m. and on Thursday, August 19, 2004 from 9 a.m. to 9:30 a.m. Members of the public must schedule a timeslot in order to comment. In the event that the public comments do not take up the scheduled time period for public comment, the Panel will use that time to deliberate and conduct other Panel business.

Individuals interested in providing testimony in person should contact the Panel staff as outlined below to schedule time slots. Each presenter will be called on by the Chair in the order in which they are scheduled to testify and is limited to a maximum five-minute verbal presentation. Full written testimony on TWWIIA Implementation, no longer than 5 pages, may be submitted in person or by mail, fax or e-mail on an on-going basis to the Panel for consideration.

Since seating may be limited, persons interested in providing testimony at the meeting should contact the Panel staff by e-mailing Monique Fisher, at *Monique.Fisher@ssa.gov* or calling (202) 358–6435.

The full agenda for the meeting will be posted on the Internet at *http://www.ssa.gov/work/panel* at least one week before the meeting or can be received in advance electronically or by fax upon request.

Contact Information: Anyone requiring information regarding the Panel should contact the TWWIIA Panel staff. Records are being kept of all Panel proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the Panel staff by:

- Mail addressed to Social Security Administration, Ticket to Work and Work Incentives Advisory Panel Staff, 400 Virginia Avenue, SW., Suite 700, Washington, DC 20024.
- Telephone contact with Monique Fisher at (202) 358–6435.
- Fax at (202) 358–6440.
- E-mail to *TWWIIAPanel@ssa.gov.*

Dated: July 14, 2004.

Carol Brenner,

Designated Federal Officer.

[FR Doc. 04–16480 Filed 7–20–04; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4768]

Bureau of Political-Military Affairs; Rescission of Statutory Debarment and Reinstatement of Eligibility To Apply for Export/Retransfer Authorizations Pursuant to Section 38(g)(4) of the Arms Export Control Act; Armaments Corporation of South Africa Ltd. (Armscor) and the Denel Group (Pty) Ltd. (Denel)

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has fully rescinded the statutory debarment against the Armaments Corporation of South Africa Ltd. (Armscor) and the Denel Group (Pty) Ltd. (Denel) and its divisions; and any divisions, subsidiaries, associated companies, affiliated persons, and successor entities pursuant to section 38(g)(4) of the Arms Export Control Act (AECA) (22 U.S.C. 2778) and § 127.11 of the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130).

EFFECTIVE DATE: July 14, 2004.

FOR FURTHER INFORMATION CONTACT: Robert W. Maggi, Managing Director, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202) 663–2700.

SUPPLEMENTARY INFORMATION: Section 38(g)(4) of the AECA and § 127.7 of the ITAR prohibit the issuance of export licenses or other approvals to a person, or any party to the export, who has been convicted of violating certain U.S. criminal statutes enumerated at section 38(g)(1)(A) of the AECA and § 120.27 of the ITAR. The term "person" means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization, or group, including governmental entities. The term "party to the export" means the president, the chief executive officer, and any other senior officers of the license applicant; and any consignee or end-user of any item to be exported.

Effective June 8, 1994, the Department of State implemented a policy of denial pursuant to sections 38 and 42 of the AECA and §§126.7(a)(1) and (a)(2) of the ITAR for Armscor, Denel and its divisions (including Kentron (Pty) Ltd.), and any divisions, subsidiaries, associated companies, affiliated persons, and successor entities based upon an indictment returned in the U.S. District Court for the Eastern District of Pennsylvania charging Armscor and Kentron with violating and conspiring to violate the AECA (*see* 59 FR 33811, June 30, 1994).

Subsequently, after the companies accepted plea agreements in connection with the criminal charges, the Department of State imposed statutory debarment against Armscor and Denel and its divisions effective February 27, 1997 (*see* 62 FR 13932, March 24, 1997).

A **Federal Register** notice was published on March 4, 1998 (63 FR 10671), that rescinded the policy of denial and temporarily suspended the statutory debarment against Armscor and Denel in accordance with section 38(g)(4) of the AECA. The temporary suspension of the statutory debarment was consistent with the Agreement Between the Government of the United States of America and the Government of the Republic of South Africa Concerning Cooperation on Defense Trade Controls (the Agreement). The Agreement provided that the companies would establish internal compliance programs and further required that the companies would make available an amount of money equivalent to suspended civil fines to the South African Government to support the effective implementation of its national export control regime.

Section 38(g)(4) of the AECA permits rescission of debarment after consultation with the Secretary of the Treasury and after a thorough review of the circumstances surrounding the conviction and a finding that appropriate steps have been taken to mitigate any law enforcement concerns. After thoroughly reviewing the steps Armscor and Denel have taken with respect to the establishment of internal compliance programs and supporting the effective implementation of a national export regime, the Department of State has determined that Armscor and Denel have taken the appropriate initiatives to address the causes of the violations and to mitigate any law enforcement concerns.

Therefore, in accordance with section 38(g)(4) of the AECA and section 127 of the ITAR, effective July 14, 2004, the debarment against Armscor and Denel is fully rescinded. The effect of this notice is that Armscor, Denel and its divisions, and any divisions, subsidiaries, associated companies, affiliated persons, and successor entities may participate, without prejudice, in the export or transfer of defense articles, related technical data, and defense services subject to section 38 of the AECA and the ITAR.

Dated: July 14, 2004.

Lincoln P. Bloomfield, Jr.,

Assistant Secretary, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 04–16588 Filed 7–20–04; 8:45 am]

BILLING CODE 4710–25–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Andean Trade Preference Act (ATPA), as Amended: Notice Regarding the 2003 Annual Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) received petitions in September 2003 to review certain practices in certain beneficiary developing countries to determine whether such countries are in compliance with the ATPA eligibility criteria. This notice specifies the results of the preliminary review of those petitions.

FOR FURTHER INFORMATION CONTACT: Bennett M. Harman, Deputy Assistant U.S. Trade Representative for Latin America, at (202) 395–9446.

SUPPLEMENTARY INFORMATION: The ATPA (19 U.S.C. 3201 *et seq.*), as renewed and amended by the Andean Trade Promotion and Drug Eradication Act of 2002 (ATPDEA) in the Trade Act of 2002 (Pub. L. 107–210), provides trade benefits for eligible Andean countries. Pursuant to section 3103(d) of the ATPDEA, USTR promulgated regulations (15 CFR part 2016) (68 FR 43922) regarding the review of eligibility of countries for the benefits of the ATPA, as amended.

In a **Federal Register** notice dated August 14, 2003, USTR initiated the 2003 ATPA Annual Review and announced a deadline of September 15, 2003 for the filing of petitions (68 FR 48657). Several of these petitions requested the review of certain practices in certain beneficiary developing countries regarding compliance with the eligibility criteria set forth in sections 203(c) and (d) and section 204(b)(6)(B) of the ATPA, as amended (19 U.S.C. 3203 (c) and (d); 19 U.S.C. 3203(b)(6)(B)).

In a **Federal Register** notice dated November 13, 2003, USTR published a list of the responsive petitions filed pursuant to the announcement of the annual review. The Trade Policy Staff Committee (TPSC) has conducted a preliminary review of these petitions. 15 CFR 2016.2(b) provides for

announcement of the results of the preliminary review on or about December 1. 15 CFR 2016.2(b) also provides for modification of the schedule if specified by **Federal Register** notice. In a **Federal Register** notice dated December 30, 2003, USTR modified the schedule for this review, specifying that the results would be announced on or about March 31, 2004. In a **Federal Register** notice dated April 5, 2004, USTR modified the schedule for this review, specifying that the results would be announced on or about May 15, 2004.

Following is the status of the responsive petitions filed pursuant to the announcement of the annual review. The TPSC has determined that certain of the petitions do not require action and terminates their review. These include: Nortel Networks—Colombia, PhRMA—Peru, Big 3 Marine—Peru, Duke Energy—Ecuador, and PhRMA—Ecuador.

The TPSC has decided to modify the date of the announcement of the results of preliminary review for the following petitions: Engelhard—Peru, Princeton Dover—Peru, LeTourneau—Peru, Duke Energy—Peru, AFL-CIO—Ecuador, Human Rights Watch—Ecuador, and US/LEAP—Ecuador. USTR will announce the results of the preliminary review of these petitions at the same time it publishes the list of responsive petitions filed pursuant to the 2004 Annual ATPA Review.

Bennett M. Harman,

Deputy Assistant U.S. Trade Representative for Latin America.

[FR Doc. 04–16479 Filed 7–20–04; 8:45 am]

BILLING CODE 3190–W3–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular; Guidance Material for 14 CFR 33.75, Safety Analysis

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed advisory circular and request for comments.

SUMMARY: This notice announces the availability and request for comments of draft Advisory Circular (AC), No 33.75–1, Guidance Material for 14 CFR 33.75, Safety Analysis.

DATES: Comments must be received on or before October 30, 2004.

ADDRESSES: Send all comments on the proposed AC to the Federal Aviation Administration, Attn: Ann Azevedo, Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, MD 01803–5299.

FOR FURTHER INFORMATION CONTACT: Ann Azevedo, Engine and Propeller Standards Staff, ANE–110, at the above address, telephone (781) 238–7117, fax (781) 238–7199. If you have access to the Internet, you may also obtain further information by writing to the following address: *Ann.Azevedo@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

You may obtain a copy of the draft AC by contacting the person named under **FOR FURTHER INFORMATION CONTACT**, or if using the Internet, you may obtain a copy at the following address: *http://www.airweb.faa.gov/rgl.* Interested persons are invited to comment on the proposed AC and to submit written data, views, or arguments. Commenters must identify the subject of the AC, and submit comments to the address specified above. The Engine and Propeller Directorate, Aircraft Certification Service, will consider all responses received on or before the closing date for comments before it issues the final AC.

We will also file in the docket all substantive comments received, and a report summarizing them. The docket is available for public inspection both before and after the comment date. If you wish to review the docket in person, you may go the address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. If you wish to contact the above individual directly, you can use the above telephone number or e-mail address provided.

Background

This draft advisory circular (AC) would provide guidance and acceptable methods, but not the only methods that may be used to demonstrate compliance with the safety analysis requirements of Title 14 of the Code of Federal Regulation (14 CFR) § 33.75.

This advisory circular would be published under the authority granted to the Administrator by 49 U.S.C. 106(g), 40113, 44701–44702, 44704, and would provide guidance for the requirements in 14 CFR part 33.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 04–16522 Filed 7–20–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 04–07–C–00–BGM To Impose/Use the Revenue From a Passenger Facility Charge (PFC) at Greater Binghamton Airport, Binghamton, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose/use the revenue from a PFC at Greater Binghamton Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before August 20, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, NY 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Carl R. Beardsley, Jr., Deputy Commissioner of Aviation, of the Broome County Department of Aviation at the following address: Broome County Department of Aviation, Greater Binghamton Airport, 2534 Airport Road, Box 16, Johnson City, NY 13790.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Broome County Department of Aviation under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Levine, Airport Engineer, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, NY 11530, (516) 227–3807. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose/use the revenue from a PFC at Greater Binghamton Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On June 29, 2004, the FAA determined that the application to impose/use the revenue from a PFC submitted by the Broome County Department of Aviation was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 29, 2004.

The following is a brief overview of the application.

PFC Application No.: 04–07–C–00–BGM.

Level of the proposed PFC: $4.50.

Proposed charge effective date: May 1, 2005.

Proposed charge expiration date: December 1, 2005.

Total estimated PFC revenue: $531,220.

Brief description of proposed project(s):

—Glycol Collection Rehabilitation

—Runway 16/34 Rehabilitation, Design/Construction

—Runway 10/28 Safety Area Study

—Airport Wildlife Hazard Study

—Airport Entrance Road Improvements

—Taxiway Rehabilitation—Design

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Non-Scheduled/On Demand Air Carriers filing FAA form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional airports office located at: Federal Aviation Administration, Airports Division, AEA–610, Eastern Region, 1 Aviation Plaza, Jamaica, New York, 11434–4809.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Broome County Department of Aviation.

Issued in Garden City, New York on July 8, 2004.

Philip Brito,

Manager, New York Airports District Office, Eastern Region.

[FR Doc. 04–16523 Filed 7–20–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (04–03–C–00–SHR) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at the Sheridan County Airport, Submitted by the County of Sheridan, Sheridan, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and to use PFC revenue at the Sheridan County Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before August 20, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Craig A. Sparks, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, Colorado 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. John W. Stopka, Airport Manager, at the following address: Sheridan County Airport, 908 W. Brundage Lane, Sheridan, Wyoming 82801.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to the Sheridan County Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Schaffer, (303) 342–1258; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 68th Avenue, Suite 224; Denver, Colorado 80249–6361. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (04–03–C–00–SHR) to impose and to use PFC revenue at the Sheridan County Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On July 13, 2004, the FAA determined that the application to impose and to use the revenue from a PFC submitted by the County of Sheridan, Wyoming, was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 13, 2004.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge-effective date: March 1, 2005.

Proposed charge-expiration date: May 1, 2010.

Total requested for use approval: $247,309.00.

Brief description of proposed projects: Perimeter fencing; Land acquisition for approaches (easements); Reconstruction of parallel Taxiway A; Reconstruct commercial apron; Update airport layout plan; Snow removal equipment, and security gates.

Class or classes of air carriers that the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Sheridan County Airport.

Issued in Renton, Washington on July 13, 2004.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 04–16524 Filed 7–20–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 14, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 20, 2004, to be assured of consideration.

Bureau of the Public Debt (PD)

OMB Number: 1535–0082.
Form Numbers: PD F 5237.
Type of Review: Extension.
Title: Subscription for Purchase of U.S. Treasury Securities State and Local Government Series One-Day Certificate of Indebtedness Demand Deposit.
Description: PD F 5237 is used to collect information from State and local government entities wishing to purchase Treasury securities.
Respondents: State, local or tribal government.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Respondent: 8 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden Hours: 13 hours.

OMB Number: 1535–0083.
Form Numbers: PD F 5238.
Type of Review: Extension.
Title: Request for Redemption of U.S. Treasury Securities-State and local government Series One-Day Certificates of Indebtedness.
Description: PD F 5238 is used to collect information from State and local government entities to process redemptions of U.S. Treasury Securities.
Respondents: State, local or tribal government.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Respondent: 3 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden Hours: 5 hours.

OMB Number: 1535–0112.
Form Numbers: None.
Type of Review: Extension.
Title: Sale and Issue of Marketable Book-Entry Treasury Bills, Notes and Bonds.
Description: Information is needed in order to process tenders and to ensure compliance with Treasury Auction Rules.
Respondents: Individuals or households, business or other for-profit, not-for-profit institutions.
Estimated Number of Respondents: 1.
Estimated Burden Hours Per Respondent: 1.
Frequency of Response: On occasion.
Estimated Total Reporting Burden Hours: 1 hour.

OMB Number: 1535–0117.
Form Numbers: PD F 1010.
Type of Review: Extension.
Title: Resolution for Transactions Involving Registered Securities.
Description: PD F 1010 is completed by an official of an organization that is designated to act on behalf of the organization.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 500.
Estimated Burden Hours Per Respondent: 10 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden Hours: 85 hours.

OMB Number: 1535–0128.
Form Numbers: PD F 5396.
Type of Review: Extension.
Title: Direct Deposit Sign-Up Form.
Description: PD F 5396 is used to process payment data to the financial institution.
Respondents: Individuals or households.
Estimated Number of Respondents: 20,000.
Estimated Burden Hours Per Respondent: 10 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden Hours: 3,400 hours.
Clearance Officer: Vicki S. Thorpe, (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.
OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Treasury PRA Clearance Officer.

[FR Doc. 04–16564 Filed 7–20–04; 8:45 am]
BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 14, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 20, 2004, to be assured of consideration.

Internal Revenue Service (IRS)
OMB Number: 1545–1054.
Form Number: IRS Form 8736.
Type of Review: Revision.
Title: Application for Automatic Extension of Time to File U.S. Return for a Partnership, REMIC or Certain Trusts.
Description: Form 8736 is used by partnerships, REMICs, and by certain trusts to request an automatic 3-month extension of time to file Form 1065, Form 1041, or Form 1066. Form 8736 contains data needed by the IRS to determine whether or not a taxpayer qualifies for such an extension.
Respondents: Business or other for-profit, farms.
Estimated Number of Respondents/Recordkeepers: 36,000.
Estimated Burden Hours Respondent/Recordkeeper:
Recordkeeping—2 hr., 37 min.
Learning about the law or the form—30 min.
Preparing, copying, assembling, and sending the form to the IRS—34 min.
Frequency of response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 132,840 hours.
OMB Number: 1545–1601.
Revenue Procedure Number: Revenue Procedure 98–32.
Type of Review: Extension.
Title: EFTPS Programs for Reporting Agents.
Description: The Batch and Bulk Filer programs are used by Filers for electronically submitting enrollments, federal tax deposits, and federal tax payments on behalf of multiple taxpayers. These programs are part of the Electronic Federal Tax Payments System (EFTPS).
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 3,000.
Estimated Burden Hours Respondent/Recordkeeper: 82 hours, 23 minutes.
Frequency of response: On occasion, Weekly, Monthly, Quarterly, Semi-annually, Annually, Biennially.
Estimated Total Reporting/Recordkeeping Burden: 246,877 hours.
OMB Number: 1545–1620.
Form Number: IRS Form 8812.
Type of Review: Revision.
Title: Additional Child Tax Credit.
Description: Section 24 of the Internal Revenue Code allows taxpayers a credit for each of their dependent children who is under age 17 at the close of the taxpayer's tax year. The credit is advantageous to taxpayers as it directly reduces the tax liability for the year and, if the taxpayer has three or more children, may result in a refundable amount of credit.

Respondents: Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 9,000,000.
Estimated Burden Hours Respondent/ Recordkeeper:
Recordkeeping—6 min.
Learning about the law or the form—9 min.
Preparing the form—28 min.
Copying, assembling, and sending the form to the IRS—20 min.
Frequency of response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 9,630,000 hours.
OMB Number: 1545–1731.
Revenue Procedure Number: Revenue Procedure 2001–37.
Type of Review: Extension.
Title: Extraterritorial Income Exclusion Elections.
Description: This revenue procedure provides guidance for implementing the elections (and revocation of such elections) established under the "FSC Repeal and Extraterritorial Income Exclusion Act of 2000."
Respondents: Business or other for-profit.
Estimated Number of Respondents: 56.
Estimated Burden Hours Respondent: 20 minutes.
Frequency of response: Other (once).
Estimated Total Reporting Burden: 19 hours.
OMB Number: 1545–1847.
Revenue Procedure Number: Revenue Procedure 2004–29.
Type of Review: Extension.
Title: Statistical Sampling in § 274 Context.
Description: For taxpayers desiring to establish for purposes of § 274(n)(2)(A), (C), (D), or (E) that a portion of the total amount of substantiated expenses incurred for meals and entertainment is excepted from the 50% limitation of § 274(n), the revenue procedure requires that taxpayers maintain adequate documentation to support the statistical application, sample unit findings, and all aspects of the sample plan.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 400.
Estimated Burden Hours Recordkeeper: 8 hours.
Estimated Total Recordkeeping Burden: 3,200 hours.
OMB Number: 1545–1884.
Announcement Number: Announcement 2004–43.
Type of Review: Extension.
Title: Election of Alternative Deficit Reduction Contribution.
Description: Announcement 2004–43 describes the notice that must be given by an employer to plan participants and beneficiaries and to the Pension Benefit Guaranty Corporation within 30 days of making an election to take advantage of the alternative deficit reduction contribution described in Public Law 108–18, and gives a special transition rule for the 1st quarter.
Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents/ Recordkeepers: 200.
Estimated Burden Hours Respondent/ Recordkeeper:
Respondents:—60 hours.
Recordkeepers:—200 hours.
Frequency of response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 12,000 hours.
Clearance Officer: Glenn P. Kirkland (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Treasury PRA Clearance Officer.
[FR Doc. 04–16565 Filed 7–20–04; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be conducted in Pittsburgh, PA. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held August 13 and 14, 2004.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be held in Pittsburgh PA at the Courtyard Pittsburgh Airport, 450 Cherrington Parkway, Coraopolis, PA 15108, Friday August 13, 2004, from 8:30 a.m. to 4:30 p.m. e.d.t. and Saturday August 14, 2004, from 8:30 a.m. to 12 p.m. e.d.t. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324. Notification of intent to participate in the meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979.

The agenda will include various IRS issues.

Dated: July 15, 2004.

Bernard Coston,
Director, Taxpayer Advocacy Panel.
[FR Doc. 04–16596 Filed 7–20–04; 8:45 am]
BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 69, No. 139
Wednesday, July 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 HOMELAND SECURITY

Customs and Border Protection

Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers

Correction

In notice document 04–12187 beginning on page 31162 in the issue of June 2, 2004, make the following corrections:

1. On page 31208, in the table, under the column heading, "Petitioners/ suporters," in the 13th entry, "Lamb's Honey FarmLamb's Honey Farm" should read, "Lamb's Honey Farm".

2. On the same page, in the same table, under the same column, in the 17th entry from the bottom, "Talbott;s Honey" should read, "Talbott's Honey".

3. On the same page, in the same table, in the same column, in the 5th entry from the bottom, "Wooten Golden Queens" should read, "Wooten's Golden Queens".

4. On page 31211, in the table, under the column heading "Petitioners/ suporters," in the 32nd entry, "A.H. Meyers & Sons" should read, "A.H. Meyer & Sons".

5. On page 31212, in the table, under the column heading "Petitioners/ suporters,", in the fifth entry from the bottom, "Franklin Lumber Co." should read, "Franklin Timber Co.".

6. On page 31218, in the table, under the column titled "Petitioners/ suporters,", after the 22nd entry titled "Shuqualak Lumber", add "Sierra Forest Products".

7. On page 31220, in the table, under the column heading, "Petitioners/ suporters,", the third entry, "Electralloy Empire Specialty Steei" should actually be the third and fourth entries: "Electralloy" and "Empire Specialty Steel".

8. On the same page, in the same table, in the same column, the ninth entry, "Electralloy Empire Specialty Steel" should actually be the ninth and 10th entries: "Electralloy" and "Empire Specialty Steel".

9. On the same page, in the same table, in the same column, the 15th entry, "Electralloy Empire Specialty Steel" should actually be the 15th and 16th entries: "Electralloy" and "Empire Specialty Steel".

10. On the same page, in the same table, in the same column, the 21st entry, "Electralloy Empire Specialty Steel" should actually be the 21st and 22nd entries: "Electralloy" and "Empire Specialty Steel".

[FR Doc. C4–12187 Filed 7–20–04; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Wednesday,
July 21, 2004

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Removing the Eastern Distinct Population Segment of the Gray Wolf From the List of Endangered and Threatened Wildlife; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AJ03

Endangered and Threatened Wildlife and Plants; Removing the Eastern Distinct Population Segment of the Gray Wolf From the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) proposes to remove the Eastern Distinct Population Segment (EDPS) of the gray wolf (*Canis lupus*) from the List of Endangered and Threatened Wildlife established under the Endangered Species Act of 1973, as amended (Act). We propose this action because available data indicate that this DPS no longer meets the definitions of threatened or endangered under the Act. The gray wolf population is stable or increasing in Minnesota, Wisconsin, and Michigan, and exceeds its numerical recovery criteria. Completed State wolf management plans will provide adequate protection and management to the species in these three States if the gray wolf is delisted in the EDPS. The proposed rule, if finalized, would remove this DPS from the protections of the Act by ending its threatened classification. This proposed rule would also remove the currently designated critical habitat for the gray wolf in Minnesota and Michigan and remove the current special regulations for gray wolves in Minnesota and other Midwestern States. This proposal, if finalized, would not change the status or special regulations currently in place for the Western or Southwestern DPSs of the gray wolf or for the red wolf (*C. rufus*).

DATES: We must receive comments by November 18, 2004 in order to ensure their consideration in our final decision. We must receive requests for public hearings by September 7, 2004.

ADDRESSES: You may submit comments and other information, identified by RIN 1018–AJ03, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Gray Wolf Delist—EDPS, c/o Content Analysis Team, P.O. Box 221150, Salt Lake City, UT 84122–1150
- Fax: (801) 517–1015
- Email: *egwdelist@fs.fed.us*. Include "Attn: Gray Wolf Delisting" in the subject line of the message.

Instructions: All submissions received must include the agency name and Regulatory Information Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comments Solicited" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

The complete file for this rule is available for inspection, by appointment, during normal business hours at our Midwest Regional Office: U.S. Fish and Wildlife Service, Federal Building, 1 Federal Drive, Ft. Snelling, MN 55111–4056. Call 612–713–5350 to make arrangements. The comments and materials we receive during the comment period also will be made available for public inspection, by appointment, during normal business hours. See the "Public Comments Solicited" section of **SUPPLEMENTARY INFORMATION** for location information.

FOR FURTHER INFORMATION CONTACT: Direct all questions or requests for additional information to the Service using the Gray Wolf Phone Line—612–713–7337, facsimile—612–713–5292, the general gray wolf electronic mail address—*GRAYWOLFMAIL@FWS.GOV*, or write to: Gray Wolf Questions, U.S. Fish and Wildlife Service, Federal Building, 1 Federal Drive, Ft. Snelling, MN 55111–4056. Additional information is also available on our World Wide Web site at *http://midwest.fws.gov/wolf*. In the event that our internet connection is not functional, please contact the Service by the alternative methods mentioned above. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1–800–877–8337 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Background

This rule begins with discussions on the biology, ecology, taxonomy, and historical range of the gray wolf. We then describe previous Federal listing actions taken for this DPS of gray wolves. Next, we discuss the purpose and relevant definitions of the Act and conclude this introductory section with a discussion of the conservation and recovery of the EDPS of the gray wolf.

We then analyze the current status of the EDPS relative to the criteria set out in section 4(c)(1) of the Act to determine whether it still warrants listing under the Act. This analysis takes into account the effects of current and future likely actions that may positively or negatively affect the EDPS if it were delisted.

A. Biology and Ecology of Gray Wolves

Gray wolves are the largest wild members of the Canidae, or dog family, with adults ranging from 18 to 80 kilograms (kg) (40 to 175 pounds (lb)) depending upon sex and subspecies (Mech 1974). The average weight of male wolves in Wisconsin is 35 kg (77 lb) and ranges from 26 to 46 kg (57 to 102 lb), while females average 28 kg (62 lb) and range from 21 to 34 kg (46 to 75 lb) (Wisconsin Department of Natural Resources (WI DNR) 1999a). Wolves' fur color is frequently a grizzled gray, but it can vary from pure white to coal black. Wolves may appear similar to coyotes (*Canis latrans*) and some domestic dog breeds (such as the German shepherd or Siberian husky) (*C. familiaris*). Wolves' longer legs, larger feet, wider head and snout, and straight tail distinguish them from both coyotes and dogs.

Wolves primarily are predators of medium and large mammals. Wild prey species in North America include white-tailed deer (*Odocoileus virginianus*) and mule deer (*O. hemionus*), moose (*Alces alces*), elk (*Cervus elaphus*), woodland caribou (*Rangifer caribou*) and barren ground caribou (*R. arcticus*), bison (*Bison bison*), muskox (*Ovibos moschatus*), bighorn sheep (*Ovis canadensis*) and Dall sheep (*O. dalli*), mountain goat (*Oreamnos americanus*), beaver (*Castor canadensis*), and snowshoe hare (*Lepus americanus*), with small mammals, birds, and large invertebrates sometimes being taken (Mech 1974, Stebler 1944, WI DNR 1999a). In the EDPS, during the last 22 years, wolves have also killed domestic animals including horses (*Equus caballus*), cattle (*Bos taurus*), sheep (*Ovis aries*), goats (*Capra hircus*), llamas (*Lama glama*), pigs (*Sus scrofa*), geese (*Anser sp.*), ducks (*Anas sp.*), turkeys (*Meleagris gallopavo*), chickens (*Gallus sp.*), pheasants (*Phasianus colchicus*), dogs, and cats (*Felis catus*) (Paul 2001, Wydeven *et al.* 2001a).

Wolves are social animals, normally living in packs of 2 to 12 wolves, although 2 packs in Yellowstone National Park (NP) had 22 and 27 members in 2000; Yellowstone NP's Druid Peak pack increased to 37 members in 2001 (USFWS *et al.* 2001, 2002). Winter 2001–02 pack size in Michigan's Upper Peninsula averaged 4.3 wolves (Potvin *et al.* submitted). Packs are primarily family groups consisting of a breeding pair, their pups from the current year, offspring from the previous year, and occasionally an unrelated wolf. Packs typically occupy,

and defend from other packs and individual wolves, a territory of 50 to 550 square kilometers (km²) (20 to 214 square miles (mi²)). In the northern U.S. Rocky Mountains, territories tend to be larger, usually from 520 to 1,040 km² (200 to 400 mi²), and in Wood Buffalo NP in Canada, territories of up to 2,700 km² (1,042 mi²) have been recorded (Carbyn, Canadian Wildlife Service, *in litt.* 2000). Normally, only the top-ranking ("alpha") male and female in each pack breed and produce pups. Litters are born from early April into May; they range from 1 to 11 pups, but generally include 4 to 6 pups (Michigan Department of Natural Resources (MI DNR) 1997; USFWS 1992a; USFWS *et al.* 2001). Normally a pack has a single litter annually, but the production of 2 or 3 litters in one year has been documented in Yellowstone NP (USFWS *et al.* 2002). Yearling wolves frequently disperse from their natal packs, although some remain with their natal pack. Yearlings may range over large areas as lone animals after leaving their natal pack or they may locate suitable unoccupied habitat and a member of the opposite sex and begin their own pack. Dispersal distances of 800 km (500 mi) have been documented (Fritts 1983; James Hammill, MI DNR, *in litt.* 2001). Individual wolves have more recently traveled from central Wisconsin to east-central Indiana (655 km (407 mi)) and northern Illinois (unknown distance), from the Upper Peninsula of Michigan to northern Missouri (965 km (600 mi)), and from the Minnesota-Wisconsin-Michigan population to east-central Nebraska (unknown distance).

The gray wolf historically occurred across most of North America, Europe, and Asia. In North America, gray wolves formerly occurred from the northern reaches of Alaska, Canada, and Greenland to the central mountains and the high interior plateau of southern Mexico. The only areas of the conterminous United States that apparently lacked gray wolf populations since the last ice age are parts of California and portions of the eastern and southeastern United States (an area occupied by the red wolf). In addition, wolves were generally absent from the deserts and mountaintop areas of the western United States (Young and Goldman 1944, Hall 1981, Mech 1974, Nowak 2000). (Refer to the *Taxonomy of Gray Wolves in the Eastern United States* section below for additional discussion.)

European settlers in North America and their cultures often had superstitions and fears of wolves and a unified desire to eliminate them (Boitani 1995). Their attitudes, coupled with perceived and real conflicts between wolves and human activities along the frontier, led to widespread persecution of wolves. Poisons, trapping, and shooting spurred by Federal, State, and local government bounties extirpated this once widespread species from more than 95 percent of its range in the 48 conterminous States. At the time the Act was passed, only several hundred wolves occurred in northeastern Minnesota and on Isle Royale, Michigan, and a few scattered wolves may have occurred in the Upper Peninsula of Michigan, Montana, and the American Southwest.

Researchers have learned a great deal about gray wolf biology, especially about the species' adaptability and its use of nonwilderness habitats. Public appreciation of the role of predators in our ecosystems has increased. Surveys indicate that approximately 60 percent of persons in the eastern and western United States have positive attitudes towards wolves and their restoration (Williams *et al.* 2002). Most importantly, within the last decade the prospects for gray wolf recovery in several areas of their historical range in the United States have greatly increased. In the EDPS, wolves have dramatically increased their numbers and occupied range.

The gray wolf is one of two North American wolf species currently protected by the Act. The other species is the red wolf (*Canis rufus*), which is listed as endangered throughout its historical range in the southeastern United States and extending west into central Texas. The red wolf is the subject of a separate recovery program. This final rule does not affect the current listing status or protection of the red wolf.

Gray wolf populations in the United States are protected under the Act by separate listings covering the EDPS, the Western DPS, and the Southwestern DPS (50 CFR 17.11(h)), regulations establishing three non-essential experimental populations (50 CFR 17.84(i) and (k)), and by special regulations for parts of the Western and Eastern DPSs (50 CFR 17.40(d), (n), and (o)). Regulations for the Western and Southwestern DPSs would not be removed or changed if this proposal is finalized.

It is important to note that the protections of the gray wolf under the Act does not extend to gray wolf-dog hybrids regardless of the geographic location of the capture of their pure wolf ancestors. As noted in the final reclassification rule (68 FR 15804, April 1, 2003), gray wolf-dog hybrids have no value to gray wolf recovery programs and can introduce dog genes into wild wolf populations.

B. Taxonomy of Gray Wolves in the Northeastern United States

Both versions (USFWS 1978 and 1992a) of the Recovery Plan for the Eastern Timber Wolf (Recovery Plan) were developed to recover the gray wolf subspecies *Canis lupus lycaon,* commonly known as the eastern timber wolf. *Canis lupus lycaon* was believed to be the gray wolf subspecies that historically occurred throughout the northeastern quarter of the United States east of the Great Plains (Young and Goldman 1944, Hall 1981, Mech 1974). Since the publication of those recovery plans, various studies on the subspecific taxonomy of the gray wolf have been conducted with conflicting results (Nowak 1995, 2002, 2003; Wayne *et al.* 1995; Wilson *et al.* 2000).

Wilson *et al.* (2000) questioned the identity of the *Canis* species in southeastern Canada, an area with an extant wolf population adjacent to the northeastern United States. The alternative view of southeastern Canada wolf taxonomy as advanced by Wilson *et al.* (2000) appears to be gaining wider acceptance among taxonomists. That view is that the wolf currently occurring in Algonquin Provincial Park and southern Quebec Province, and possibly the ancestral wolf of southeastern Canada and the northeastern United States, is a smaller form of wolf, similar to or indistinguishable from the red wolf. Others argue that ecologically, the ancestral wolf in northern New England and northern New York where moose and woodland caribou were the predominant ungulate prey (Hall 1981), and throughout New York State where elk were indigenous (Hall 1981), was likely to be a large-bodied gray wolf, rather than a smaller, deer-eating wolf, such as the red wolf (Daniel Harrison, University of Maine, pers. comm.).

We acknowledge that our understanding of wolf taxonomy at both the species and the subspecies levels is likely to continue changing as new studies are completed and the results of additional genetic and morphometric analyses are published. Analyses of the canids recently found in the northeastern United States and southeastern Canada point to a north-south (and to a lesser extent, west-east) gradient consisting of western gray wolf, eastern wolf, and coyote. The western gray wolf historically occupied much of the western United States and much of Canada. According to recent genetic analyses (Wilson *et al.* 2000), the eastern

wolf, now referred to by some investigators as *Canis lycaon,* currently occupies southeastern Canada and may have historically occupied the northeastern United States and portions of the Great Lakes area as well (Fascione *et al.* 2001). The Service believes that it is equally likely there was a contact zone between the two forms of wolves along this broad boundary between the northern extent of white-tailed deer range and the southern extent of caribou and moose range.

Currently, molecular genetic and morphological data suggest several plausible identities for the large canid that historically occupied the Northeast. Nowak's (1995) morphological data support the contention that *Canis lupus lycaon,* a subspecies of the gray wolf, occupied part of the Northeast, including southern New England. A recent molecular genetics study (Wilson *et al.* 2000) disputes that this species is a gray wolf, and suggests it is a form of red wolf and both forms should be referred to as *C. lycaon.* Nowak's (2002) more recent analysis places the boundary between the gray wolf and red wolf in central New York and northern Vermont, with *C. l. lycaon* to the north and west of this line and the red wolf subspecies, *C. rufus floridanus,* to the east and south. Furthermore, Nowak (2002, 2003) now suggests that *C. l. lycaon* may be a subspecies of hybrid origin resulting from matings of *C. lupus* and *C. rufus.*

The historical range of the gray wolf and the taxonomy of the wolf in the conterminous United States is the subject of substantial scientific debate. As pointed out in the April 2003 final reclassification (68 FR 15804) and by Brewster and Fritts (1995), wolf systematics is a continually evolving science. During the 1800s and through the mid-1900s, which Brewster and Fritts (1995) refer to as the "descriptive era," wolf taxonomies were based on physical attributes such as color, weight, and size. During the "multivariate analysis era" (1950s to present), alternative wolf taxonomies were based on statistical analyses of multiple morphometric data, particularly cranial measurements. Lastly, recent advances in molecular taxonomy (1970s to present) have made it possible to compare phylogenic relatedness between closely related species and subspecies and to characterize their differences. Proponents of each alternative wolf taxonomy offer a different view of the range of wolf species and subspecies in North America.

The coyote is the dominant canid in the northeastern United States at present, although wolf genetic material is also present in these animals (Wilson *et al.* 2004). It is extremely difficult to determine the genetic identity of the wolf (or wolves) that occurred in the Northeast before European settlement. The ranges of specific forms of wolf may have changed over time or intermingled along contact zones, and scientific consensus on one ancestral form of wolf for the Northeast may not be possible. We, however, encourage additional research on the identity of the historical wolf of the northeast region, the taxonomy and phylogeny of contemporary wolves in southeastern Canada, and new information on the occurrence of wolves in the northeastern United States and southeastern Canada. Due to the extreme uncertainty over wolf taxonomy, at this time we are adopting no final position on the identity of the wolf (or wolves) that historically existed in the northeastern United States. As announced in the final reclassification rule (68 FR 15804, April 1, 2003), we are treating gray wolves in the northeastern United States as part of the EDPS.

C. Historical Range of the Gray Wolf

Until the molecular genetics studies of the last few years, the range of the gray wolf before European settlement was generally believed to include most of North America. The only areas that were believed to have lacked gray wolf populations are southern and interior Greenland, the coastal regions of Mexico, all of Central America south of Mexico, coastal and other parts of California, the extremely arid deserts and the mountaintops of the western United States, and parts of the eastern and southeastern United States (Young and Goldman 1944, Hall 1981, Mech 1974, Nowak 1995). (Some authorities, however, question the reported historical absence of gray wolves from parts of California (Carbyn *in litt.* 2000, Mech, U.S. Geological Survey, *in litt.* 2000)). Authors are inconsistent on their views of the precise boundary of historical gray wolf range in the eastern and southeastern United States. Some use Georgia's southeastern corner as the southern extent of gray wolf range (Young and Goldman 1944, Mech 1974); others believe gray wolves did not occur at all in the southeastern U.S. (Hall 1981) or only to a limited extent, primarily at relatively high elevations (Nowak 1995). The southeastern and mid-Atlantic States have generally been recognized as being within the historical range of the red wolf; the extent of overlap between the ranges of these competing canids is unknown. Recent morphological work (Nowak 2002, 2003) supports extending the historical range of the red wolf into southern New England or even further north. This suggests that the historical range of the gray wolf in the eastern United States may have been more limited than previously believed, although the ranges of the wolf species may have expanded and contracted after the last ice age.

The results of recent molecular genetic (Wilson *et al.* 2000) and morphometric studies (Nowak 1995, 2002) may help explain some of the past difficulties in determining the southern boundary of the gray wolf's range in the eastern United States. Unless additional data demonstrate that gray wolves did not historically occur in the northeastern U.S., we have defined the historical range of the gray wolf as including those areas north of the Ohio River, the southern borders of Pennsylvania and New Jersey, and southern Missouri; and west from central Texas and Oklahoma (68 FR 15804). This boundary is a reasonable compromise of several published accounts, being somewhat south of that shown by Nowak (2002) and north of the range boundary shown by Young and Goldman (1944) and Mech (1974). The historical range boundary we used to establish the southern boundary of the EDPS in 50 CFR 17.11(h) most closely approximates that shown in Hall (1981).

While the historical range and taxonomy of the wolf in the northeastern United States continues to be debated, the fact that wolves were indigenous to that region is well established in historical accounts and bounty records. As early as 1645, the Massachusetts Court complained of "the great losse and damage" suffered by the colony because wolves killed settlers' cattle (Cronon 1983). Cronon (1983) reports that such complaints persisted in newly settled areas throughout the colonial period. Young and Goldman (1944) recount the early years of wolf bounties offered on Long Island, New York, where in 1663 it was agreed that settlers be provided bushels of Indian corn in exchange for wolf heads. In 1794, Samuel Williams recorded in *The Natural and Civil History of Vermont* that, "One of the most common and noxious of all our animals, is the Wolf." A review of wolf bounty records in Maine revealed documentation for well over 100 bounties paid, primarily during the 1800s (R. Joseph, USFWS, *in litt.* 2000). In the Proceedings of the Portland Society of Natural History (1930), it is reported that wolves were numerous in the Portland, Maine, region, and existed at least until 1740 in

the immediate vicinity of the present city.

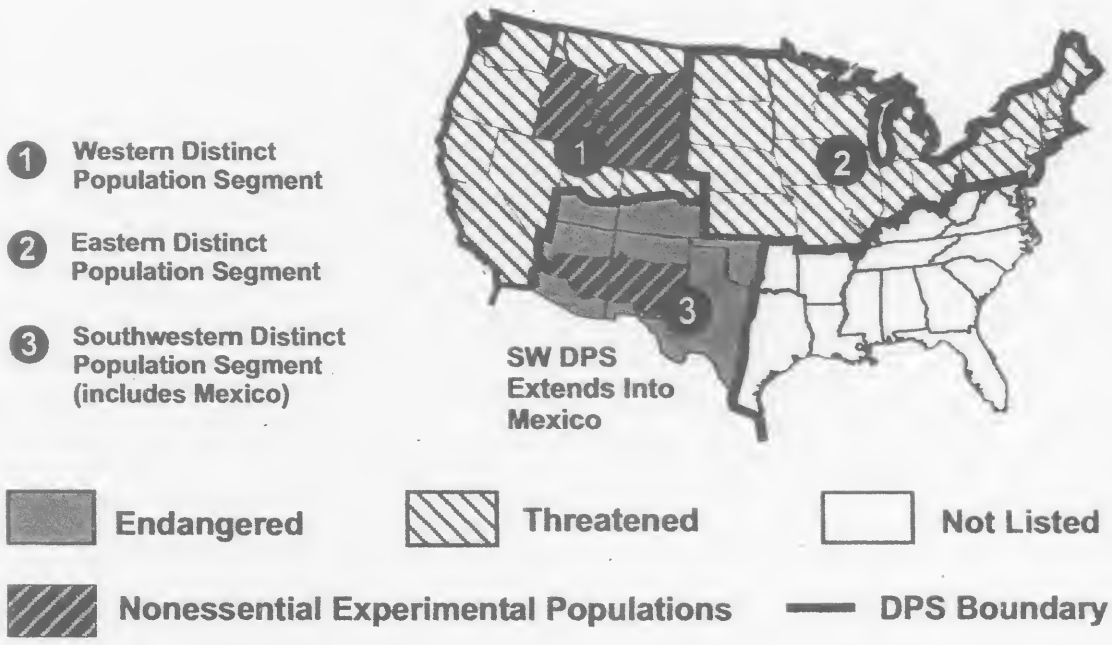
From the first reward offered by the Massachusetts Bay Colony in 1630, wolf bounties became a common means of addressing livestock losses to wolf predation in colonial America. By the early eighteenth and into the nineteenth centuries, bounties on the wolf were common throughout the United States. Wolf populations in the northeastern United States were strongly affected as colonial settlement progressed and activities such as forest clearing, hunting, and trapping reduced the wolf's natural habitat and prey (ungulates and beaver). Remaining wolf populations were largely eliminated by the bounties, and by 1900, the wolf was considered extirpated from the northeastern United States (Nowak 2002). Hamilton (1943) noted that where the wolf formerly ranged widely throughout the eastern States, persistent hunting, trapping, and poisoning resulted in its extermination in Pennsylvania, New York, and New England well before the close of the nineteenth century.

D. Previous Federal Action

On April 1, 2003, we published a final rule (68 FR 15804) that reclassified and delisted gray wolves, as appropriate, across their range in the 48 conterminous United States and Mexico. In that final rule (on page 15806), we included a detailed summary of the previous Federal actions completed prior to publication of that final rule.

The first part of the April 1, 2003, final rule delisted gray wolves in parts or all of 16 southern States because that area is outside the historical range of the species. The second part of the final rule separated the remainder of the 32 States and Mexico into three gray wolf DPSs, and it gave each DPS a separate listing under the Act as threatened or endangered (see Figure 1 below). Additionally, new special regulations under section 4(d) of the Act were established for portions of the Western and Eastern Gray Wolf DPSs.

Status of the Gray Wolf in the Conterminous U.S.
April 2003



On March 1, 2000, we received a petition from Mr. Lawrence Krak of Gilman, Wisconsin, and on June 28, 2000, we received a petition from the Minnesota Conservation Federation. Mr. Krak's petition requested the delisting of gray wolves in Minnesota, Wisconsin, and Michigan. The Minnesota Conservation Federation requested the delisting of gray wolves in a Western Great Lakes DPS. Because the data reviews resulting from the processing of these petitions would be a subset of the review begun by our July 13, 2000, proposal (65 FR 43450) to revise the current listing of the gray wolf across most of the conterminous United States, we did not initiate separate reviews in response to those two petitions. This proposed rule constitutes both our 90-day finding that the petitioned actions may be warranted and our 12-month finding that the actions are warranted.

On April 1, 2003, we also received a petition from Defenders of Wildlife, Sierra Club, RESTORE: The North Woods, and The Wildlands Project requesting that we list a DPS of wolves in the northeastern United States. As explained in the April 1, 2003, reclassification rule (68 FR 15804) and our September 12, 2003, response to the petitioners, the absence of a wolf population in the Northeast precluded us from designating that entity as a separate DPS. Instead, the EDPS includes New Hampshire, Maine, Vermont, and New York; any gray wolves that may exist in or disperse into these States continue to be protected as threatened under the Act until a final delisting of the EDPS is published.

E. Purpose and Definitions of the Act

The primary purpose of the Act is to prevent the endangerment and extinction of animal and plant species. The Act requires the Service to identify species that meet the Act's definitions of endangered or threatened, to add those species that meet either of these definitions to the Federal Lists of Endangered and Threatened Wildlife and Plants (50 CFR 17.11 and 17.12, respectively), and to plan and implement conservation actions to improve their status to the point at which they no longer need the protections of the Act. When that protection is no longer needed, we take steps to remove (delist) the species from the Federal lists. If a species is listed as endangered, we may first reclassify it to threatened status as an intermediate step, if the species has met the downlisting criteria outlined in its recovery plan before its eventual delisting; reclassification before delisting, however, is not required.

Section 3 of the Act provides the following definitions that are relevant to this rule:

Endangered species—any species which is in danger of extinction throughout all or a significant portion of its range;

Threatened species—any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range; and

Species—includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature. (For further information on DPSs, see our February 7, 1996, DPS policy (61 FR 4722) or the April 1, 2003, final gray wolf reclassification rule (68 FR 15804)).

Understanding the Service's strategy for gray wolf recovery also requires an understanding of the meaning of "recover" and "conserve" under the Act: "Conserve" is defined in the Act itself (section 3(3)) whereas "recovery" is defined in the Act's implementing regulations at 50 CFR 402.02.

Conserve—defined, in part as "the use of all measures and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary."

Recovery—improvement in the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the Act. Essentially, "recover" and "conserve" both mean to bring a species to the point at which it no longer needs the protections of the Act because the species is no longer threatened or endangered.

The Service will determine whether a species is endangered or threatened only after assessing its status throughout all or a significant portion of its range. A species does not have to be recovered throughout all of its historical range before it can be delisted; however, within its current range it must no longer be in danger of extinction or likely to become endangered in the foreseeable future.

F. Recovery Planning and Recovery Criteria for the Eastern Timber Wolf

The Eastern Gray Wolf DPS was established on April 1, 2003 (68 FR 15804). It is important to note that a DPS is a listed entity under the Act, and is treated the same as a listed species or subspecies. It is listed, protected, subject to interagency consultation, and recovered just as any other threatened or endangered species or subspecies. A DPS will have its own recovery plan and its own recovery goals. As with a species or subspecies, we are not required to seek restoration of the animal throughout the entire geographic area of the DPS, but only to the point at which it no longer meets the definition of a threatened or endangered species.

Section 4(f) of the Act directs us to develop and implement recovery plans for listed entities: Species, subspecies, or DPS. In some cases, we appoint recovery teams of experts to assist in the writing of recovery plans and to provide advice to the Service on subsequent recovery efforts. Recovery plans contain criteria that trigger our consideration of the need to either reclassify (from endangered to threatened) a species due to improvements in its status or to delist the species due to its recovery under the Act. Reclassification and recovery criteria are based on factors that can be measured or otherwise objectively evaluated to document improvements in a species' status. Examples of the type of criteria typically used are numbers of individuals, numbers and distribution of subgroups or populations of the species, rates of productivity of individuals or populations, protection of habitat, and reduction or elimination of specific threats to the species and its habitat.

We initiated recovery programs for the originally listed gray wolf subspecies by appointing recovery teams and developing and implementing recovery plans. In addition to containing the criteria to assess a species' progress toward recovery, recovery plans describe and prioritize specific actions necessary to achieve the recovery criteria and objectives and identify appropriate parties to implement each action.

Once a species has met its delisting criteria and no longer meets the definition of endangered or threatened, it is considered to be recovered and should be delisted. The restoration of a species throughout its historical range, or even throughout the entire remaining suitable habitat, may not be necessary for a species to be delisted. Recovery plans generally do not require restoration of the species throughout its historical range to achieve recovery under the Act.

The 1978 Recovery Plan for the Eastern Timber Wolf (Recovery Plan) was approved on May 2, 1978, (USFWS 1978) and revised and approved on January 31, 1992 (USFWS 1992a). The 1978 Recovery Plan and its 1992 revision were intended to recover the eastern timber wolf, *Canis lupus lycaon*, thought at that time to be the gray wolf subspecies that historically inhabited the United States east of the Great Plains. Thus, this Recovery Plan covers a geographic triangle extending from Minnesota to Maine and into northeastern Florida, an area consistent with the geographic coverage of the EDPS (when corrected for the lack of historical gray wolf range in the southeastern United States). The Recovery Plan was based on the best available information on wolf taxonomy at the time of its original publication and subsequent revision. Since the publication of those recovery plans, various studies have produced conflicting results regarding the identity of the wolf that historically occupied the eastern States. Because this conflict is still unresolved, this recovery program has continued its original focus on recovering the gray wolf population that survived in, and has expanded outward from, northeastern Minnesota, regardless of its subspecific identity. (See the *Taxonomy of Gray Wolves in the Northeastern United States* section above).

G. Recovery of the Eastern Gray Wolf

The 1978 and the 1992 revised Recovery Plans each have two delisting criteria. The first delisting criterion states that the survival of the wolf in Minnesota must be assured. We, and the Eastern Timber Wolf Recovery Team (Rolf Peterson, Eastern Timber Wolf Recovery Team, *in litt.* 1997, 1998, 1999a, 1999b), believe that this first delisting criterion remains valid. It identifies a need for reasonable assurances that future State, tribal, and

Federal wolf management practices and protection will maintain a viable recovered population of gray wolves within the borders of Minnesota for the foreseeable future. The Recovery Plan's subgoal for Minnesota is 1,251 to 1,400 wolves (USFWS 1992a).

The second delisting criterion in the Recovery Plan states that at least one viable wolf population should be reestablished within the historical range of the eastern timber wolf outside of Minnesota and Isle Royale, Michigan. The Recovery Plan provides two options for reestablishing this second viable wolf population. If it is located more than 100 miles from the Minnesota wolf population, the second population should consist of at least 200 wolves for at least 5 years (based upon late-winter population estimates) to be considered viable. Alternatively, if the second population is located within 100 miles of a self-sustaining wolf population (for example, the Minnesota wolf population), a reestablished second population having a minimum of 100 wolves for at least 5 years would be considered viable.

The Recovery Plan does not specify where in the eastern United States the second population should be reestablished. Therefore, the second population could be located anywhere within the triangular Minnesota-Maine-Florida area covered by the Recovery Plan, except on Isle Royale (Michigan) or within Minnesota. The 1978 Recovery Plan identified potential gray wolf restoration areas throughout the eastern United States, including northern Wisconsin and Michigan and extending as far south as the Great Smoky Mountains and adjacent areas in Tennessee, North Carolina, and Georgia. The revised 1992 Recovery Plan, however, dropped from consideration the more southern potential restoration areas, because recovery efforts for the red wolf were being initiated in those areas (USFWS 1978, 1992a). The recovery criteria do not suggest that either the restoration of the gray wolf throughout all or most of its historical range in the eastern United States are necessary to achieve recovery under the Act.

In 1998, the Eastern Timber Wolf Recovery Team clarified the delisting criterion for the second population (*i.e.*, the wolves in northern Wisconsin and the adjacent Upper Peninsula of Michigan) (Rolf Peterson, Eastern Timber Wolf Recovery Team, *in litt.* 1998). It stated that the numerical delisting criterion for the Wisconsin-Michigan population will be achieved when 6 consecutive late-winter wolf surveys documented that the population equaled or exceeded 100 wolves (excluding Isle Royale wolves) for the 5 consecutive years between the 6 surveys (Rolf Peterson, *in litt.* 1998). The Wisconsin-Michigan wolf population was first known to have exceeded 100 wolves in the late-winter 1993–94 survey and the numerical delisting criterion was satisfied in early 1999, based upon late-winter 1998–99 data (Beyer *et al.* 2001, Wydeven *et al.* 1999).

The Recovery Plan has no goals or criteria for the gray wolf population on 546 km² (210 mi²) Isle Royale, Michigan. The wolf population of Isle Royale National Park, Michigan, is not considered to be an important factor in the recovery or long-term survival of wolves in the EDPS. This population is small, varying from 12 to 29 animals over the last 20 years, and is almost completely isolated from other wolf populations (Peterson *et al.* 1998, pers. comm. 1999, Peterson and Vucetich 2004). For these reasons, the Eastern Plan does not include these wolves in its recovery criteria and recommends only the continuation of research and complete protection for these wolves (USFWS 1992a). Unless stated otherwise in this proposal, subsequent discussions of Michigan wolves do not refer to wolves on Isle Royale.

Minnesota

During the pre-1965 period of wolf bounties and legal public trapping, wolves persisted in the more remote northeastern areas of Minnesota, but were eliminated from the rest of the State. Estimated numbers of Minnesota wolves before their listing under the Act in 1974 include 450 to 700 in 1950–53 (Fuller *et al.* 1992, Stenlund 1955), 350 to 700 in 1963 (Cahalane 1964), 750 in 1970 (Leirfallom 1970), 736 to 950 in 1971–72 (Fuller *et al.* 1992), and 500 to 1,000 in 1973 (Mech and Rausch 1975). Although these estimates were based upon different methodologies and are not directly comparable, each estimates pre-listing abundance of wolves in Minnesota at 1,000 or less. This was the only significant population in the United States outside Alaska during those time-periods.

After the wolf was listed as endangered under the Act, population estimates in Minnesota indicated increasing numbers in the State (see Table 1 below). L. David Mech estimated the population to be 1,000 to 1,200 in 1976 (USFWS 1978); Berg and Kuehn (1982) estimated that there were 1,235 wolves in 138 packs in the winter of 1978–79. In 1988–89, the Minnesota Department of Natural Resources (MN DNR) repeated the 1978–79 survey and also used a second method to estimate wolf numbers in the State. The resulting independent estimates were 1,500 and 1,750 wolves in at least 233 packs (Fuller *et al.* 1992).

TABLE 1.—GRAY WOLF POPULATION IN MINNESOTA, WISCONSIN, AND MICHIGAN FROM 1976 THROUGH 2004

[Note that there are several years between the first three Minnesota surveys.]

Year	Minnesota	Wisconsin	Michigan
1976	1,000–1,200	.....	.....
1978–79	1,235	.....	.....
1988–89	1,500–1,750	.....	.....
1993–94	.....	57	57
1994–95	.....	83	80
1995–96	.....	99	116
1996–97	.....	148	112
1997–98	2,445	178	140
1998–99	.....	205	174
1999–2000	.....	248	216
2000–01	.....	257	249
2001–02	.....	327	278
2002–03	.....	335	321
2003–04	Pending*	373	360

*Minnesota DNR conducted another survey of the State's wolf population and range during the winter of 2003–04. A preliminary population estimate may be available for review by mid-July 2004.

During the winter of 1997–98, a statewide wolf population and distribution survey was repeated by MN DNR, using methods similar to those of the two previous surveys. Field staff of Federal, State, Tribal, and county land management agencies and wood products companies were queried to identify occupied wolf range in Minnesota. Data from five concurrent radio telemetry studies tracking 36 packs, representative of the entire Minnesota wolf range, were used to determine average pack size and territory area. Those figures were then used to calculate a statewide estimate of pack numbers and the overall wolf population in the occupied range, with single (non-pack) wolves factored into the estimate (Berg and Benson 1999).

The 1997–98 survey concluded that approximately 2,445 wolves existed in about 385 packs in Minnesota during that winter period. This figure indicates the continued growth of the Minnesota wolf population at an average rate of about 3.7 percent annually. The Minnesota wolf population has shown approximately this average annual rate of increase since 1970 (Berg and Benson 1999, Fuller *et al.* 1992). No rigorous survey of the Minnesota wolf population has been conducted since the winter of 1997–98, but biologists generally accept that the population has increased (Mech 1998, Paul 2001).

As wolves increased in abundance in Minnesota, they also expanded their distribution. During 1948–53, the major wolf range was estimated to be about 31,080 km^2 (11,954 mi^2) (Stenlund 1955). A 1970 questionnaire survey resulted in an estimated wolf range of 38,400 km^2 (14,769 mi^2) (calculated by Fuller *et al.* 1992 from Leirfallom 1970). Fuller *et al.* (1992), using data from Berg and Kuehn (1982), estimated that Minnesota primary wolf range included 36,500 km^2 (14,038 mi^2) during winter 1978–79. By 1982–83, pairs or breeding packs of wolves were estimated to occupy an area of 57,050 km^2 (22,000 mi^2) in northern Minnesota (Mech *et al.* 1988). That study also identified an additional 40,500 km^2 (15,577 mi^2) of peripheral range, where habitat appeared suitable but no wolves or only lone wolves existed. The 1988–89 study produced an estimate of 60,200 km^2 (23,165 mi^2) as the contiguous wolf range at that time in Minnesota (Fuller *et al.* 1992), an increase of 65 percent over the primary range calculated for 1978–79. The 1997–98 study concluded that the contiguous wolf range had expanded to 88,325 km^2 (33,971 mi^2), a 47 percent increase in 9 years (Berg and Benson 1999). Thewolf population in Minnesota had recovered to the point that its contiguous range covered approximately 40 percent of the State during 1997–98.

Minnesota DNR conducted another survey of the State's wolf population and range during the winter of 2003–04 using methodology similar to that used in 1988–89 and 1997–98 (John Erb, MN DNR, pers. comm. 2003). A preliminary population estimate may be available for review by mid-July 2004. The final results of that survey will be posted on our web site (*http://midwest/fws.gov/wolf*) as soon as they are available. Those results will be used in our final decision on this proposal.

Wisconsin

Wolves were considered to have been extirpated from Wisconsin by 1960. No formal attempts were made to monitor the State's wolf population from 1960 until 1979. From 1960 through 1975, individual wolves and an occasional wolf pair were reported. There is no documentation, however, of any wolf reproduction occurring in Wisconsin, and the wolves that were reported may have been dispersing animals from Minnesota.

Wolf population monitoring by the WI DNR began in 1979 and estimated a statewide population of 25 wolves at that time. This population remained relatively stable for several years, then declined slightly to approximately 15 to 19 wolves in the mid-1980s. In the late 1980s, the Wisconsin wolf population began an increase that has continued into 2004.

Wisconsin DNR intensively surveys its wolf population annually using a combination of aerial, ground, and satellite radio telemetry, complemented by snow tracking and wolf sign surveys (Wydeven *et al.* 1995, 2003). Wolves are trapped from May through September and fitted with radio collars, with a goal of having at least one radio-collared wolf in about half of the wolf packs in Wisconsin. Aerial locations are obtained from each functioning radio collar about once per week, and pack territories are estimated from the movements of the individuals who exhibit localized patterns. From December through March, the pilots make special efforts to visually locate and count the individual wolves in each radio-tracked pack. Snow tracking is used to supplement the aerial sighting-based counts and to provide pack size estimates for packs lacking a radio-collared wolf. Tracking is done by assigning survey blocks to trackers who then drive snow-covered roads in their blocks and follow all wolf tracks they encounter. Snowmobiles are used to locate wolf tracks in more remote areas with low road density. The results of the aerial and ground surveys are carefully compared to properly separate packs and to avoid over-counting (Wydeven *et al.* 2003). The number of wolves in each pack is estimated based on the aerial and ground observations made of the individual wolves in each pack over the winter.

During the winter of 2002–03, 43 of Wisconsin's 94 wolf packs (46 percent) had members carrying active radio transmitters much of the season. Thirty-nine of the 66 monitored wolves were located 20 or more times during the mid-September to mid-April period, providing excellent information on home range boundaries and pack territory size (Wydeven *et al.* 2003). Minimum wolf population estimates (late-winter counts) for 1994 through 2003 increased from 57 to 335 animals, comprising 14 to 94 packs respectively (Wydeven *et al.* 2003) (see Table 1 above). An estimated 373 to 410 wolves in 109 packs, including 12 wolves on Native American reservations, were in the State in 2004, representing an 11 percent increase from 2003 (WI DNR 2004).

Because the monitoring methods focus on wolf packs, it is believed that lone wolves are undercounted in Wisconsin, and, as a result, these population estimates are probably slight underestimates of the actual wolf population within the State during the late-winter period. Also, these estimates are made at the low point of the annual wolf population cycle—late-winter surveys produce an estimate of the wolf population at a time when most winter mortality has already occurred, but the birth of pups has yet to take place. The wolf population increases dramatically when pups are born, then decreases rapidly due to pup mortality, and with a subsequent slower decline as other mortality factors continue throughout the year. Thus, Wisconsin wolf population estimates are conservative in two respects: they undercount lone wolves and the count is made at the annual low point of the population. However, the recovery criteria established in 1992 are consistent with existing methodology, establishing numerical criteria based on late-winter surveys.

In 1995, wolves were first documented in Jackson County, Wisconsin, an area well to the south of the northern Wisconsin area occupied by other Wisconsin wolf packs. The number of wolves in this central Wisconsin area has dramatically expanded since that time. During the winter of 2003–04, there were approximately 57 wolves in 16 to 17

packs in central Wisconsin (Wydeven pers. comm. 2004).

During the winter of 2002–03, 7 wolves occurred on Native American reservations in Wisconsin (Wydeven *et al.* 2003), and this increased to 12 wolves in the winter of 2003–04 (WI DNR 2004). These animals were on the Bad River (10) and Lac Courte Oreilles Reservations (2) (Wydeven *in litt.* 2004). There also is evidence of individual wolves on the Lac du Flambeau and Menominee Reservations, with a high likelihood of wolf packs developing on these reservations in the near future (Wydeven pers. comm. 2002). Additionally, the Red Cliff and Stockbridge-Munsee Reservations and scattered Potawatomi and Ho-Chunk lands will likely support wolves in the near future (Wydeven *in litt.* 2003).

In 2002, wolf numbers in Wisconsin alone surpassed the goal for a second population, as identified in the Recovery Plan (*i.e.*, 100 wolves within 100 miles for a minimum of 5 consecutive years, as measured in 6 consecutive late-winter counts). The Wisconsin wolf population continues to increase, although the slower rates of increase seen in the 2001 and 2003 surveys (3.6 and 2.4 percent, respectively, above the previous year) may be the first indications that the State's wolf population growth and geographic expansion are beginning to level off. The much higher rates of growth seen in 2000 and 2002 (20.9 and 27.2 percent, respectively), however, indicate that it is too soon to conclude that wolf numbers in Wisconsin have reached a plateau. Over the last 10 years, the Wisconsin wolf population grew at an annualized rate of 24 percent.

Michigan

Michigan wolves were extirpated as a reproducing population long before they were listed as endangered in 1974. Prior to 1991, and excluding Isle Royale, the last known breeding population of wild Michigan wolves occurred in the mid-1950s. As wolves began to reoccupy northern Wisconsin, the MI DNR began noting single wolves at various locations in the Upper Peninsula of Michigan. In the late 1980s, a wolf pair was verified in the central Upper Peninsula, and it produced pups in 1991. Since that time, wolf packs have spread throughout the Upper Peninsula, with immigration occurring from both Wisconsin on the west and Ontario on the east. They now are found in every county of the Upper Peninsula.

The MI DNR annually monitors the wolf population in the Upper Peninsula by intensive late-winter tracking surveys that focus on each pack. The Upper Peninsula is divided into seven monitoring zones, and specific surveyors are assigned to each zone. Pack locations are derived from previous surveys, citizen reports, and ground and aerial tracking of radio-collared wolves. During the winter of 2002–03 at least 68 wolf packs were resident in the Upper Peninsula. Approximately 30 to 35 percent of these packs had members with active radio-tracking collars (Dean Beyer, MI DNR, pers. comm. 2004). Care is taken to avoid double-counting packs and individual wolves, and a variety of evidence is used to distinguish adjacent packs and accurately count their members (Beyer *et al.* 2003). Surveys along the border of adjacent monitoring zones are coordinated to avoid double-counting of wolves and packs occupying those border areas. In areas with a high density of wolves, ground surveys by four to six surveyors with concurrent aerial tracking are used to accurately identify adjacent packs and count their members (Potvin *et al.* submitted).

From 1994 through 2003, annual surveys have documented minimum late-winter estimates of wolves occurring in the Upper Peninsula as increasing from 57 wolves in 1994 to 321 in 2003 (see Table 1 above). Over the last 10 years the annualized rate of increase has been 27 percent (MI DNR 1997, 1999a, 2001, 2003). In 2004, the late winter population was at least 360 wolves, up 12 percent from last year (MI DNR 2004b). The Michigan Upper Peninsula wolf population by itself has surpassed the recovery goal for a second population of 100 wolves within 100 miles for a minimum of 5 consecutive years (6 late-winter estimates), as specified in the Recovery Plan.

In 2003–04, no wolf packs were known to be primarily using tribal-owned lands in Michigan (Beyer pers comm. 2004). Native American tribes in the Upper Peninsula of Michigan own small, scattered blocks of land. As such, no one tribal property would likely support a wolf pack. However, as wolves occur in all counties in the Upper Peninsula and range widely, tribal land is likely utilized periodically by wolves.

As mentioned previously, the wolf population of Isle Royale National Park, Michigan, is not considered to be an important factor in the recovery or long-term survival of wolves in the EDPS. This small and isolated wolf population is not expected to make a significant numerical contribution to gray wolf recovery, although long-term research on this wolf population has added a great deal to our knowledge of the species.

Although there have been reports of wolf sightings in the Lower Peninsula of Michigan, including a winter 1997 report of 2 large canids believed to be wolves on the ice west of the Mackinaw Bridge, there is no evidence that there are resident wolves in the Lower Peninsula. Recognizing, however, the likelihood that small numbers of gray wolves will eventually move into the Lower Peninsula, MI DNR has begun a revision of its Wolf Management Plan to incorporate provisions for wolf management there.

When the wolf population estimates of Wisconsin and Michigan are combined, the total population has exceeded the second population recovery goal of 200 wolves for 5 consecutive years for a geographically isolated wolf population. The two-State wolf population, excluding Isle Royale wolves, has exceeded 200 wolves since late-winter 1995–96.

Northeastern United States

Wolves were extirpated from the northeastern United States by 1900. Few credible observations of wolves were reported in the Northeast during most of the 20th century. There has been a small number of remains or salvages of either wolves or wolf-like canids in the northeastern United States since 1993. Observations of "wolves" cannot be verified without physical evidence, because wolves may be confused with other canids such as large eastern coyotes, wolf-dog hybrids, and large domestic and feral dogs. As mentioned earlier and in the final reclassification rule (68 FR 15804), gray wolf-dog hybrids are not provided protection of the Act, regardless of the geographic location of the capture of their pure wolf ancestors. Therefore, only recent wolf or wolf-like canid remains in the northeastern United States and adjacent Quebec are summarized here.

Recent reports and analyses confirmed the presence of four wolf-like canids in the northeastern United States and one in Canada just north of the United States border. Three of these wolves (including the Canadian wolf) were determined to be gray wolves, whereas the other two have been found to be hybrids of various lineages. Of the three gray wolf-like canids, two showed genetic linkages with wolves in Canada's Algonquin Provincial Park area. However, there is no evidence of the presence of a self-sustaining wolf population in the northeastern United States.

In 1993, a 63-pound female canid was killed in northwestern Maine. The Maine Department of Inland Fisheries and Wildlife concluded that this animal

was of captive origin because it reportedly visited a campsite the day before its death. The Service, however, found no evidence that this animal was captive held and determined it to be a gray wolf (consistent with DNA from an Algonquin Provincial Park area wolf). The animal was tested for distemper vaccine and evidence of vaccination was not found. Additionally, it had calloused foot pads typical of a wild animal.

In 1996, an 86-pound male canid was killed in Aurora, Maine. The Service conducted a genetic evaluation to establish species identity, which was inconclusive. Canadian geneticist Dr. Brad White (*in litt.* 1999) states that, based on his analysis, the animal appeared 75 percent southeastern Canadian wolf (*lycaon* type) and 25 percent coyote. The animal tested negative for routine vaccinations, exhibited worn foot pads, had beaver remains in its stomach, and otherwise appeared to be of wild origin. The Maine Department of Inland Fisheries and Wildlife initially referred to this canid as a "probable wolf," but subsequently described it as a coyote (K. Elowe, *in litt.* August 2003). In 1997, the Maine Department of Inland Fisheries and Wildlife placed infrared cameras at carcasses and conducted howling surveys in this area. No further evidence of other large canids was obtained. We concluded that this animal was a hybrid between a coyote and southeastern Canadian wolf.

In 1997, a 72-pound canid was shot in Glover, Vermont. Samples were sent to three labs for genetic analyses: The Service's lab in Ashland, Oregon; the University of California at Los Angeles (UCLA); and the Wildlife Forensic DNA Lab at MacMaster University in Ontario, Canada. Thus far, results from UCLA indicate that the canid's mitochondrial DNA match that of a wolf (*Canis lupus lycaon*); however, because this analysis only identifies maternal ancestry, it does not rule out the possibility that the animal may have been sired by a coyote or domestic dog. In contrast, the Service's Ashland lab typed the animal using mitochondrial DNA as coyote, whereas the nuclear DNA suggests coyote/Alaskan malamute dog. The Service concluded that the animal was likely of hybrid origin.

In 2001, a male animal reported to be 85 pounds was killed in Day (near Edinburg), Saratoga County, New York. The skin, carcass, and skull were examined by Dr. Robert Chambers (formerly of the College of Environmental Science and Forestry and authority on New York coyotes), who reported that the animal's head was atypical in shape for either a coyote or a wolf. Dr. Chambers also noted that its teeth were not typical for a wild canid and more consistent with that of a domestic dog. The Service's Ashland forensic lab, however, recently completed mitochondrial DNA and nuclear DNA analyses on this animal and determined that it was a gray wolf. No evidence was found to indicate that the animal was of captive origin.

In 2002, a 64-pound male, wolf-like canid was trapped and killed north of the United States border near Sante-Marguerite-de-Lingwick in southern Quebec Province, Canada. Mitochondrial DNA samples were consistent with *Canis l. lycaon/C. latrans* and the microsatellite genotype showed 95 percent ancestry with Eastern wolves from Algonquin Provincial Park (Villemure and Jolicoeur submitted 2003). The authors describe this animal as the first confirmed occurrence of a wolf, *C. Lupus*, [in Canada] south of the St. Lawrence River in over 100 years.

For the past decade, the Service, the State of Maine, the National Wildlife Federation, and several other private organizations have conducted surveys and responded to sightings of large canids in an attempt to document the presence of wolves or wolf-like canids in the northeastern United States. These efforts have not documented the occurrence of wolves or wolf-like canids in addition to those discussed above, nor have they found evidence that a population of wolves is breeding in the northeastern United States.

While the northeastern United States may contain a large area of historical range not currently occupied by breeding wolves, recovery of the EDPS is not contingent on a secure population of wolves being established in this area. It is appropriate to delist the EDPS even if a substantial amount of the historical range remains unoccupied if the population in its current range is recovered. For this reason, we believe that gray wolf recovery in the eastern United States has been achieved by restoring the species to its core areas within the EDPS, consisting of Minnesota, Wisconsin, and Michigan. Although we believe that additional wolf restoration is not necessary within the eastern United States before delisting the EDPS, delisting will not preclude States and Tribes from undertaking additional wolf restoration programs.

Other Areas in the Eastern DPS

The increasing numbers of wolves in Minnesota and the accompanying expansion of their range westward and southwestward in the State have led to an increase in dispersing, mostly young wolves that have been documented in North and South Dakota in recent years. No surveys have been conducted to document the number of wolves present in North Dakota or South Dakota. The North Dakota Fish and Game Department (Phil Mastrangelo pers. comm. 2004), USDA Wildlife Services (John Paulson pers. comm. 2004), and the Service estimate the number of wolves in North Dakota to be 10 to 20 animals; in South Dakota, single wolves have been sighted, but no resident wolves have been documented.

An examination of skull morphology of North and South Dakota wolves indicates that of eight examined, seven likely had dispersed from Minnesota; the eighth probably came from Manitoba, Canada (Licht and Fritts 1994). Genetic analysis of an additional gray wolf killed in 2001 in extreme northwestern South Dakota indicates that it, too, originated from the Minnesota-Wisconsin-Michigan wolf population (Straughan and Fain 2002).

Additionally, wolves from the Minnesota-Wisconsin-Michigan population are traveling to other States in the EDPS. In October 2001, a wolf was killed in north-central Missouri by a farmer who stated that he thought it was a coyote. The wolf's ear tag identified it as having originated from the western portion of Michigan's Upper Peninsula, where it had been captured as a juvenile in July 1999. Another wolf was shot and killed in Marshall County, Illinois, in December 2002, and in that same month a wolf was mistaken for a coyote and shot near Spalding, Nebraska. A fourth Great Lakes wolf was found dead in Randolph County in east-central Indiana (about 12 miles from the Ohio border) in June 2003. That wolf originated in Jackson County, Wisconsin.

Wolf dispersal is expected to continue as wolves travel from the core recovery populations into areas where wolves are extremely sparse or absent. Unless they return to a core recovery population and join or start a pack there, they are unlikely to contribute to wolf recovery. Although it is possible for them to encounter another wolf, mate, and reproduce outside the core wolf areas, the lack of large expanses of unfragmented public land will make it difficult for wolf packs to persist in these areas.

Gray wolf recovery in the eastern United States has been achieved by restoring the species to its core recovery areas within the EDPS, consisting of Minnesota, Wisconsin, and Michigan, to the point where it is not in danger of

extinction now or in the foreseeable future. We do not need to recover the wolf in other areas of the eastern United States to delist the EDPS. Once protection of the Act is removed, States and Tribes may undertake additional wolf recovery programs if they are interested. The Service does not intend to undertake any additional wolf recovery efforts within the States that are part of the EDPS, before or after delisting. We may, however, provide technical assistance to States and tribes who wish to develop wolf recovery plans beyond those that have already been undertaken.

H. Principles of Conservation Biology

Representation, resiliency, and redundancy are three principles of conservation biology that are generally recognized as being necessary to conserve the biodiversity of an area (Shaffer and Stein 2000). These principles apply when establishing goals for individual species' recovery under the Act.

The principle of representation is the need to preserve "some of all available"—every species, every habitat, and every biotic community—so biodiversity can be maintained. At the species level, it also calls for preserving the genetic diversity that remains within a species to maximize its ability to adapt to its environment.

Redundancy and resiliency both deal with preserving "enough to last," but they address it at distinctly different levels. Redundancy addresses the need for a sufficient number of populations of a species, whereas resiliency deals with the necessary size and geographic range of individual populations necessary to ensure the species' persistence over time. Resiliency increases in relation to the geographic range of a population. Therefore, populations with a broad geographic range are more likely to persist in the face of environmental changes and other threats to their existence. The redundancy provided by multiple populations of a species provides additional assurances for its survival. For example, a threat to one population may not affect other populations. If that threat leads to the extirpation of a population, the species would still persist due to the occurrence of more than one population that was not affected by the same set of factors.

Due to the vast array of life forms that are potentially subject to the protections of the Act and the variety of physical, biological, and cultural factors acting on them, these three principles should be applied on a species-by-species basis to determine the appropriate recovery goals. For example, addressing the need for redundancy and resiliency for nonmotile organisms, species of limited range (for example, island or insular species), or those species restricted to linear features of the environment (stream or shoreline species) should be expected to result in recovery goals that are quite different from goals developed for habitat generalist, widely distributed, and/or highly mobile species like the gray wolf.

I. Application of Conservation Biology Principles to the Eastern Gray Wolf DPS

In this proposed rule, we evaluate the current conditions and the conditions in the foreseeable future to determine whether the DPS still warrants listing under the Act. This includes an assessment of progress made to date toward the recovery of the Eastern Gray Wolf DPS. Because the wolf currently resides in only a portion of the DPS, we will determine if recovery has been achieved across a significant portion of the DPS to ensure long-term viability in the DPS. We use the principles of conservation biology discussed above and focus on the size, number, composition, distribution, and threats to wolves in the EDPS to answer the following key question: is the gray wolf in danger of extinction, or likely to become so in the foreseeable future, throughout all or a significant portion of its range within the EDPS?

The original Recovery Plan for the Eastern Timber Wolf and the 1992 revision of that plan (USFWS 1978, 1992a) included criteria to identify whether long-term population viability of gray wolves would be assured in the eastern United States. The 1978 Recovery Plan embodied conservation biology tenets in its recovery criteria that the 1992 revised recovery plan carried forward. The Eastern Timber Wolf Recovery Team (Eastern Team) reviewed these criteria in 1997 and found them to be adequate and sufficient to ensure long-term population viability (Peterson *in litt.* 1997).

The principles of representation, resiliency, and redundancy are fully incorporated into the recovery criteria developed by the Eastern Team. Maintenance of the Minnesota wolf population is vital because the remaining genetic diversity of gray wolves in the eastern United States was carried by the several hundred wolves that survived in the State into the early 1970s. The Eastern Team insisted that the remnant Minnesota wolf population be maintained and expanded to achieve wolf recovery in the eastern United States, and the successful growth of that remnant population has maximized the representation of that genetic diversity among gray wolves in the eastern United States. Furthermore, the Eastern Team specified that the Minnesota wolf population should increase to 1,250–1,400 animals, which would increase the likelihood of maintaining its genetic diversity over the long term, and would provide the resiliency to reduce the adverse impacts of unpredictable chance demographic and environmental events. The Minnesota wolf population currently is estimated to be double that numerical goal.

The Eastern Team members recognized the need for redundancy, and specified that this need be accomplished by establishing a second population of gray wolves in the eastern United States. They identified several potential locations for the second population, including Wisconsin, Michigan, northern New York, and northern Maine. To ensure that the second population also had sufficient resiliency to survive normal and unexpected variations in population size, the Eastern Team specified a minimum size for the second population that would have to be maintained for a minimum of 5 years. If the second population was isolated from the larger Minnesota population, the recovery criteria requires that the second population contain at least 200 wolves for a minimum of 5 years. If, however, the second population were near (*i.e.*, less than 100 miles from) the Minnesota population, the two populations would function as a "metapopulation" rather than as two separate and isolated populations; in that case the second population would be viable if it maintained 100 wolves for at least 5 years. Wolf populations near Minnesota were likely to be viable at this smaller size due to the potential immigration of wolves from Minnesota. Such a second wolf population has developed in Wisconsin and the adjacent Upper Peninsula of Michigan. This second population is less than 200 miles from the Minnesota wolf population, and it has had a late-winter population exceeding 100 animals since 1994.

The number of wolves in the EDPS greatly exceeds the recovery criteria (USFWS 1992a) for (1) a secure wolf population in Minnesota and (2) a second population of 100 wolves for 5 successive years; thus, based on the criteria set by the recovery team in 1992, the DPS contains sufficient numbers and distribution (resiliency and redundancy) to ensure the long-term survival of gray wolves within the DPS. The wolf's numeric and distributional recovery in the EDPS has been achieved.

Next we will consider whether the significant reduction or removal of threats to the gray wolf's continued existence within the DPS demonstrates that the species is not likely to become in danger of extinction nor likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range within the DPS.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for listing, reclassifying, and delisting species. Species may be listed as threatened or endangered if one or more of the five factors described in section 4(a)(1) of the Act threaten the continued existence of the species. A species may be delisted, according to 50 CFR 424.11(d), if the best scientific and commercial data available substantiate that the species is neither endangered nor threatened because of (1) extinction, (2) recovery, or (3) error in the original data, or the data analysis, used for classification of the species. A determination of recovery must be based upon the same five threat factors specified in section 4(a)(1).

For species that are being considered for delisting, this analysis of threats is primarily an evaluation of the threats that would, with a reasonable degree of likelihood, affect the species in the foreseeable future after its delisting and the consequent removal of the Act's protections. This may include currently existing threats whose impacts are sufficiently low so that recovery has been achieved despite their impacts; or they may be threats that are no longer existent, but that may have significant adverse effects after delisting. Although the latter threats are more difficult to identify and evaluate, their potential impacts may preclude the long-term viability of a species.

Our evaluation of the threats to the gray wolf in the EDPS—especially those threats to wolves in the core recovery areas that would occur after removal of the protections of the Act—is substantially based on the wolf management plans and assurances of the States and Tribes. If the gray wolf is federally delisted, State and Tribal management plans will be the major determinant of wolf protection, will set and enforce limits on human take of wolves (*e.g.*, for depredation control), and will determine the overall regulatory framework for the conservation and/or exploitation of gray wolves.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

A popular perception is that wolves inhabit only remote portions of pristine forests or mountainous areas, where human developments and other activities have produced negligible change to the natural landscape. Their extirpation south of Canada and Alaska, except for the heavily forested portions of northeastern Minnesota, reinforced this popular belief. Wolves, however, survived in those areas not because those were the only places with the necessary habitat conditions, but because only in those remote areas were they sufficiently free of the human persecution that elsewhere killed wolves faster than the species could reproduce (Mech 1995).

In the upper Great Lakes region, wolves in the densely forested northeastern corner of Minnesota have expanded into the more agricultural portions of central and northwestern Minnesota, northern and central Wisconsin, and the entire Upper Peninsula of Michigan. Habitats currently being used by wolves span the broad range from the mixed hardwood-coniferous forest wilderness area of northern Minnesota, through sparsely settled, but similar habitats in Michigan's Upper Peninsula and northern Wisconsin, and into more intensively cultivated and livestock-producing portions of central and northwestern Minnesota and central Wisconsin; wolves even approach the fringes of the St. Paul, Minnesota, and Madison, Wisconsin, suburbs. Wolves also travel from Minnesota into the agricultural landscape of North and South Dakota in increasing numbers (Licht and Fritts 1994, Straughan and Fain 2002). Similarly, a radio-collared wolf from the Upper Peninsula of Michigan was recently mistaken for a coyote and killed in north-central Missouri, presumably traveling through expanses of agricultural land along the way (Missouri Department of Conservation 2001). A wolf originating from the Minnesota-Wisconsin-Michigan population was shot and killed in central Illinois, and a young wolf from central Wisconsin was shot in extreme eastern Indiana, and likely traveled through areas of heavy human use as it journeyed south and east around the highly developed land bordering the southern tip of Lake Michigan. Similar long-distance movement of wolves is expected to continue from core areas as these animals attempt to disperse into unoccupied areas. These movements may result in the expansion of the population's range when the wolves locate areas with sufficient prey and potential mates and where human-caused mortality is not too high to preclude their persistence.

Wolf research and the expansion of wolf range over the last three decades have shown that wolves can successfully occupy a wide range of habitats, and they are not dependent on wilderness areas (*i.e.*, areas essentially free of human disturbance) for their survival (Mech 1995). In the past, gray wolf populations occupied nearly every type of habitat north of mid-Mexico that contained large ungulate prey species, including bison, elk, white-tailed deer, mule deer, moose, and woodland caribou. An inadequate prey density and a high level of human persecution apparently are the only factors that limit wolf distribution (Mech 1995). Therefore, virtually any area that has sufficient prey and adequate protection from human-caused mortality could be considered potential gray wolf habitat.

Wisconsin and the Upper Peninsula of Michigan contain large tracts of wolf habitat, estimated at 15,052 km^2 (5,812 mi^2) and 29,348 km^2 (11,331 mi^2), respectively (Mladenoff *et al.* 1995; WI DNR 1999a). In those States, much of the suitable habitat is on public lands (national, State, and county forest lands).

Hearne *et al.* (2003), determined that a viable wolf population (that is, having less than 10 percent chance of extinction over 100 years) should consist of at least 175 to 225 wolves, and they modeled various likely scenarios of habitat conditions in the Upper Peninsula of Michigan and northern Wisconsin through the year 2020 to determine whether future conditions would support a wolf population of that size. Most scenarios of future habitat conditions resulted in viable wolf populations in each State through 2020. When the model analyzed the future conditions in the two States combined, all scenarios produced a viable wolf population through 2020.

Three comparable surveys of wolf numbers and range in Minnesota have been carried out since 1979. These surveys estimated that there were 1,235, 1,500–1,750, and 2,445 wolves in Minnesota in 1979, 1989, and 1998, respectively (Berg and Kuehn 1982, Fuller *et al.* 1992, Berg and Benson 1999) (see Table 1 above). Based on these surveys, wolf numbers in Minnesota increased at annual rates of about 3 percent between 1979–89 and by about 4 to 5 percent between 1989–98. As of the 1998 survey, the number of wolves in Minnesota was

approximately twice the planning goal for Minnesota, as specified in the Eastern Recovery Plan. (Refer to the *Recovery of the Eastern Gray Wolf* section above, for additional details on the increase in numbers and range of Minnesota wolves.)

The MN DNR, in cooperation with the MN Department of Agriculture, completed a Wolf Management Plan (Minnesota Plan) in early 2001 (MN DNR 2001). The Minnesota Plan's stated goal is "to ensure the long-term survival of wolves in Minnesota while addressing wolf-human conflicts that inevitably result when wolves and people live in the same vicinity." It establishes a minimum goal of 1,600 wolves, with provisions to monitor the population and to take prompt corrective action, including habitat protection, if wolf numbers drop below that threshold. The Minnesota Plan divides the State into two wolf management zones—Zones A and B (see Figure 2 below). Zone A corresponds to wolf management zones 1 through 4 (an approximately 30,000 mi^2 area in northeastern Minnesota) in the Service's Eastern Recovery Plan, whereas Zone B constitutes zone 5 in the Eastern Recovery Plan. Within Zone A, wolves would receive strong protection by the State, unless they were involved in attacks on domestic animals. The rules governing the take of wolves to protect domestic animals in Zone B would be less protective than in Zone A.

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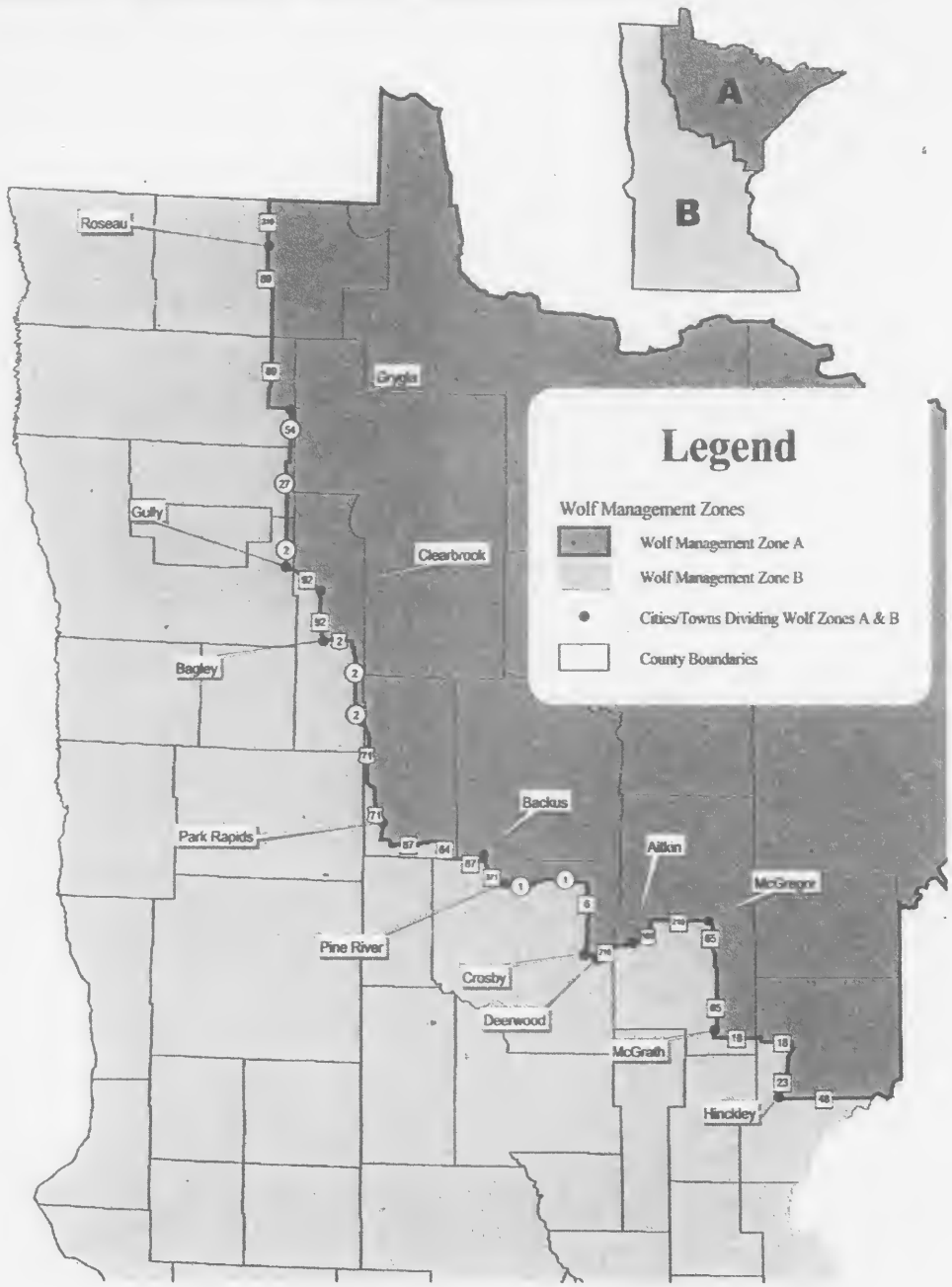
Figure 2. Minnesota wolf management zones.



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The Wisconsin wolf population has increased at an average annual rate of 18 percent since 1985. Wisconsin had at least 335 wild gray wolves in early 2003 (Wydeven *et al.* 2003b), and an estimated 373–410 wolves in the State in 2004, an 11 percent increase from 2003 (*WI DNR* 2004). The Michigan wolf population (excluding Isle Royale) has increased at an average annual rate of about 19 percent between 1995 and 2002 and the 2003 wolf population was at least 321 wolves (Huntzinger *et al.* 2003). The early 2004 wolf population was at least 360 wolves, up 12 percent from last year (MI DNR 2004b). Wolf survey methods in both States focus on wolf packs and may miss many lone individuals, thus underestimating the actual wolf populations. It is safe to say, however, that the combined gray wolf population in the two States (excluding Isle Royale, MI) was over 700 animals in late-winter 2003–04.

Final State wolf management plans for Michigan and Wisconsin have identified habitat protection as one of their top priorities for maintaining a viable wolf population. Both State wolf management plans emphasize the need to manage human access to wolf areas by avoiding increasing road densities, protecting habitat corridors between larger tracts of wolf habitat, avoiding disturbance and habitat degradation in the immediate vicinity of den and rendezvous sites, and maintaining adequate prey species for wolves by suitable habitat and prey harvest regulations.

Both the Michigan Plan and the Wisconsin Plan establish wolf population goals that exceed the viable population threshold identified in the Federal recovery plan for isolated wolf populations, that is, a population of 200 or more wolves for 5 consecutive years (USFWS 1992a). Each State adopted this "isolated population" approach to ensure the continued existence of a viable wolf population within its borders regardless of the condition or existence of wolf populations in adjacent States or Canada. (For more information on State Management Plans, see the *Summary of Factors Affecting the Species* section, factor "D. *The adequacy or inadequacy of existing regulatory mechanisms*" section, below.)

Tribal Lands

Native American tribes and multi-tribal organizations have indicated to the Service that they will continue to conserve wolves on most, and probably all, Native American reservations in the core recovery areas of the EDPS. The wolf retains great cultural significance and traditional value to many tribes and their members (Eli Hunt, Leech Lake Tribal Council, *in litt.* 1998; Mike Schrage, Fond du Lac Resource Management Division, *in litt.* 1998a). Some Native Americans view wolves as competitors for deer and moose, whereas others are interested in harvesting wolves as a furbearer (Schrage, *in litt.* 1998a). Many tribes intend to sustainably manage their natural resources, wolves among them, to ensure that they are available to their descendants. Traditional natural resource harvest practices, however, often include only a minimum amount of regulation by the tribal government (Hunt *in litt.* 1998).

To retain and strengthen cultural connections, some tribes oppose unnecessary killing of wolves on reservations and on ceded lands, even if wolves were to be delisted in the future. For example, because of the strong cultural significance of the wolf to their culture, the Ojibwe people support its protection (James Schlender, Great Lakes Indian Fish and Wildlife Commission, *in litt.* 1998). (For detailed discussion on tribal management of wolves in the EDPS, see the *Summary of Factors Affecting the Species* section, factor "D. *The adequacy or inadequacy of existing regulatory mechanisms*" section, below.)

Although no tribes have completed wolf management plans, based on communications with tribes and tribal organizations, wolves are likely to be adequately protected on tribal lands. Furthermore, the numerical recovery criteria in the Recovery Plan would be achieved (based on the numbers and range of off-reservation wolves) even without the protection of wolves on tribal lands.

Federal Lands

National forests, and the prey species found in their various habitats, are important to wolf conservation and recovery in the core areas of the EDPS. There are five national forests with resident wolves (Superior, Chippewa, Chequamegon-Nicolet, Ottawa; and Hiawatha National Forests) in Minnesota, Wisconsin and Michigan. Their wolf populations range from approximately 20 on the Nicolet portion of the Chequamegon-Nicolet National Forest in northeastern Wisconsin to an estimated 300–400 on the Superior National Forest in northeastern Minnesota. Nearly half of the wolves in Wisconsin currently use the Chequamegon portion of the Chequamegon-Nicolet National Forest. All of these national forests are operated in conformance with standards and guidelines in their management plans that follow the 1992 Recovery Plan's recommendations for the Eastern Timber Wolf (USFWS 1992a). Delisting is not expected to lead to an immediate change in these standards and guidelines; in fact, the Regional Forester for U.S. Forest Service Region 9 is expected to maintain the classification of the gray wolf as a sensitive species for at least 5 years after Federal delisting (Regional Forester, U.S. Forest Service, *in litt.* 2003). The continuation of current national forest management practices will be important in ensuring the long-term viability of gray wolf populations in Minnesota, Wisconsin, and Michigan.

Gray wolves regularly use four units of the National Park System in the EDPS and may occasionally use three or four other units. Although the National Park Service (NPS) has participated in the development of some of the State wolf management plans in this area, NPS is not bound by States' plans. Instead, the NPS Organic Act and the NPS Management Policy on Wildlife authorize the agency to conserve natural and cultural resources and the wildlife present within the parks. Generally, National Park Service management policies require that native species be protected against harvest, removal, destruction, harassment, or harm through human action, although certain parks may allow some harvest in accordance with State management plans. Management emphasis in National Parks after delisting would continue to minimize the human impacts on wolf populations. Thus, because of their responsibility to preserve all wildlife, units of the National Park System can be more protective of wildlife than are State plans and regulations. In the case of the gray wolf, the NPS Organic Act and NPS policies will continue to provide protection even after Federal delisting has occurred.

Voyageurs National Park, along Minnesota's northern border, has a land base of nearly 882 km^2 (340 mi^2). There are 40 to 55 wolves within 7 to 11 packs that exclusively or partially reside within the park. Management and protection of wolves in the park is not likely to change after delisting. The park's management policies require that "native animals will be protected against harvest, removal, destruction, harassment, or harm through human action." To reduce human disturbance, temporary closures around wolf denning and rendezvous sites will be enacted whenever they are discovered in the park. Sport harvest of wolves within the park will be prohibited,

regardless of what may be allowed beyond park boundaries (Barbara West, National Park Service, *in litt.* 2004). A radiotelemetry study conducted between 1987–91 of wolves living in and adjacent to the park found that all mortality inside the park was due to natural causes (*e.g.*, killing by other wolves), whereas all mortality outside the park was human induced (*e.g.*, shooting and trapping) (Gogan *et al.* 1997). If there is a need to control depredating wolves outside the park, which seems unlikely due to the current absence of agricultural activities adjacent to the park, the park would work with the State to conduct control activities where necessary (West in *litt.* 2004).

The wolf population in Isle Royale National Park is described above (*see* the *Recovery of the Eastern Gray Wolf* section). The NPS has indicated that it will continue to closely monitor and study these wolves. This wolf population is very small and isolated from the other EDPS gray wolf populations; it is not considered to be significant to the recovery or long term viability of the gray wolf (USFWS 1992a).

Two other units of the National Park System, Pictured Rocks National Lakeshore and St. Croix National Scenic Riverway, are regularly used by wolves. Pictured Rocks National Lakeshore is a narrow strip of land along Michigan's Lake Superior shoreline; lone wolves periodically use, but do not appear to be year-round residents of, the Lakeshore. If denning occurred after delisting, the Lakeshore would protect denning and rendezvous sites at least as strictly as the MI Plan recommends (Karen Gustin, Pictured Rocks National Lakeshore, *in litt.* 2003). Harvesting wolves on the Lakeshore may be allowed (*i.e.*, if the Michigan DNR allows for harvest in the State), but trapping would not be allowed. The St. Croix National Scenic Riverway, in Wisconsin and Minnesota, is also a mostly linear ownership. At least 18 wolves from 6 packs use the Riverway. The Riverway is likely to limit public access to denning and rendezvous sites and to follow other management and protective practices outlined in the respective State wolf management plans, although trapping will not be allowed on NPS lands except possibly by Native Americans (Robin Maercklein, National Park Service, *in litt.* 2003).

In the EDPS, we currently manage seven units within the National Wildlife Refuge System with wolf activity. Primary among these are Agassiz National Wildlife Refuge (NWR) and Tamarac NWR in Minnesota, Seney NWR in the Upper Peninsula of Michigan, and Necedah NWR in central Wisconsin. Agassiz NWR has had as many as 20 wolves in 2 to 3 packs in recent years, but in 1999 mange and illegal shootings reduced them to a single pack of five wolves and a separate lone wolf. Since 2001, however, two packs with a total of 10 to 12 wolves have been using the refuge. Tamarac NWR has 2 packs, with approximately 18 wolves, using that refuge. In 2003, Seney NWR had one pack with two adults and two pups on the refuge. Necedah NWR currently has 3 packs with a total of 13 to 15 wolves in the packs. Rice Lake NWR, in Minnesota, has one pack of nine animals using the refuge in 2004; other single or paired wolves pass through the refuge frequently (M. Stefanski, USFWS, pers. comm. 2004). In the past ten years, Sherburne and Crane Meadows NWRs in central Minnesota have reliably had intermittent observations and signs of individual wolves each year. To date, no established packs have been documented on either of those refuges. The closest established packs are within 15 miles of Crane Meadows NWR at Camp Ripley Military Installation and 30 miles of Sherburne NWR at Mille Lacs State Wildlife Management Area (J. Holler, USFWS, pers. comm. 2004).

Gray wolves occurring on NWRs in the eastern United States will be monitored and refuge habitat management will maintain the current prey base for them for a minimum of 5 years after delisting. Trapping or hunting by government trappers for depredation control will not be authorized on NWRs. Because of their relatively small size, however, most or all of these packs and individual wolves also spend significant amounts of time off of these NWRs.

Gray wolves also occupy the Fort McCoy military installation in Wisconsin. In 2003, one pack containing five adult wolves occupied a territory that included the majority of the installation; in 2004, the installation had one pack with two adults. Management and protection of wolves on the installation will not change significantly after Federal and/or State delisting. Den and rendezvous sites would continue to be protected; non-deer hunting seasons (*i.e.* coyote) would be closed during the gun-deer season; and current surveys would continue, if resources are available. Fort McCoy has no plans to allow a public harvest of wolves on the installation. (Danny Nobles, Department of the Army, *in litt.* 2004).

The protection afforded to resident and transient wolves, their den and rendezvous sites, and their prey by five national forests, four National Parks, and numerous National Wildlife Refuges in Minnesota, Wisconsin, and Michigan would further ensure the conservation of wolves in the three States after delisting.

In summary, we find that the risk of gray wolf habitat destruction or degradation, a reduction in the range of the gray wolf, or related factors that may affect gray wolf abundance, will not by themselves or in combination with other factors cause the EDPS of the gray wolf likely to become in danger of extinction in the foreseeable future. Ongoing effects of recovery efforts over the past decade, which resulted in a significant expansion of the range of wolves in the EDPS, in conjunction with State, Tribal, and Federal agency wolf management will be adequate to ensure the conservation of the EDPS. These activities are likely to maintain an adequate prey base, preserve denning sites and dispersal corridors, and keep wolf populations well above the numerical recovery criteria established in the Federal Recovery Plan for the Eastern Timber Wolf (USFWS 1992a).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Since their listing under the Act, no gray wolves have been legally killed or removed from the wild in the conterminous 48 States for either commercial or recreational purposes. Some wolves may have been illegally killed for commercial use of the pelts and other parts, but we think that illegal commercial trafficking in wolf pelts or parts and illegal capture of wolves for commercial breeding purposes is rare.

We do not expect the use of wolves for scientific purposes to increase in proportion to total wolf numbers in the EDPS after delisting. Before delisting, the intentional or incidental killing, or capture and permanent confinement, of endangered or threatened gray wolves for scientific purposes has only legally occurred under permits issued by us (for example, under section 10(a)(1)(A) and 10(a)(1)(B) of the Act), under an incidental take statement issued by us in conjunction with a biological opinion completed under section 7(a)(2), under an incidental take permit issued by us pursuant to section 10(a)(1)(B), or by a State agency operating under a cooperative agreement with us pursuant to section 6 of the Act (50 CFR 17.21(c)(5) and 17.31(b)). Although exact figures are not available, throughout the coterminous 48 States, such removals of wolves from the wild have been very limited and probably

comprise an average of fewer than two animals per year since the species was first listed as endangered. In the EDPS, these animals were either taken from the Minnesota wolf population during long-term research activities (about 15 gray wolves) or were accidental takings as a result of research activities in Wisconsin (4 to 5 mortalities and 1 long-term confinement) (William Berg, MN DNR, *in litt.* 1998; Mech, *in litt.* 1998; Wydeven 1998).

The Minnesota DNR plans to encourage the study of wolves with radio-telemetry after delisting, with an emphasis on areas where they expect wolf-human conflicts and where wolves are expanding their range (MN DNR 2001). The handling of animals, including the administration of drugs, may result in some accidental deaths of wolves. We assume that radio-telemetry will not increase significantly above the level observed before delisting in proportion to wolf abundance; adverse effects to wolves associated with such activities has been minimal (see below) and would not constitute a threat to the EDPS.

We believe that no wolves have been legally removed from the wild for educational purposes in recent years. Wolves that are used for such purposes are the captive-reared offspring of wolves that were already in captivity for other reasons.

Refer to the *Depredation Control Programs* section under the *Summary of Factors Affecting the Species* section, factor D. *The adequacy or inadequacy of existing regulatory mechanisms,* below, for discussions of additional wolf mortalities associated with wolf depredation control programs. For a discussion on commercial and recreational hunting and trapping, refer to the *Predation* section under the *Summary of Factors Affecting the Species* section, factor *C. Disease or predation,* below.

C. Disease or Predation

Disease. Many diseases and parasites have been reported for the gray wolf, and several of them have had significant impacts during the recovery of the species in the 48 conterminous United States (Brand *et al.* 1995). These diseases and parasites, and perhaps others, may significantly threaten gray wolf populations in the future. Thus, to avoid a decline caused by diseases or parasites, States and their partners will have to diligently monitor the prevalence of these pathogens and respond to significant outbreaks.

Canine parvovirus (CPV) is a relatively new disease that infects wolves, domestic dogs, foxes, coyotes, skunks, and raccoons. Recognized in the United States in 1977 in domestic dogs, it appeared in Minnesota wolves (based upon retrospective serologic evidence) live-trapped as early as 1977 (Mech *et al.* 1986). Minnesota wolves, however, may have been exposed to the virus as early as 1973 (Mech and Goyal 1995). Serologic evidence of gray wolf exposure to CPV peaked at 95 percent for a group of Minnesota wolves live-trapped in 1989 (Mech and Goyal 1993). In a captive colony of Minnesota wolves, pup and yearling mortality from CPV was 92 percent of the animals that showed indications of active CPV infections in 1983 (Mech and Fritts 1987), demonstrating the substantial impacts this disease can have on young wolves. It is believed that the population impacts of CPV occur via diarrhea-induced dehydration leading to abnormally high pup mortality (WI DNR 1999a).

There is no evidence that CPV has caused a population decline or has had a significant impact on the recovery of the Minnesota gray wolf population. Mech and Goyal (1995), however, found that high CPV prevalence in the wolves of the Superior National Forest in Minnesota occurred during the same years in which wolf pup numbers were low. Because the wolf population did not decline during the study period, they concluded that CPV-caused pup mortality was compensatory, that is, it replaced deaths that would have occurred from other causes, especially starvation of pups. They theorized that CPV prevalence affects the amount of population increase and that a wolf population will decline when 76 percent of the adult wolves consistently test positive for CPV exposure. Their data indicate that CPV prevalence in adult wolves in their study area increased by an annual average of 4 percent during 1979–93 and was at least 80 percent during the last 5 years of their study (Mech and Goyal 1995). Additional unpublished data gathered since 1995 indicate that CPV reduced wolf population growth in that area from 1979 to 1989, but not since that period (Mech *in litt.* 1999). These data provide strong justification for continuing population and disease monitoring.

Canine parvovirus probably stalled wolf population growth in Wisconsin during the early and mid-1980s when numbers there declined or were static and 75 percent of 32 wolves tested positive for CPV. During the following years (1988–96) of population increase, only 35 percent of the 63 wolves tested positive for CPV (WI DNR 1999a). Exposure rates for CPV were 50 percent in live-captured Wisconsin wolves in 1995–96 (WI DNR 1999a). Of the 13 Wisconsin wolves that died and were examined in 2000, none of the deaths were attributed to CPV (Wydeven *et al.* 2001a). Similarly, CPV was not noted for the 22 wolves with a suspected cause of death identified in 2001 (WI DNR unpublished data). Recently, CPV has been confirmed as the cause of death for some pups (Wydeven pers. comm. 2004) and the difficulty of discovering CPV-killed pups, however, must be considered.

Canine parvovirus is considered to have been a major cause of the decline of the isolated Isle Royale, Michigan, population in the mid and late 1980s. The Isle Royale gray wolf population decreased from 23 and 24 wolves in 1983 and 1984, respectively, to 12 and 11 wolves in 1988 and 1989, respectively. The wolf population remained in the low to mid-teens through 1995. Factors other than disease, however, may be causing, or contributing to, a low level of reproductive success, including a low level of genetic diversity and a prey population composed of young healthy moose that may make it difficult to secure sufficient prey for pups.

There are no data showing any CPV-caused population impacts to the larger gray wolf population on the Upper Peninsula of Michigan (Peterson *et al.* 1998, Hammill pers. comm. 2002, Beyer pers. comm. 2003). Mortality data is primarily collected from collared wolves, however, which until recently received CPV inoculations. Therefore, mortality data for the Upper Peninsula should be interpreted cautiously.

Sarcoptic mange is caused by a mite infection of the skin. The irritation caused by the feeding and burrowing mites results in scratching and then severe fur loss, which in turn can lead to mortality from exposure during severe winter weather. In a long-term Alberta, Canada, wolf study, higher wolf densities were correlated with increased incidence of mange, and pup survival decreased as the incidence of mange increased (Brand *et al.* 1995).

From 1991 to 1996, 27 percent of live-trapped Wisconsin wolves exhibited symptoms of mange. During the winter of 1992–93, 58 percent showed symptoms, and a concurrent decline in the Wisconsin wolf population was attributed to mange-induced mortality (WI DNR 1999a). Seven Wisconsin wolves died of mange from 1993 through October 15, 1998, and severe fur loss affected five other wolves that died from other causes. During that period, mange was the third largest cause of death in Wisconsin wolves,

behind trauma (usually vehicle collisions) and shooting (Nancy Thomas *in litt.* 1998).

The prevalence of mange and its impacts on the wolf population have increased in Wisconsin. During the 12-month period from April 2002 through March 2003, mange caused the death of 7 of the 63 Wisconsin wolves that were found dead, and 1 wolf was euthanized because of the disease. (Depredation control took 17 Wisconsin wolves during this same period, while 17 died from motor vehicle collisions, 15 were shot, 1 drowned, and 1 was killed by other wolves.) Wolves nearing death from mange generally crawl into dense cover and are difficult to discover if they are not radio-tracked (Shelley and Gehring 2002). During the winter of 2002–03, approximately 36 percent of the radio-collared wolves being tracked by WI DNR died from mange (Wydeven *et al.* 2003a, 2004). Other observations showed that some mangy wolves are able to survive the winter (Wydeven *et al.* 2000b, 2001a).

Pup survival during their first winter is believed to be strongly affected by mange. Wolf mortality from mange in Wisconsin was fairly high in 2003 and may have had more severe effects on pup survival than in previous years. The prevalence of the disease may have contributed to the relatively small population increase in 2003 (2.4 percent in 2003 as compared to the average 18 percent since 1985). So far, though, mange has not caused a decline in the State's wolf population, and even though the rate has slowed in recent years, the wolf population continues to increase despite the continued prevalence of mange in Wisconsin wolves (Wydeven *et al.* 2003b). Although mange mortality may not be the primary determinant of wolf population growth in the State, the impacts of mange in Wisconsin need to be closely monitored as identified in the State wolf management plan.

At least seven wild Michigan wolves died from mange during 1993–97, making it the most common disease of Michigan wolves. From 1999–01, mange-induced hypothermia killed all seven Michigan wolves whose cause of death was attributed to disease (Hammill *in litt.* 2002). Before 2004, MI DNR treated all captured wolves with Ivermectin if they showed signs of mange. In addition, MI DNR vaccinated all captured wolves against CPV and canine distemper virus (CDV), and administered antibiotics to combat potential leptospirosis infections. These inoculations will be discontinued in 2004 to provide more natural biotic conditions and to provide biologists with an unbiased estimate of disease-caused mortality rates in the population (Beyer per. comm. 2004).

Wisconsin wolves similarly had been treated with Ivermectin and vaccinated for CPV and CDV when captured, but the practice was stopped in 1995 to allow the wolf population to experience more natural biotic conditions. Since that time, Ivermectin has been administered only to captured wolves with severe cases of mange. In the future, Ivermectin and vaccines will be used sparingly on Wisconsin wolves, but will be used to counter significant disease outbreaks (Wydeven *in litt.* 1998).

Mange has not been documented to be a significant disease problem in Minnesota. Several packs in the Ely and Park Rapids areas, however, are known to suffer from mange, and at Agassiz NWR in northwestern Minnesota wolves were reduced from as many as 20 animals in 2 to 3 packs in the early 1990s to a single pack of 5 wolves and a separate single wolf in 1999, primarily as a result of mange.

Lyme disease, caused by a spirochete, is another relatively recently recognized disease, first documented in New England in 1975; it may have occurred in Wisconsin as early as 1969. It is spread by ticks that pass the infection to their hosts when feeding. Host species include humans, horses, dogs, white-tailed deer, white-footed mice, eastern chipmunks, coyotes, and wolves. The prevalence of Lyme disease in Wisconsin wolves averaged 70 percent of live-trapped animals in 1988–91, but dropped to 37 percent during 1992–97. Although there are no data showing wolf mortalities from Lyme disease, it may be suppressing population growth through decreased wolf pup survival.

Other diseases and parasites, including rabies, canine distemper, canine heartworm, blastomycosis, bacterial myocarditis, granulomatous pneumonia, brucellosis, leptospirosis, bovine tuberculosis, hookworm, dog lice, coccidiosis, and canine hepatitis, have been documented in wild gray wolves, but their impacts on future wild wolf populations are not likely to be significant (Brand *et al.* 1995, Hassett *in litt.* 2003, Johnson 1995, Mech and Kurtz 1999, Thomas *in litt.* 1998, WI DNR 1999a). Continuing wolf range expansion, however, likely will provide new avenues for exposure to several of these diseases, especially canine heartworm, rabies, and bovine tuberculosis (Thomas *in litt.* 2000), further emphasizing the need for disease monitoring programs.

In aggregate, diseases and parasites were the cause of 9 percent of the diagnosed mortalities of radio-collared wolves in Michigan from 1992 through 2003 (MI DNR unpublished data 2004a) and 26 percent of the diagnosed mortalities of radio-collared wolves in Wisconsin from 1979 through June 2003 (Hassett *in litt.* 2003).

Several of the diseases and parasites are known to be spread by wolf-to-wolf contact. Therefore, their incidence may increase as wolf densities increase in newly colonized areas. Because wolf densities generally are relatively stable following the first few years of colonization, wolf-to-wolf contacts will not likely lead to a continuing increase in disease prevalence (Mech *in litt.* 1998).

Disease and parasite impacts may increase because several wolf diseases are carried and spread by domestic dogs. This transfer of diseases and parasites from domestic dogs to wild wolves may increase as gray wolves continue to colonize non-wilderness areas (Mech *in litt.* 1998). Heartworm, CPV, and rabies are the main concerns (Thomas *in litt.* 1998).

Disease and parasite impacts are a recognized concern of the Minnesota, Michigan, and Wisconsin State DNRs. The Michigan Gray Wolf Recovery and Management Plan states that necropsies will be conducted on all dead wolves, and that all live wolves that are handled will be examined, with blood, skin, and fecal samples taken to provide disease information (MI DNR 1997). Similarly, the Wisconsin Wolf Management Plan states that as long as the wolf is State-listed as a threatened or endangered species, the WI DNR will conduct necropsies of dead wolves and test a sample of live-captured wolves for diseases and parasites. The goal will be to capture and screen 10 percent of the State wolf population for diseases annually. After State delisting, disease monitoring will be scaled back because the percentage of the wolf population that is live-trapped each year will decline. The State will continue to test for disease and parasite loads through periodic necropsy and scat analyses. The plan also recommends that all wolves live-trapped for other studies should have their health monitored and reported to the WI DNR wildlife health specialists (WI DNR 1999a).

The Minnesota Wolf Management Plan (MN DNR 2001) states that MN DNR "will collaborate with other investigators and continue monitoring disease incidence, where necessary, by examination of wolf carcasses obtained through depredation control programs, and also through blood/tissue physiology work conducted by DNR and the U.S. Geological Survey. DNR will

also keep records of documented and suspected incidence of sarcoptic mange." In addition, it will initiate "(R)egular collection of pertinent tissues of live captured or dead wolves" and periodically assess wolf health "when circumstances indicate that diseases or parasites may be adversely affecting portions of the wolf population." Unlike Michigan and Wisconsin, Minnesota has not established minimum goals for the proportion of its wolves that will be assessed for disease nor does it plan to treat any wolves, although it does not rule out these measures. Minnesota's less intensive approach to disease monitoring and management seems warranted in light of its much greater abundance of wolves than in the other two States.

In summary, several diseases have had significant impacts on wolf population growth in the Great Lakes region in the past. These impacts have been both direct, resulting in mortality of individual wolves, and indirect, by reducing longevity and fecundity of individuals or entire packs or populations. Canine parvovirus stalled wolf population growth in Wisconsin in the early and mid-1980s and has been implicated as a contributing factor in declines of the isolated Isle Royale population in Michigan. Sarcoptic mange has affected wolf recovery in Michigan's Upper Peninsula and in Wisconsin over the last ten years, and is recognized as a continuing problem. Despite these and other diseases and parasites, however, the overall trend for wolf populations in the EDPS is upward. Wolf management plans for Minnesota, Michigan, and Wisconsin include disease monitoring that we expect to identify future disease and parasite problems in time to allow corrective action to avoid a significant decline in overall population viability. We conclude that disease will not prevent the continuation of wolf recovery in these States. Delisting wolves in the EDPS will not change the incidence or impacts of disease on these wolves.

Predation. No wild animals habitually prey on gray wolves. Large prey, such as deer or moose (Mech and Nelson 1989), or other predators, such as mountain lions (*Felis concolor*), occasionally kill wolves, but this has only been rarely documented. Humans, however, are highly effective predators of gray wolves.

Wolves kill other wolves, most commonly when packs encounter and attack a dispersing wolf as an intruder or when two packs encounter each other along a territorial boundary. This form of mortality is likely to increase as more of the available wolf habitat becomes saturated with wolf pack territories, as is the case in northeastern Minnesota. From October 1979 through June 1998, 7 (13 percent) of the diagnosed mortalities of radio-collared Wisconsin wolves resulted from wolves killing wolves (Wydeven 1998). Gogan *et al.* (1997) studied 31 radio-collared wolves from 1987–91 and found that 3 (10 percent) were killed by other wolves. This behavior is normal in healthy wolf populations and indicates that the wolf population is at, or approaching, its carrying capacity for the area.

Humans have functioned as highly effective predators of the gray wolf. We attempted to eliminate the wolf entirely in earlier times and the United States Congress passed a wolf bounty that covered the Northwest Territories in 1817. Bounties on wolves subsequently became the norm for States across the species' range. In Michigan, an 1838 wolf bounty became the ninth law passed by the First Michigan Legislature; this bounty remained in place until 1960. A Wisconsin bounty was instituted in 1865 and then repealed about the time wolves were extirpated from the State in 1957. Minnesota maintained a wolf bounty until 1965.

Subsequent to the gray wolf's listing as a federally endangered species, the Act and State endangered species statutes prohibited the killing of wolves except under extenuating circumstances, such as in defense of human life, for scientific or conservation purposes, or under several special regulations intended to reduce wolf depredations of livestock. This reduction in human-caused mortality is the main cause of the wolf's reestablishment in parts of its historical range. It is clear, however, that illegal killing of wolves continued.

If delisted, wolves in Minnesota, Wisconsin, and Michigan will continue to receive protection from general human persecution by State laws and regulations. In Michigan, wolves would continue to be protected under the State's Endangered Species Protection Law after Federal delisting. Michigan has met the criteria established in their management plan for State delisting, and, during that delisting process, intends to amend the Wildlife Conservation Order to grant "protected animal" status to the gray wolf. That status would "prohibit take, establish penalties and restitution for violations of the Order, and detail conditions under which lethal depredation control measures could be implemented" (Rebecca Humphries, MI DNR, *in litt.* 2004). Following State delisting in Wisconsin, the wolf will be classified as a "protected wild animal," with protections that provide for fines of $1,000 to $2,000 for unlawful hunting. Minnesota DNR will consider population management measures, including public hunting and trapping, but not sooner than five years after Federal delisting (MN DNR 2001). In the meantime, wolves could only be legally taken in Minnesota for depredation management or public safety and Minnesota plans to increase its capability to enforce laws against take of wolves (MN DNR 2001).

Illegal killing of wolves occurs for a number of reasons. Some of these killings are accidental (*e.g.*, wolves are hit by vehicles, mistaken for coyotes and shot, or caught in traps set for other animals); some of these accidental killings are reported to State, Tribal, and Federal authorities. Most illegal killings, however, likely are intentional and are never reported to authorities. Radiotelemetry studies (*e.g.*, Gogan *et al.* 1997) are necessary to accurately estimate illegal mortality (Fuller 1989).

In Wisconsin, human-caused mortalities accounted for 58 percent of the diagnosed mortalities on radio-collared wolves from October 1979 through June 1998. One-third of all the diagnosed mortalities, and 55 percent of the human-caused mortalities, were from shooting. Another 12 percent of all the diagnosed mortalities resulted from vehicle collisions. Vehicle collisions have increased as a percentage of radio-collared wolf mortalities. During the October 1979 through June 1995 period, only 1 of 27 known mortalities was from that cause; but from July 1995 through June 1998, 5 of the 26 known mortalities resulted from vehicle collisions (WI DNR 1999a, Wydeven 1998); and from April 2000 through March 2001, 10 of 23 known mortalities were from that cause (Wydeven *et al.* 2000b, 2001a). Only 2 of those 23 mortalities were from shootings, but an additional 4 Wisconsin wolves were shot during the State's 2001 deer hunting season (WI DNR 2001).

In the Upper Peninsula of Michigan, human-caused mortalities accounted for 75 percent of the diagnosed mortalities, based upon 34 wolves recovered from 1960 to 1997. Twenty-eight percent of all the diagnosed mortalities and 38 percent of the human-caused mortalities were from shooting. In the Upper Peninsula during that period, about one-third of all the known mortalities were from vehicle collisions (MI DNR 1997). During the 1998 Michigan deer hunting season, 3 radio-collared wolves were shot and killed, resulting in one arrest and conviction (Hammill *in litt.* 1999,

Michigan DNR 1999b). During the subsequent 3 years, 8 additional wolves were killed in Michigan by gunshot, and the cut-off radio-collar from a ninth animal was located, but the animal was never found. These incidents resulted in 6 guilty pleas, with 3 cases remaining open. Data from 1992 to 2002 show that human-caused mortalities still account for the majority of the diagnosed mortalities (66 percent) in Michigan. Deaths from vehicular collisions, however, now greatly outnumber shootings. Twenty-four percent of the diagnosed mortalities were from shootings (37 percent of the human-caused mortalities), while 41 percent of the diagnosed Michigan mortalities were from vehicular collisions (Beyer *in litt.* 2004). When viewing these figures, it is important to remember that there is a much greater likelihood of finding a vehicle-killed wolf than there is of finding a wolf that has been illegally shot, unless the animal was being radio-tracked.

A continuing increase in wolf mortalities from vehicle collisions, both in actual numbers and as a percent of total diagnosed mortalities, is expected as wolves continue their colonization of areas with more human developments and a denser network of roads and vehicle traffic.

Minnesota (MN DNR 2001) plans to reduce or control illegal mortality of wolves through education, increased enforcement of the State's wolf laws and regulations, by discouraging new road access in some areas, and by maintaining a depredation control program that includes compensation for livestock losses. MN DNR plans to use a variety of methods to encourage and support education of the public about the effects of wolves on livestock, wild ungulate populations, and human activities and the history and ecology of wolves in the State (MN DNR 2001:30–31). These are all measures that have been in effect for years in Minnesota, although "increased enforcement" of State laws against take of wolves (MN DNR 2001) would replace enforcement of the Endangered Species Act's take prohibitions. We do not expect the State's efforts to reduce illegal take of wolves from existing levels, but these measures may be crucial in ensuring that illegal mortality does not increase.

The likelihood of illegal take increases in relation to road density and human population density, but changing attitudes towards wolves may allow them to survive in areas where road and human densities were previously thought to be too high (Fuller *et al.* 2003). MN DNR does not plan to reduce current levels of road access, but would encourage managers of land areas large enough to sustain one or more wolf packs to "be cautious about adding new road access that could exceed a density of one mile of road per square mile of land, without considering the potential effect on wolves' (MN DNR 2001).

MN DNR acknowledges that increased enforcement of the State's wolf laws and regulations would be dependent on increases in staff and resources, additional cross-deputization of tribal law enforcement officers, and continued cooperation with Federal law enforcement officers. They specifically propose the addition of three Conservation Officers "strategically located within current gray wolf range in Minnesota" whose priority duty would be to implement the gray wolf management plan (MN DNR 2001). In 2000, MN DNR had 78 conservation officer stations in the State's wolf range (MN DNR *in litt.* 2000).

Two Minnesota studies provide insight into the extent of human-caused wolf mortality before and after the species' listing. On the basis of bounty data from a period that predated wolf protection under the Act by 20 years, Stenlund (1955) found an annual human-caused mortality rate of 41 percent. Fuller (1989) provided 1980–86 data from a north-central Minnesota study area and found an annual human-caused mortality rate of 29 percent, a figure which includes 2 percent mortality from legal depredation control actions. Drawing conclusions from comparisons of these two data sets, however, is difficult due to the confounding effects of habitat quality, exposure to humans, prey density, differing time periods, and vast differences in study design. Although these figures provide support for the contention that human-caused mortality decreased after the wolf's protection under the Act, it is not possible at this time to determine if human-caused mortality (apart from mortalities from depredation control) has significantly changed over the 25-year period that the gray wolf has been listed as threatened or endangered.

Interestingly, when compared to his 1985 survey, Kellert's 1999 public attitudes survey showed an overall increase in the number of northern Minnesota residents who reported having killed, or knowing someone who had killed, a wolf. However, members of groups that are more likely to encounter wolves—farmers, hunters, and trappers—reported a decrease in the number of such incidents (Kellert 1985, 1999). Because of these apparently conflicting results, and differences in the methodology of the two surveys, drawing any clear conclusions on this issue is difficult.

It is important to note that, despite the difficulty in measuring the extent of illegal killing of wolves, all sources of wolf mortality, including legal (*e.g.*, depredation control) and illegal human-caused mortality, have not been of sufficient magnitude to stop the continuing growth of the wolf population. Since 1993, wolf numbers have increased annually by about 4 percent in Minnesota and by about 28 percent in Wisconsin and Michigan. This indicates that total gray wolf mortality continues to be exceeded by wolf recruitment (that is, reproduction and immigration) in these areas.

The wolf population in Wisconsin and Michigan will stop growing at some point when it has saturated the suitable habitat and is checked in less suitable areas by depredation management, incidental mortality (*e.g.*, road kill), illegal killing, and other means. At that time, we should expect to see population declines in some years that reflect short-term fluctuations in birth and mortality rates. Adequate wolf monitoring programs, however, as described in the Michigan, Wisconsin, and Minnesota wolf management plans are likely to identify mortality rates and/or low birth rates that are high enough to warrant corrective action. The goals of all three State wolf management plans are to maintain wolf populations well above the numbers recommended in the Federal Eastern Recovery Plan to ensure long-term viable wolf populations (the State management plans recommend a minimum wolf population of 1,600 in Minnesota, 350 in Wisconsin, and 200 in Michigan).

In Wisconsin and Michigan, the rapidly expanding wolf population is beginning to cause more depredation problems. From 1979 through 1989, there were only 5 cases (an average of 0.4/year) of verified wolf depredations in Wisconsin. Between 1990 and 1997, there were 27 depredation incidents in the State (an average of 3.4/year), and 82 incidents (an average of 16.4 per year) occurred from 1998–02. Data from Michigan show a similar increase in confirmed wolf depredations on livestock and dogs: 1 in 1996, 3 in 1998, 3 in 1999, 5 in 2000, 6 in 2001, and 22 in 2003 (MI DNR unpublished data).

The WI DNR compensates livestock and pet owners for confirmed losses to depredating wolves. The compensations have been funded from the endangered resources tax check-off and sales of the endangered resources license plates. Likewise, in Michigan, livestock owners are compensated when they lose

livestock as a result of a confirmed wolf depredation. Currently there are two compensation programs in Michigan, one implemented by Michigan Department of Agriculture (MI DA) and another set up through donations and held by the International Wolf Center (IWC), a non-profit organization. From the inception of the program to 2000, MI DA paid 90 percent of full market value of depredated livestock value at the time of loss. The IWC account was used to pay the remaining 10 percent from 2000 to 2002 when MI DA began paying 100 percent of the full market value of depredated livestock. This MI DA program is funded annually through State appropriations. The MI DNR plans to continue cooperating with MI DA and other organizations to maintain the wolf depredation compensation program (Pat Lederle, MI DNR, pers. comm. 2004).

Under a Minnesota statute, the Minnesota Department of Agriculture (MDA) compensates livestock owners for full market value of livestock that wolves have killed or severely injured. A university extension agent or conservation officer must confirm that wolves were responsible for the depredation. The agent or officer also evaluates the livestock operation for conformance to a set of Best Management Practices (BMPs) designed to minimize wolf depredation and provides operators with an itemized list of any deficiencies relative to the BMPs. The Minnesota statute also requires MDA to periodically update its BMPs to incorporate new practices that it finds would reduce wolf depredation.

Wolves were largely eliminated from the Dakotas in the 1920s and 1930s and were rarely reported from the mid-1940s through the late 1970s. Ten wolves were killed in these two States from 1981 to 1992 (Licht and Fritts 1994). Six more were killed in North Dakota since 1992, with four of these mortalities occurring in 2002 and 2003; in 2001, one wolf was killed in Harding County in extreme northwestern South Dakota. The number of reported sightings of gray wolves in North Dakota is increasing. From 1993–98, six wolf depredation reports were investigated in North Dakota, and adequate signs were found to verify the presence of wolves in two of the cases. A den with pups was also documented in extreme north-central North Dakota near the Canadian border in 1994. From 1999–2003, 16 wolf sightings/depredation incidents in North Dakota were reported to USDA/APHIS-Wildlife Services, and 9 of these incidents were verified. Additionally, one North Dakota wolf sighting was confirmed in early 2004. USDA/APHIS-Wildlife Services also confirmed a wolf sighting along the Minnesota border near Gary, South Dakota, in 1996, and a trapper with the South Dakota Game, Fish, and Parks Department sighted a lone wolf in the western Black Hills in 2002. Several other unconfirmed sightings have been reported from these States, including two reports in South Dakota in 2003. Wolves killed in North and South Dakota are most often shot by hunters after being mistaken for coyotes, or were killed by vehicles. The 2001 mortality in South Dakota and one of the 2003 mortalities in North Dakota were caused by M–44 "coyote getter" devices that had been legally set in response to complaints about coyotes.

Additional discussion of past and future wolf mortalities in the EDPS arising from depredation control actions is found under the *Summary of Factors Affecting the Species* section, factor D, *The inadequacy of existing regulatory mechanisms.*

Despite human-caused mortalities of wolves in Minnesota, Wisconsin, and Michigan, these wolf populations have continued to increase in both numbers and range. If wolves in the EDPS are delisted, as long as other mortality factors do not increase significantly and monitoring is adequate to document, and if necessary counteract, the effects of excessive human-caused mortality, the Minnesota-Wisconsin-Michigan wolf population will not decline to nonviable levels in the foreseeable future as a result of human-caused killing or other forms of predation.

D. The Adequacy or Inadequacy of Existing Regulatory Mechanisms

Human activities may affect wolf abundance and population viability by degrading or reducing the wolf habitat and range (Factor A); by excessive mortality via commercial or recreational harvest (Factor B); by acting as a predator of wolves and killing them for other reasons such as depredation control, to reduce perceived competition for wild ungulates, or in the interests of human safety (Factor C); by acting as a vector for wolf-impacting diseases or parasites (Factor C); and in other ways (Factor E). Following Federal delisting under the Act, however, many of these human activities would be regulated or prohibited by various regulatory mechanisms. Therefore, with only a few exceptions, human activities with the potential to impact wolf populations are primarily discussed under this factor.

State Wolf Management Planning. In late 1997 the Michigan Wolf Management Plan was completed and received the necessary State approvals. The Wisconsin Natural Resources Board approved the Wisconsin Wolf Management Plan in October 1999. Our biologists have participated on the teams that developed these two State plans and will continue to participate in revising the plans, so we are familiar with their evolution and likely future direction. We think these plans provide sufficient information for us to analyze the future threats to the gray wolf population in Wisconsin and Michigan after Federal delisting.

The MN DNR prepared a Wolf Management Plan and an accompanying legislative bill in early 1999 and submitted them to the Minnesota legislature. The legislature, however, failed to approve the Minnesota Plan in the 1999 session. In early 2000, the MN DNR drafted a second bill that would result in somewhat different wolf management and protection than the 1999 bill. The legislature did not pass the 2000 Minnesota wolf management bill, but instead passed separate legislation directing the DNR to prepare a new management plan based upon various new provisions that addressed wolf protection and the take of wolves. The MN DNR completed the Minnesota Wolf Management Plan (MN Plan) in early 2001 (MN DNR 2001). Although the Minnesota legislation and the MN Plan were not available in time to play a role in our 2003 reclassification, they were carefully evaluated in preparation of this proposal to delist gray wolves in the EDPS.

The MN Plan is based, in part, on the recommendations of a wolf management roundtable and on a State wolf management law enacted in 2000. This law and the Minnesota Game and Fish Laws constitute the basis of the State's authority to manage wolves. Key components of the plan are population monitoring and management, management of wolf depredation of domestic animals, management of wolf habitat and prey, enforcement of laws regulating take of wolves, public education, and increased staffing.

MN DNR plans to allow wolf numbers and distribution to naturally expand and if any winter population estimate is below 1,600 wolves it would take actions to "assure recovery" to 1,600 wolves. MN DNR will continue to monitor wolves in Minnesota to determine whether such intervention is necessary. It is currently conducting a statewide population survey (winter of 2003–04) and plans to repeat the survey in the fifth year after delisting and at subsequent five-year intervals. Preliminary results of the 2003–04 survey may be available in early summer 2004 (J. Erb, MN DNR, pers. comm. 2004).

Following delisting, Minnesota's management of wolves would differ from their current management under the Act. To guide wolf management under the Act, the Service divided Minnesota into five zones and established specific population goals for each of Zones 1–4 (The 1992 Recovery Plan's numeric goal for Minnesota was 1,251–1,400); the Service's goal for Zone 5, which consists of all of Minnesota outside of Zones 1–4, was "no wolves" (USFWS 1992a:28). Currently no control of depredating wolves is allowed in Zone 1, whereas in Zones 2–5 employees or agents of the Service or MN DNR may take wolves in response to depredations of domestic animals within one-half mile of the depredation site. Young-of-the-year captured on or before August 1 of that year must be released. The regulations that allow for this take [50 CFR 17.40(d)(2)(i)(B)(*4*)] do not specify a maximum duration for depredation control, but USDA-Wildlife Services follows informal guidelines under which they trap for no more than 10–15 days, except at sites with repeated or chronic depredation, where they may trap for up to 30 days (William Paul, USDA/APHIS-Wildlife Services, pers. comm., 2004).

The Minnesota plan divides the State into Zones A and B. Zone A comprises the current Zones 1–4 and Zone B is identical to the current Zone 5 (*i.e.*, it comprises the rest of the State). The most recent statewide survey conducted during the winter of 1997–98 found that there were approximately 2,025 wolves in Zone A and 425 in Zone B (M. DonCarlos, MN DNR, *in litt.* 2000).

Government control of wolf depredation would be modified under Minnesota's Wolf Management Plan, especially in Zone B. In Zone A, if DNR verifies that a wolf destroyed any livestock, domestic animal, or pet, trained and certified predator controllers may take wolves within a one-mile radius of the depredation site for up to 60 days. In Zone B, predator controllers may take wolves for up to 214 days after MN DNR opens a depredation control area, depending on the time of year. The DNR may open a control area in Zone B anytime within five years of a verified depredation loss.

The Minnesota plan would also allow for private wolf depredation control. Statewide, persons may shoot or destroy a gray wolf that poses an immediate threat to their livestock, guard animals, or domestic animals on lands that they own, lease, or occupy. Immediate threat is defined as "stalking, attacking, or killing." To protect their domestic animals in Zone B, however, persons do not have to wait for an immediate threat to take wolves. At anytime in Zone B, persons who own, lease, or manage lands may take wolves on those lands. They may also employ a predator controller to trap a gray wolf on their land or within one mile of their land to protect their livestock, domestic animals, or pets. The State will continue to provide compensation for livestock taken by wolves. The MN Plan would also allow persons to harass wolves anywhere in the State within 500 yards of "people, buildings, dogs, livestock, or other domestic pets or animals" (MN DNR 2001:23). Harassment may not include physical injury to a wolf. Owners of domestic pets may also kill wolves posing an immediate threat to pets under their supervision on lands that they do not own or lease, although such actions are subject to local ordinances, trespass law, and other applicable restrictions. MN DNR will investigate any private taking of wolves in Zone A.

In summary, the key differences between the current management of wolves in Minnesota under the ESA and their proposed management under MN DNR's wolf plan are:

- Activities to control depredating wolves would be allowed within one mile of depredation sites instead of one-half mile of these sites.
- Persons would be allowed to harass wolves within 500 yards of persons, buildings, and domestic animals anywhere in the State.
- Persons would be allowed to destroy wolves posing an immediate threat to domestic animals on lands that they own, manage, or lease.
- Persons would be allowed to destroy wolves posing an immediate threat to domestic pets under the supervision of the owner statewide, subject to other restrictions.
- Persons may destroy wolves in absence of an immediate threat in Zone B to "protect their domestic animals."
- Minnesota DNR will consider population management measures, including public hunting and trapping, but not sooner than five years after Federal delisting.

The Wisconsin Wolf Management Plan (WI Plan) sets a management goal of 350 wolves, well above the 200 wolves specified in the Federal recovery plan for a viable isolated wolf population. The WI Plan allows for differing levels of management within four separate management zones (see figure 3 below). The two zones that now contain most of the wolf population would be managed to allow limited lethal control on problem wolves when the population exceeds 250, but generally lethal control would not be exercised on wolves inhabiting large blocks of public land. In the other two zones, liberal controls would be allowed for problem wolves, with the least restrictive zone allowing for almost no protections; one of these zones had five packs of wolves in 2003, and the other had only lone wolves confirmed. Other components of the WI Plan include monitoring, education, reimbursement for depredation losses, citizen stakeholder involvement, habitat management, coordination with the Tribes, and the development of new legal protections. If the population exceeds 350, a proactive depredation control program would be allowed in all four zones, and public harvest would be considered.

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Figure 3. Wisconsin wolf management zones.

The Wisconsin Plan sets a goal of 250 wolves as the trigger for State delisting, a process that is nearly complete. The Plan calls for re-listing as State threatened if the population falls to less than 250 for three years, and reclassification as endangered if the population falls below 80 for one year. Given the likely decline and ultimate termination in Federal funding for monitoring in the future, it is imperative that an effective, yet cost-efficient method for detecting wolf population changes be put in place. A methodology similar to that implemented in Minnesota was tested in Wisconsin during the winter of 2003–04, but its efficacy remains unknown at this time.

Some members of the Wisconsin public have already advocated that the wolf be subject to public harvest following State and Federal delisting. The Wisconsin Plan indicates that any public harvest would require a separate action by the Wisconsin State legislature, and significant public input. The fact that the Wisconsin Plan calls for State listing as threatened if the population falls to less than 250 for three years provides reasonable assurance that public harvest is not likely to threaten the persistence of the population.

The Michigan Gray Wolf Recovery and Management Plan (MI Plan) details wolf management actions needed and wolf recovery goals in Michigan. Necessary wolf management activities detailed in the plan include wolf education and outreach, population and health monitoring, research, depredation control, and habitat management. The MI Plan contains a long-term minimum goal of 200 wolves (excluding Isle Royale wolves) and identifies 800 wolves as the estimated carrying capacity of suitable areas on the Upper Peninsula (MI DNR 1997). ("Carrying capacity" is the number of animals that an area is able to support over the long term; for wolves it is primarily based on the availability of prey animals and competition from other wolf packs.) Under the MI Plan, wolves in the State would be considered recovered when a minimal sustainable population of 200 wolves is maintained for 5 consecutive years. The Upper Peninsula has had more than 200 wolves since the winter of 1999–2000. Therefore, the gray wolf is eligible for State delisting under the MI Plan in 2004. In Michigan, however, State delisting cannot occur until after Federal delisting. During the State delisting process, Michigan intends to amend its Wildlife Conservation Order to grant "protected animal" status to the gray wolf. That status would "prohibit take, establish penalties and restitution for violations of the Order, and detail conditions under which lethal depredation control measures could be implemented" (Rebecca Humphries, MI DNR, *in litt.* 2004). Population management, except for depredation control, is not addressed in the MI Plan beyond statements that the wolf population may need to be controlled by lethal means at some future time, when the cultural carrying capacity is reached or approached. The MI Plan calls for re-evaluation of the plan at 5-year intervals. The MI DNR is currently evaluating the Plan's direction and developing recommendations for revisions (Beyer pers. comm.).

The complete text of the Wisconsin, Michigan, and Minnesota wolf management plans, as well as our summaries of those plans, can be found on our Web site (*see* **FOR FURTHER INFORMATION CONTACT** section above).

Depredation Control Programs in the Core Recovery Areas. Wolves that are injuring and/or killing domestic animals in the core recovery areas have been controlled in different ways, depending upon their listing status under the Act and their importance to our gray wolf recovery programs. In Minnesota, depredating wolves have been lethally controlled under a special regulation since they were listed as threatened in 1978. (Details on the Minnesota depredation control program are provided later in this subsection.)

Until 2003, when wolves in Wisconsin and Michigan were reclassified to threatened (and therefore eligible for a section 4(d) special regulation), depredating wolves in those States had been trapped and released in a suitable and unoccupied area some distance from the depredation location. Lethal depredation control is now in effect in Wisconsin and Michigan under special management regulations and section 4(d) of the Act (68 FR 15804). The decreasing effectiveness of, and increasing opposition to, translocation of depredating wolves, as well as the high monetary and labor costs of such attempts, led to the adoption of lethal control.

With the Wisconsin and Michigan (Upper Peninsula) late-winter wolf populations at about 250–350 wolves in each State, in our April 2003 final reclassification rule (68 FR 15804) we estimate that an average of about 2 to 3 percent of those wolves will be taken annually through lethal depredation control actions in response to attacks on livestock. This will be about 6 to 10 adult and subadult wolves in each State. Given the average annual population increases of 19 to 24 percent over recent years in each of these States, the effect of such levels of lethal depredation control will not prevent the continued growth of the wolf population in either State and will probably be so small that it does not noticeably slow that growth over the next few years. Wolf recovery will not be affected in either State. Reporting (within 15 days) and monitoring requirements in State management plans will ensure that the level of lethal depredation control is evaluated promptly and can be curtailed if necessary. Therefore, we think that lethal depredation control will not be a significant threat to the future of wolves in either Michigan or Wisconsin and that it will not result in a need to reclassify those wolves back to threatened or endangered status in the foreseeable future.

In recent years the number of dogs attacked by gray wolves in Wisconsin has increased, with 33 dogs killed and 9 dogs injured in 2001–03. In almost all cases, these have been hunting dogs that were being used for, or being trained for, hunting bears and bobcats at the time they were attacked. It is believed that the dogs entered the territory of a wolf pack and may have been close to a den, rendezvous site, or feeding location, thus triggering an attack by wolves defending their territory or pups. The Wisconsin Wolf Management Plan states that "generally only wolves that are habitual depredators on livestock will be euthanized" (WI DNR 1999a). Furthermore, the State's guidelines for conducting depredation control actions on wolves currently listed as federally threatened say that no control trapping will be conducted on wolves that kill "dogs that are free-roaming or roaming at large." Lethal control will only be conducted on wolves that kill dogs that are "leashed, confined, or under the owner's control on the owner's land" (Wisconsin Wolf Technical Committee 2002). Because of these State-imposed limitations, we do not believe that lethal control of wolves depredating on hunting dogs will be a significant additional source of mortality in Wisconsin.

Michigan has not experienced as high a level of attacks on dogs by wolves, although a slight increase in such attacks has occurred over the last decade. The number of dogs killed in the State was one in 1996, one in 1999, three in 2001, four in 2002, and eight in 2003. Similar to Wisconsin, MI DNR has guidelines for their depredation control program. The Michigan guidelines state that lethal control will not be used when wolves kill dogs that are free-roaming, hunting, or training on public lands. Lethal control of wolves,

however, would be considered if wolves have killed confined pets and remain in the area where more pets are being held (MI DNR 2003).

Between the time that wolves were protected under the Act and downlisted to threatened in 2003, only one wolf was killed for depredation control purposes in Wisconsin and Michigan. That adult wolf was killed by the WI DNR in 1999, under the provisions of a permit that we issued to deal with that specific instance. This was done to end a chronic depredation problem at a private deer farm after the failure of extensive efforts to live-trap and remove the wolf (WI DNR 1999b). Since the 2003 downlisting and implementation of the 4(d) rule, which allows some lethal take in those States, a total of 17 wolves have been killed in Wisconsin and 4 in Michigan in response to depredations. Nine of the 17 Wisconsin wolves were adults, whereas the remaining 8 were juveniles. The four Michigan wolves, all from one pack, were killed near Engadine where chronic depredation problems had occurred. A fifth pack member, identified for removal, was killed as the result of a vehicle collision (Donald Lonsway, Michigan Wildlife Service, pers. comm. 2004). These four individuals represented about one percent of the Michigan wolf population in 2003. Despite the recent implementation of the 4(d) rule allowing lethal control of depredating wolves, preliminary estimates indicate that wolf populations in Wisconsin and Michigan have continued to increase (Wydeven per. comm. 2004, Beyer pers. comm. 2004).

Before the 2003 downlisting of wolves to threatened, we anticipated that North Dakota and South Dakota would have potential wolf depredation problems associated with mostly single, dispersing wolves from the Minnesota and Manitoba populations. To cope with these anticipated depredations we had a "Contingency Plan for Responding to Gray Wolf Depredations of Livestock" in place for each State for several years, although in neither State has it been necessary to implement the control measures authorized under the contingency plans (USFWS 1992b, 1994). The implementation of the 4(d) rule in 2003 replaced the contingency plans for those States. Since 1993, three incidents of verified wolf depredations occurred in North Dakota, with the most recent occurring in September 2003. Wildlife Services attempted to remove the wolf responsible for the 2003 depredation, but the wolf was not sighted again and no further livestock losses were reported. There have been no verified wolf depredations in South Dakota in recent decades.

North Dakota and South Dakota are recognized as lacking significant potential for restoration of the gray wolf, and our Eastern Recovery Plan does not include those States in its list of possible locations for restoration of gray wolf populations (USFWS 1987, 1992a). Therefore, lethal control of depredating wolves in these two States will not adversely affect recovery in the EDPS.

During the period from 1980–2003, the Federal Minnesota wolf depredation control program euthanized from 20 (in 1982) to 216 (in 1997) gray wolves annually. Annual averages (percentage of statewide populations) were 30 (2.2 percent) wolves killed from 1980 to 1984, 49 (3.0 percent) from 1985 to 1989, 115 (6.0 percent) from 1990 to 1994, and 152 (6.7 percent) from 1995 to 1999. During the most recent 4-year period, 2000–03, an average of 132 wolves—about 5 percent of the wolf population, based on the most recent (1997–98) statewide estimate—were killed under the program annually. The lowest annual percentage of Minnesota wolves destroyed by USDA/APHIS-Wildlife Services was 1.5 percent in 1982; the highest percentage was 9.4 in 1997 (Paul 2004).

This level of wolf removal for depredation control has not halted the increase in wolf numbers or range expansion in Minnesota, although it may have slowed the increase in wolf numbers in the State, especially since the late-1980s. Minnesota wolf numbers grew at an average annual rate of nearly 4 percent between 1989 and 1998 while depredation control was in effect.

MN DNR proposes to expand the control of depredating wolves upon delisting (*see* above), but this expansion is not likely to threaten the conservation of wolves in the State. Significant changes in wolf depredation control under State management would primarily be restricted to Zone B, which is outside of the area that the Service found was necessary for wolf recovery (USFWS 1992a), and wolves may still persist in Zone B despite increased take for depredation control. The Eastern Timber Wolf Recovery Team concluded that the changes in wolf management in the State's Zone A would be "minor" and would not likely result in "significant change in overall wolf numbers in Zone A." They found that, despite an expansion in the control area from approximately 1 to 3 square miles and an extension of the control period to 60 days, depredation control will remain "very localized" in Zone A. The requirement that control activities are conducted only in response to verified wolf depredation in Zone A played a key role in the team's evaluation (R. Peterson, Michigan Tech University/Eastern Timber Wolf Recovery Team Leader, *in litt.* 2001). Depredation control would be allowed throughout Zone A, which includes an area (Zone 1) where such control has not been permitted under Federal management. Depredation in Zone 1, however, has been limited to 3 to 6 reported incidents per year, mostly of wolves killing dogs (William Paul, USDA/APHIS-Wildlife Services, pers. comm. 2004), although many dog kills in this zone probably go unreported. There are few livestock in Zone 1; therefore, the number of reported depredation incidents in that zone is expected to be low.

The proposed changes in the control of depredating wolves in Minnesota under State management emphasize the need for robust post-delisting monitoring. Minnesota will continue to monitor wolf populations throughout the State and will also monitor all depredation control activities in Zone A. These and other activities contained in their plan would be essential in meeting their population goal of a minimum statewide winter population of 1,600 wolves, which exceeds the Recovery Plan's criteria of 1,251 to 1,400 wolves.

State Management and Protection of Wolves. Both the Wisconsin and Michigan Wolf Management Plans recommend managing wolf populations as isolated populations that are not dependent upon immigration of wolves from an adjacent State or Canada. Thus, even after Federal wolf delisting, each State will be managing for a wolf population at, or in excess of, the 200 wolves identified in the Federal Recovery Plan for the Eastern Timber Wolf as necessary for an isolated wolf population to be viable. We support this approach and believe it provides further assurance that the gray wolf will remain a viable component of the EDPS ecosystem in the foreseeable future.

At the time the Wisconsin Wolf Management Plan was completed, it recommended immediate reclassification from State-endangered to threatened status because the State's wolf population had already exceeded its reclassification criterion of 80 wolves for 3 years; that State reclassification has already occurred (*http://www.dnr.state.wi.us/org/land/er/working_list/taxalists/TandE.htm*). The Plan further recommends the State manage for a gray wolf population of 350 wolves outside of Native American reservations, and states that the species should be delisted by the State once the population reaches 250 animals outside

of reservations. The species was proposed for State delisting in late 2003; this process is expected to be completed in 2004. Upon State delisting, the species would be classified as a "protected nongame species," a designation that would continue State prohibitions on sport hunting and trapping of the species. The Wisconsin Plan includes criteria that would trigger State relisting as threatened (a decline to fewer than 250 wolves for 3 years) or endangered (a decline to fewer than 80 wolves for 1 year). The Wisconsin Plan will be reviewed annually by the Wisconsin Wolf Advisory Committee and will be reviewed by the public every 5 years. Any public harvest could be considered only if the population exceeds 350 wolves outside of Native American reservations, and would require authorization by the legislature following major public input.

Michigan reclassified wolves to threatened in June 2002. Under the Michigan Gray Wolf Recovery and Management Plan (MI Plan), wolves in Michigan would be considered recovered when a minimum sustainable population of 200 wolves is maintained for 5 consecutive years. The Upper Peninsula has had more than 200 wolves since the winter of 1999–2000. Therefore, the wolf is eligible for State delisting under the MI Plan in 2004. In Michigan, however, State delisting cannot occur until after Federal delisting. During the State delisting process, Michigan intends to amend its Wildlife Conservation Order to grant "protected animal" status to the gray wolf. That status would "prohibit take, establish penalties and restitution for violations of the Order, and detail conditions under which lethal depredation control measures could be implemented" (Rebecca Humphries, MI DNR, *in litt.* 2004). The MI Plan will be re-evaluated at 5-year intervals. The MI DNR is currently evaluating the MI Plan's direction and developing recommendations for revisions (Beyer, pers. comm. 2004).

The Wisconsin and Michigan wolf management plans recommend similar high levels of protection for wolf den and rendezvous sites, whether on public or private land. Both State plans recommend that most land uses be prohibited at all times within 100 meters (330 feet) of active sites. Seasonal restrictions (March through July) should be enforced within 0.8 km (0.5 mi) of these sites, to prevent high-disturbance activities such as logging from disrupting pup-rearing activities. These restrictions should remain in effect even after State delisting occurs.

The Wisconsin Plan provides for legal protections of wolves following State delisting, through designation as a Protected Wild Animal in the Wisconsin Administrative Code NR 10.02(1). Penalties for illegally killing wolves would include fines in the range of $1,000 to $2,000, as well as revocation of hunting privileges for 3 to 5 years, and possibly up to 6 months imprisonment.

Tribal Management and Protection of Gray Wolves

Although the tribes with wolves that visit or reside on their Reservations do not yet have management plans specific to the gray wolf, several tribes have informed us that they have no plans or intentions to allow commercial or recreational hunting or trapping of the species on their lands after Federal delisting. We are working with the States and several tribes to assist them to develop wolf management plans for the Reservations.

The Tribal Council of the Leech Lake Band of Minnesota Ojibwe (Council) supports a recent resolution that describes the sport and recreational harvest of gray wolves as an inappropriate use of the animal (Peter White, Leech Lake Tribal Council, *in litt.* 2003). That resolution supports limited harvest of wolves to be used for traditional or spiritual uses by enrolled tribal members if it would not negatively affect the wolf population. Based on the Council's request, we will help them to obtain wolf pelts and parts that become available from other sources, such as depredation control activities. The Council is currently revising the Reservation Conservation Code to allow tribal members to harvest some wolves (P. White *in litt.* 2003). The Leech Lake Reservation is home to an estimated 65 gray wolves, the largest population of wolves on a Native American reservation in the 48 coterminous States (P. White *in litt.* 2003).

The Red Lake Band of Chippewa Indians (Minnesota) has indicated that it is likely to develop a wolf management plan that will be very similar in scope and content to the plan developed by the MN DNR. The Band's position on wolf management is "wolf preservation through effective management," and the Band is confident that wolves will continue to thrive on their lands (Lawrence Bedeau, Red Lake Band of Chippewa Indians, *in litt.* 1998). The Reservation has an estimated six to eight packs within its boundaries (George King, Red Lake Band of Chippewa Indians, *in litt.* 2003).

The Fond du Lac Band (Minnesota) believes that the "well being of the wolf is intimately connected to the well being of the Chippewa People" (Schrage *in litt.* 2003). In 1998, the Band passed a resolution opposing Federal delisting and any other measure that would permit trapping, hunting, or poisoning of the gray wolf (Schrage *in litt.* 1998b, *in litt.* 2003). If this prohibition is rescinded, the Band's Resource Management Division will coordinate with State and Federal agencies to ensure that any wolf hunting or trapping would be "conducted in a biologically sustainable manner" (Schrage *in litt.* 2003).

The Red Cliff Band (Wisconsin) strongly opposes State and Federal delisting of the gray wolf. Current Tribal law protects gray wolves from harvest, although harvest for ceremonial purposes would likely be permitted after delisting (Matt Symbol, Red Cliff Natural Resources Department, *in litt.* 2003).

The Keweenaw Bay Indian Community, Michigan, will continue to list the gray wolf as a protected animal under the Tribal Code even if it is federally delisted, with hunting and trapping prohibited (Mike Donofrio, Keweenaw Bay Indian Community Biological Services, pers. comm. 1998). Furthermore, the Keweenaw Bay Community plans to develop a Protected Animal Ordinance in the next few years that will address gray wolves (Donofrio *in litt.* 2003).

Several Midwestern tribes (*e.g.*, the Bad River Band of Lake Superior Chippewa Indians and the Little Traverse Bay Bands of Odawa Indians) have expressed concern regarding the possibility of Federal delisting resulting in increased mortality of gray wolves on reservation lands, in the areas immediately surrounding the reservations, and in lands ceded by treaty to the Federal Government by the tribes (Kiogama *in litt.* 2000). At the request of the Bad River Tribe of Lake Superior Chippewa Indians, we are currently working with their Natural Resource Department and WI DNR to develop a wolf management agreement for lands adjacent to the Bad River Reservation. The tribe's intent is to reduce the threats to reservation wolf packs when they are temporarily off the reservation. Under the draft agreement, the WI DNR would consult with the tribe before using lethal depredation control methods in those areas and would defer to the tribe's recommendations for wolves known to be part of a reservation pack. This agreement is still being developed, however, so its protective measures may

change somewhat. Other tribes have expressed interest in such an agreement. If this and similar agreements are implemented they will provide additional protection to certain wolf packs in the eastern United States.

The Great Lakes Indian Fish and Wildlife Commission (GLIFWC) has stated its intent to work closely with the States to cooperatively manage wolves in the ceded territories in the core areas, and will not develop a separate wolf management plan (Schlender *in litt.* 1998).

According to the 1854 Authority, "attitudes toward wolf management in the 1854 Ceded Territory run the gamut from a desire to see total protection to unlimited harvest opportunity." Because of these diverse attitudes, the management of wolves in the 1854 Ceded Territory is speculative, but the 1854 Authority would not "implement a harvest system that would have any long-term negative impacts to wolf populations" (Andrew Edwards, 1854 Authority Biological Services, *in litt.* 2003).

In addition, on the basis of information received from other Federal land management agencies in the eastern United States where wolves occur (as discussed in *Summary of Factors Affecting the Species* section, factor A, *The present or threatened destruction, modification, or curtailment of its habitat or range, above*), we expect National Forests, units of the National Park System, and National Wildlife Refuges will provide protections to gray wolves after delisting beyond the protections provided by State wolf management plans and State protective regulations.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Public Attitudes Toward the Gray Wolf. The primary determinant of the long-term status of gray wolf populations in the United States will be human attitudes toward this large predator. These attitudes are based on the conflicts between human activities and wolves, concern with the perceived danger the species may pose to humans, its symbolic representation of wilderness, the economic effect of livestock losses, the emotions regarding the threat to pets, the conviction that the species should never be a target of sport hunting or trapping, wolf traditions of Native American tribes, and other factors.

We have seen a change in public attitudes toward the wolf over the last few decades. Public attitude surveys in Minnesota and Michigan (Kellert 1985, 1990, 1999), as well as the citizen input into the wolf management plans of Minnesota, Wisconsin, and Michigan, have indicated strong public support for wolf recovery if the adverse impacts on recreational activities and livestock producers can be minimized (MI DNR 1997, MN DNR 1998, WI DNR 1999a). In Michigan, another public attitude survey was conducted since the wolf population has expanded. This survey suggested that the majority of Michigan residents still support wolf recovery efforts. Although Upper Peninsula residents' support for wolf recovery has gone down slightly since the 1990 Kellert survey, the majority of Upper Peninsula residents are still supportive of wolf recovery (Angela Mertig, Michigan State University, pers. comm. 2004).

The Minnesota DNR recognizes that to maintain public support for wolf conservation it must work to ensure that the people are well informed about wolves and wolf management in the State. Therefore, MN DNR plans to provide "timely and accurate information about wolves to the public, to support and facilitate wolf education programs, and to encourage wolf ecotourism," among other activities. This increased public acceptance of wolves during the last 25 years also has reduced illegal persecution and killing of wolves.

It is unclear whether increased flexibility of depredation control after delisting would affect public attitudes towards wolves (*i.e.*, decrease opposition to the local presence of wolves), due to the strong influence of other factors. A survey of 535 rural Wisconsin residents, for example, found that attitudes towards wolves were largely dependent on social group, and persons who were compensated for losses to wolves were not more tolerant toward wolf presence than those refused compensation for reported losses (Naughton-Treves *et al.* 2003). Although social group was the overriding factor in determining tolerance for wolves, previous history with depredation also negatively affected tolerance: persons who had lost an animal to a wolf or other predator were less tolerant of wolves (Naughton-Treves *et al.* 2003). In an analysis of data collected in 37 surveys of public attitudes toward wolves, Williams *et al.* (2002) found that hunters and trappers had significantly more positive attitudes towards wolves than farmers and ranchers. In Wisconsin, however, where bear hunters have lost hounds to wolves, they were clearly less tolerant of wolves than livestock producers (Naughton-Treves *et al.* 2003). In addition to social group and previous losses of animals to wolves or other predators, education level, gender, age, rural residence, and income have all been found to influence attitudes towards wolves (Williams *et al.* 2002). Attitudes appear to have become more tolerant between about 1920–70, but appear to have stabilized since then (Williams *et al.* 2002).

Prey. Wolf density is heavily dependent on prey availability (*e.g.*, expressed as ungulate biomass, Fuller 1989), but prey availability is not likely to threaten wolves in the EDPS. Conservation of primary wolf prey in the EDPS, white-tailed deer and moose, is clearly a high priority for State conservation agencies. As Minnesota DNR points out in its wolf management plan (MN DNR 2001:25), it manages ungulates to ensure a harvestable surplus for hunters, nonconsumptive users, and to minimize conflicts with humans. To ensure a harvestable surplus for hunters, MN DNR must account for all sources of natural mortality, including loss to wolves, and adjust hunter harvest levels when necessary. For example, after severe winters in the 1990's, MN DNR modified hunter harvest levels to allow for the recovery of the local deer population (MN DNR 2001). In addition to regulation of human harvest of deer and moose, MN DNR also plans to continue to monitor and improve habitat for these species. Land management carried out by other public agencies and by private companies in Minnesota's wolf range, including timber harvest and prescribed fire, incidentally improves habitat for deer, the primary prey for wolves in the State. There is no indication that harvest of deer and moose or management of their habitat will significantly depress abundance of these species in Minnesota's core wolf range. Therefore, prey availability is not likely to endanger gray wolves in the foreseeable future in the State.

Chronic Wasting Disease (CWD), a nervous system disease known to affect deer and elk, was confirmed in Wisconsin in 2002 (three deer from a 2001 deer harvest tested positive). Although it is not yet known if transmission from deer and elk to other species is possible (Glenn DelGiudice, MN DNR, *in litt.* 2003), it has never been detected in predators, even in areas where the disease has been known for more than 40 years (Hassett, *in litt.* 2003). The most likely effect of the disease on gray wolves would be indirect, potentially significantly reducing the prey base in some areas. In Wisconsin, CWD has been detected in a relatively restricted area in the southern

part of the State. The Wisconsin DNR, in cooperation with landowners and other State agencies, initiated an intensive program to eradicate the disease. CWD has not spread to deer populations within wolf range; the closest packs to the CWD area in Wisconsin are located approximately 70 miles to the north (Hassett *in litt.* 2003). Minnesota DNR tests harvested deer for CWD. In 2003 it tested 9,988 deer and all were negative, although a captive elk tested positive in 2002. CWD has not been detected in Michigan, although MI DNR plans to test 60 deer from each county in 2004. The DNRs in Wisconsin, Minnesota, and Michigan will continue to monitor for outbreaks of CWD in their States.

Conclusion

While we recognize that gray wolves in the EDPS do not occupy all portions of their historical range, including what may be suitable areas with low human density and a healthy prey base within the EDPS, they no longer meet the definition of a threatened or endangered species. We have based our determinations on the current status of, and threats likely to be faced by, existing wolf populations within the EDPS. This approach is consistent with the 9th Circuit Court's decision in *Defenders of Wildlife et al.* v. *Norton et al.*, where the Court noted that "[a] species with an exceptionally large historical range may continue to enjoy healthy population levels despite the loss of a substantial amount of suitable habitat." Similarly, when a threatened species has recovered to the point where it is not likely to become in danger of extinction throughout all or a significant portion of its current range in the foreseeable future, it is appropriate to delist the species even if a substantial amount of the historical range remains unoccupied if the population in its current range is secure. The wolf's recovery in numbers and distribution in the EDPS, together with the status of the threats that remain to, and are likely to be experienced by, the wolf within the DPS, indicates that the gray wolf is not likely to become in danger of extinction nor likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range within the DPS.

Since the 2003 reclassification of gray wolves in the eastern United States to threatened (68 FR 15804), we have received additional data that the conservation of gray wolves in the EDPS will be assured if delisted. Most importantly, in February 2001, the MN DNR completed their Minnesota Wolf Management Plan. With that completed plan, in addition to the previously existing plans for Wisconsin and Michigan, we were better able to assess the management of gray wolves if delisted. Furthermore, since the implementation of more flexible wolf management in Wisconsin and Michigan, resulting from the initiation of the 4(d) special rule in 2003, wolf numbers in those States have continued to increase (Wydeven per. comm. 2004, Beyer pers. comm. 2004).

After a thorough review of all available information and an evaluation of the previous five factors specified in section 4(a)(1) of the Act, as well as consideration of the definitions of threatened and endangered contained in the Act and the reasons for delisting as specified in 50 CFR 424.11(d), we conclude that removing the Eastern Gray Wolf Distinct Population Segment from the list of Endangered and Threatened Wildlife (50 CFR 17.11) is appropriate. Gray wolves have recovered in the EDPS as a result of the reduction of threats as described in the analysis of the five categories of threats.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary. Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time we list a species.

Critical habitat was designated for the gray wolf in 1978 (43 FR 9607, March 9, 1978). That rule (50 CFR 17.95(a)) identifies Isle Royale National Park, Michigan, and Minnesota wolf management zones 1, 2, and 3, as delineated in 50 CFR 17.40(d)(1), as critical habitat. Wolf management zones 1, 2, and 3 comprise approximately 25,500 km^2 (9,845 mi^2) in northeastern and north-central Minnesota. This proposed rule, if finalized, would remove the designation of critical habitat for gray wolves in Minnesota and on Isle Royale, Michigan.

Special Regulations Under Section 4(d) for Threatened Species

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered wildlife species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to our agents and agents of State conservation agencies.

Section 4(d) of the Act provides that whenever a species is listed as a threatened species, we shall issue regulations deemed necessary and advisable to provide for the conservation of the species. Section 4(d) also states that we may, by regulation, extend to threatened species the prohibitions provided for endangered species under section 9. The implementing regulations for threatened wildlife under the Act incorporate the section 9 prohibitions for endangered wildlife (50 CFR 17.31), except when a special regulation promulgated pursuant to section 4(d) applies (50 CFR 17.31(c)).

This proposal, if finalized, would remove the special regulations under section 4(d) of the Act for wolves in Minnesota, Michigan, Wisconsin, North Dakota, South Dakota, Nebraska, Kansas, Iowa, Missouri, Illinois, Indiana, and Ohio. These regulations are found at 50 CFR 17.40 (d) and (o).

Post-Delisting Monitoring

Section 4(g) of the Act requires post-delisting monitoring (PDM) for a minimum of five years after a species is delisted. The goal of post-delisting monitoring is to confirm that a delisted species does not require relisting as threatened or endangered after removal of the Act's protections. To do this, PDM generally focuses on evaluating (1) demographic characteristics of the species, (2) threats to the species, and (3) implementation of legal and/or management commitments that have been identified as important in reducing threats to the species or maintaining threats at sufficiently low levels. If at any time during the 5-year monitoring program data indicate that protective status under the Act should be reinstated, we can initiate listing

procedures, including, if appropriate, emergency listing.

A monitoring plan for the gray wolf EDPS is being developed to detect whether factors that might threaten its existence have arisen or increased unexpectedly after delisting. In the EDPS, PDM will be conducted in Minnesota, Wisconsin, and Michigan. These States comprise the recovery areas within the DPS and were the only States with numerical recovery criteria in the Recovery Plan for the Eastern Timber Wolf (USFWS 1992a). The monitoring plan is being developed by Service biologists and the Eastern Timber Wolf Recovery Team.

Minnesota, Wisconsin, and Michigan DNRs have monitored wolves for several decades with significant assistance from numerous partners, including the U.S. Forest Service, National Park Service, USDA/APHIS-Wildlife Services, tribal natural resource agencies, and the Service. To maximize comparability of PDM data with data obtained before delisting, all three State DNRs intend to continue their previous wolf population monitoring methodology with only minor changes. Additionally, in the winter of 2003–04, the Wisconsin and Michigan DNRs began implementing a "Minnesota-type" survey on a trial basis, to compare the results of that method to their current method, which is more labor-intensive. If found to be sufficiently accurate in estimating smaller wolf populations, the Minnesota-type method will be considered for adoption in Wisconsin and Michigan.

In addition to monitoring population numbers and trends, the PDM will evaluate post-delisting threats, in particular human-caused mortality, disease, and implementation of legal and management commitments. If at any time during the monitoring period we detect a significant downward change in the populations or an increase in threats to the degree that population viability may be threatened, we will evaluate and change (intensify, extend, and/or otherwise improve) the monitoring methods, if appropriate, and/or consider relisting the DPS, if warranted. Changes to the monitoring methods, for example, might include increased emphasis on a potentially important threat or a particular geographic area. At the end of the monitoring period, we will decide if relisting, continued monitoring, or ending monitoring is appropriate. If data show a significant population decline or increased threats, but not to the level that relisting is warranted, we will consider continuing monitoring beyond the specified period and may modify the monitoring program based on an evaluation of the results of the initial monitoring.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any current or likely future threat, or lack thereof, to gray wolves in the EDPS;

(2) Additional information concerning the range, distribution, population size, and population trends of gray wolves in the EDPS;

(3) Current or planned activities in the EDPS and their possible impacts on the gray wolf and its habitat;

(4) Information concerning the adequacy of the recovery criteria described in the 1992 Recovery Plan for the Eastern Timber Wolf;

(5) The extent of State and Tribal protection and management that would be provided to the gray wolf in the core areas of the EDPS as a delisted species;

(6) Information regarding taxonomy of canids in the northeastern United States.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (*see* **ADDRESSES** section). Please submit Internet comments to "*egwdelist@fs.fed.us*" in ASCII file format and avoid the use of special characters or any form of encryption. Please also include "Attn: Gray Wolf Delisting" in your e-mail subject header and your name and return address in the body of your message. You will receive a responding message verifying receipt of your comments; if you do not receive notification of receipt, please resend your comments by the alternative methods mentioned above. Please note that the Internet address "*egwdelist@fs.fed.us*" will be closed out at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we may withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will not consider anonymous comments, however. 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. We anticipate a large public response to this proposed rule. After the comment period closes, we will organize the comments and materials received and make them available for public inspection, by appointment, during normal business hours at the following Ecological Services offices:

- Twin Cities, Minnesota Ecological Services Field Office, 4101 E. 80th Street, Bloomington, MN.
- Green Bay, Wisconsin Ecological Services Field Office, 2661 Scott Tower Dr., New Franken, WI.
- East Lansing, Michigan Ecological Services Field Office, 2651 Coolidge Road, Suite 101, East Lansing, MI.
- Pierre, South Dakota Ecological Services Field Office, 420 South Garfield Avenue, Suite 400, Pierre, SD.
- Bismarck, North Dakota Ecological Services Field Office, 3425 Miriam Avenue, Bismarck, ND.
- Hadley, Massachusetts Regional Office, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589.

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.

Peer Review

In accordance with our joint policy published in the **Federal Register** 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 delisting decision 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 delisting.

Public Hearings

We will hold public hearings throughout the geographic area of the

EDPS. The dates and locations of these hearings will be announced in the **Federal Register** and local newspapers. For a list of dates and locations, contact the Fort Snelling, MN Regional Office (*See* **ADDRESSES** section for contact information.)

Clarity of the Rule

Executive Order 12866 requires agencies to write regulations that are easy to understand. We invite your comments on how to make this proposal easier to understand including answers to questions such as the following: (1) Is the discussion in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful to your understanding of the proposal? (2) Does the proposal contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposal (groupings and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? What else could we do to make the proposal easier to understand? Send a copy of any comments on 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 the comments to this address: *Exsec@ios.doi.gov.*

National Environmental Policy Act

We have determined that an Environmental Assessment or an Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR 1320 implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The OMB regulations at 5 CFR 1320.3(c) define a collection of information as the obtaining of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, 10 or more persons. Furthermore, 5 CFR 1320.3(c)(4) specifies that "ten or more persons" refers to the persons to whom a collection of information is addressed by the agency within any 12-month period. For purposes of this definition, employees of the Federal Government are not included. The Service may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

This rule does not include any collections of information that require approval by OMB under the Paperwork Reduction Act. As proposed under the *Post-delisting Monitoring* section above, gray wolf populations in the Eastern Gray Wolf DPS will be monitored by the States of Michigan, Minnesota, and Wisconsin in accordance with their Gray Wolf State Management Plans. We do not anticipate a need to request data or other information from 10 or more persons during any 12-month period to satisfy monitoring information needs. If it becomes necessary to collect information from 10 or more non-Federal individuals, groups, or organizations per year, we will first obtain information collection approval from OMB.

Executive Order 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. As this proposed rule is not expected to significantly affect energy supplies, distribution, or use, this action is not a significant energy action and no Statement of Energy Effects is required.

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 512 DM 2, we have coordinated this proposed rule with the affected tribes. Throughout development of this proposed rule, we endeavored to consult with Native American tribes and Native American organizations in order both to provide them with a complete understanding of the proposed changes and also to enable ourselves to gain an appreciation of their concerns with those changes. We will fully consider all of their comments on the proposed EDPS gray wolf delisting submitted during the public comment period and will attempt to address those concerns to the extent allowed by the Act, the Administrative Procedure Act, and other Federal statutes.

References Cited

A complete list of all references cited in this document is available upon request from the Ft. Snelling, Minnesota Regional Office (*see* **FOR FURTHER INFORMATION CONTACT** section above).

Author

The primary author of this rule is Laura J. Ragan, U.S. Fish and Wildlife Service, Ft. Snelling, Minnesota Regional Office (*see* **ADDRESSES** section). Substantial contributions were also made by Service employees Ron Refsnider (Ft. Snelling, Minnesota), Phil Delphey (Bloomington, Minnesota), Joel Trick (Green Bay, Wisconsin), Christie Deloria (Marquette, Michigan), and Michael Amaral (Concord, New Hampshire).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we hereby propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

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.

§ 17.11 [Amended]

2. Amend § 17.11(h) by removing the entry for "Wolf, gray [Eastern Distinct Population Segment] (*Canis lupus*)" under "MAMMALS" from the List of Endangered and Threatened Wildlife.

§ 17.40 [Amended]

3. Amend § 17.40 by removing and reserving paragraphs (d) and (o).

§ 17.95 [Amended]

4. Amend § 17.95(a) by removing the critical habitat entry for "Gray Wolf (*Canis lupus*)."

Dated: June 4, 2004.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 04–16535 Filed 7–16–04; 11:12 am]

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Federal Register

Wednesday,
July 21, 2004

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed Frameworks for Early-Season Migratory Bird Hunting Regulations; Notice of Meetings; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AT53

Migratory Bird Hunting; Proposed Frameworks for Early-Season Migratory Bird Hunting Regulations; Notice of Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter Service or we) is proposing to establish the 2004–05 early-season hunting regulations for certain migratory game birds. We annually prescribe frameworks, or outer limits, for dates and times when hunting may occur and the maximum number of birds that may be taken and possessed in early seasons. Early seasons may open as early as September 1, and include seasons in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands. These frameworks are necessary to allow State selections of specific final seasons and limits and to allow recreational harvest at levels compatible with population status and habitat conditions.

DATES: The Service Migratory Bird Regulations Committee will meet to consider and develop proposed regulations for late-season migratory bird hunting and the 2005 spring/summer migratory bird subsistence seasons in Alaska on July 28 and 29, 2004. All meetings will commence at approximately 8:30 a.m. You must submit comments on the proposed migratory bird hunting-season frameworks for Alaska, Hawaii, Puerto Rico, the Virgin Islands, and other early seasons by August 2, 2004, and for the forthcoming proposed late-season frameworks by August 30, 2004.

ADDRESSES: The Service Migratory Bird Regulations Committee will meet in room 200 of the U.S. Fish and Wildlife Service's Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. Send your comments on the proposals to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, MS MBSP–4107–ARLSQ, 1849 C Street, NW., Washington, DC 20240. All comments received, including names and addresses, will become part of the public record. You may inspect comments during normal business hours at the Service's office in room 4107, 4501 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2004

On March 22, 2004, we published in the **Federal Register** (69 FR 13440) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and dealt with the establishment of seasons, limits, the proposed regulatory alternatives for the 2004–05 duck hunting season, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 9, 2004, we published in the **Federal Register** (69 FR 32418) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks and the regulatory alternatives for the 2004–05 duck hunting season. The June 9 supplement also provided detailed information on the 2004–05 regulatory schedule and announced the Service Migratory Bird Regulations Committee (SRC) and Flyway Council meetings.

This document, the third in a series of proposed, supplemental, and final rulemaking documents for migratory bird hunting regulations, deals specifically with proposed frameworks for early-season regulations. It will lead to final frameworks from which States may select season dates, shooting hours, and daily bag and possession limits for the 2004–05 season. We have considered all pertinent comments received through June 25, 2004, on the March 22 and June 9, 2004, rulemaking documents in developing this document. In addition, new proposals for certain early-season regulations are provided for public comment. Comment periods are specified above under **DATES**. We will publish final regulatory frameworks for early seasons in the **Federal Register** on or about August 20, 2004.

Service Migratory Bird Regulations Committee Meetings

Participants at the June 23–24, 2004, meetings reviewed information on the current status of migratory shore and upland game birds and developed 2004–05 migratory game bird regulations recommendations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the U.S. Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl. Participants at the previously announced July 28–29, 2004, meetings will review information on the current status of waterfowl and develop recommendations for the 2004–05 regulations pertaining to regular waterfowl seasons and other species and seasons not previously discussed at the early-season meetings. In accordance with Department of the Interior policy, these meetings are open to public observation and you may submit written comments to the Director of the Service on the matters discussed.

Population Status and Harvest

The following paragraphs provide preliminary information on the status of waterfowl and information on the status and harvest of migratory shore and upland game birds.

May Breeding Waterfowl and Habitat Survey

Most of the U.S. and Canadian prairies were much drier in May of 2004 than they were in May of 2003. The return of water to short-grass prairies of southern Alberta and Saskatchewan we saw last year did not continue, and habitat in these areas went from good last year to fair or poor this year. The Manitoba survey area ranges from poor in the east to good in the west, similar to conditions observed last year. The Dakotas have continued the slow drying trend that we have seen over the past few years, and much of eastern South Dakota is in poor condition. Conditions in the Dakotas improve to the north. Eastern Montana is a mosaic of habitat conditions ranging from poor to good, and production potential is thought to be only fair in this region. Although many areas received considerable moisture in the form of over-winter snow, with even a late snowstorm in the southern portions in middle May, the snow melted and went right into the parched ground. Snow and cold during the May storm probably adversely impacted early nesters and young broods. Water received after the May surveys likely did not alleviate dry conditions, because much of it soaked into the grounds. Therefore, waterfowl production in the prairies is only poor to fair this year.

When there are dry conditions in the prairies, many prairie nesting ducks will typically over-fly these areas into the bush. This year, the Canadian Bush (Northwest Territories, Northern

Alberta, Northern Saskatchewan and Northern Manitoba) was exceptionally late in thawing so the birds that did over-fly the dry prairies encountered winter-like conditions and will be even less successful than in a normal over-flight year. This is especially true for mallard and pintails; late nesters will have better success. Overall, the bush, including the parklands and boreal forest, will be only fair to marginally good for production because of the latest spring thaw in at least 20 years. However, Alaska birds should produce well because of excellent habitat conditions. Areas south of Alaska's Brooks Range experienced a widespread, record-setting early spring breakup, and flooding due to rapid thaw was minor.

Breeding habitat conditions were generally good to excellent in the eastern U.S. and Canada. Although spring was late in most areas, it is thought that nesting was not significantly affected because of abundant spring rain and mild temperatures. Production in the East is expected to be better this year than last year.

Unfortunately, we will have no traditional July Production Survey this year to verify the early predictions of our biologists in the field, due to a severe budget situation within the migratory bird program. However, the pilot-biologists responsible for several survey areas (Southern Alberta, Southern Saskatchewan, the Dakotas, and Montana) will return in early July for a brief over-flight of a representative portion of their areas to assess significant habitat changes since May and provide a brief snapshot of production. This information and reports from local biologists in the field will help us with our overall perspective on duck production this year.

Status of Teal

The estimate of blue-winged teal numbers from the Traditional Survey Area is 4.07 million. This represents a 26.2 percent decline from 2003 and 9.6 percent below the long-term average. The estimate suggests that a 9-day September teal season is appropriate in 2004.

Sandhill Cranes

The Mid-Continent Population of Sandhill Cranes has generally stabilized at comparatively high levels, following increases in the 1970s. The Central Platte River Valley, Nebraska, spring index for 2004, uncorrected for visibility, was 356,850 cranes. The most recent photo-corrected 3-year average (for 2001–2003) was 370,300, which is within the established population-objective range of 343,000–465,000 cranes. All Central Flyway States, except Nebraska, allowed crane hunting in portions of their respective States in 2003–04. About 7,700 hunters participated in these seasons, which is similar to the number that participated during the previous year. An estimated 18,527 cranes were harvested in the Central Flyway during 2003–04 seasons, which was 42% higher than the previous year's estimate. Retrieved harvests in the Pacific Flyway, Canada, and Mexico were estimated to be about 13,109 cranes for the 2003–04 period. The total North American sport harvest, including crippling losses, was estimated at 35,706, which is similar to the previous year's estimate. The long-term trend analysis for the Mid-Continent Population during 1982–2000 indicates that harvests have been increasing at a higher rate than the trend in population growth over the same period.

The fall 2003 pre-migration survey estimate for the Rocky Mountain Population of sandhill cranes was 19,523, which was similar to the previous year's estimate of 18,803. Limited special seasons were held during 2003 in portions of Arizona, Idaho, Montana, New Mexico, Utah, and Wyoming, resulting in a harvest of 528 cranes, which was 17% below the previous year's harvest of 639 cranes.

Woodcock

Singing-ground and Wing-collection Surveys were conducted to assess the population status of the American woodcock (*Scolopax minor*). Singing-ground Survey data for 2004 indicate that the numbers of displaying woodcock in the Eastern and Central Regions were unchanged from 2003 ($P>0.10$). There was no significant trend in woodcock heard on the Singing-ground Survey in either the Eastern or Central Regions during the 10 years between 1995 and 2004 ($P\geq0.10$). This represents the first time since 1992 that the 10-year trend estimate for either region was not a significant decline. There were long-term (1968–2004) declines ($P<0.01$) of 2.1 percent per year in the Eastern Region and 1.8 percent per year in the Central Region. Wing-collection survey data indicate that the 2003 recruitment index for the U.S. portion of the Eastern Region (1.5 immatures per adult female) was slightly higher than the 2002 index, but was 12 percent below the long-term average. The recruitment index for the U.S. portion of the Central Region (1.4 immatures per adult female) was 19 percent below the 2002 index and 16 percent below the long-term average.

Band-Tailed Pigeons and Doves

A significant decline in the Coastal population of band-tailed pigeons occurred during 1968–2003, as indicated by the Breeding Bird Survey (BBS); however, no trend was noted over the most recent 10 years. Additionally, mineral-site counts at 10 selected sites in Oregon indicate a general increase since the late 1980s. Numbers have declined the past 4 years, but the count of 3,195 in 2003 is still well above the total of 1,462 in 1986. Call-count surveys conducted in Washington showed no significant trends during 1975–2003 or between 1999–2003. A rangewide (British Columbia, Washington, Oregon, and California) mineral-site survey for the Coastal Population was established in 2003, but it will be several years before trend information will be available. The Interior band-tailed pigeon population is stable, with no trend indicated by the BBS over the short- or long-term periods.

Analyses of Mourning Dove Call-count Survey data indicated no significant trend in doves heard in any management unit over the most recent 10 years. Between 1966 and 2004, all three units exhibited significant declines ($P<0.05$). In contrast, for doves seen over the 10-year period, a significant increase was found in the Eastern Unit ($P<0.05$), while no trends were found in the Central and Western Units. Over 39 years, no trend was found for doves seen in the Eastern and Central Units, while a decline was indicated in the Western Unit ($P<0.05$). A project is under way to develop mourning dove population models for each unit to provide guidance for improving our decision-making process with respect to harvest management. Additionally, a small-scale banding study was initiated in 2003 to obtain additional information.

In Arizona, the white-winged dove population has shown a significant decline between 1962 and 2004. However, the number of whitewings has been fairly stable since the 1970s. Estimated harvests in recent years (145,000 in 2003) are low compared to those occurring several decades ago. In Texas, white-winged doves are now found throughout most of the state. In 2004, the whitewing population in Texas was estimated to be 2,387,000 birds, a decrease of 5.5 percent from 2003. A more inclusive count in San Antonio documented more than 1.3 million birds. An estimated 130,900 whitewings were taken during the

special whitewing season in south Texas, with an additional 1,224,000 birds taken statewide during the regular mourning dove season. The expansion of whitewings northward and eastward from Texas has led to whitewings being sighted in most of the Great Plains and Midwestern states and as far north as Ontario. Nesting has been reported in Louisiana, Arkansas, Oklahoma, Kansas, and Missouri. They have been sighted in Colorado, Montana, Nebraska, Iowa, and Minnesota. Additionally, whitewings are believed to be expanding northward from Florida and have been seen along the eastern seaboard as far north as Newfoundland.

White-tipped doves are maintaining a relatively stable population in the Lower Rio Grande Valley of Texas. They are most abundant in cities and, for the most part, are not available to hunting because of their urban location. The count in 2004 averaged 0.84 birds per stop, an 11.6 percent decrease over the count in 2003. The estimated harvest during the special 4-day whitewing season is less than 3,000 birds.

Review of Public Comments

The preliminary proposed rulemaking (March 22 **Federal Register**) opened the public comment period for migratory game bird hunting regulations and announced the proposed regulatory alternatives for the 2004–05 duck hunting season. Comments concerning early-season issues and the proposed alternatives are summarized below and numbered in the order used in the March 22 **Federal Register** document. Only the numbered items pertaining to early-seasons issues and the proposed regulatory alternatives for which written comments were received are included. Consequently, the issues do not follow in consecutive numerical or alphabetical order.

We received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the annual review of the frameworks performed by the Councils, support for continuation of last year's frameworks is assumed for items for which no recommendations were received. Council recommendations for changes in the frameworks are summarized below. We seek additional information and comments on the recommendations in this supplemental proposed rule. New proposals and modifications to previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items in the March 22, 2004, **Federal Register** document.

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) General Harvest Strategy, (B) Regulatory Alternatives, including specification of framework dates, season length, and bag limits, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. The categories correspond to previously published issues/discussions, and only those containing substantial recommendations are discussed below.

D. Special Seasons/Species Management

i. September Teal Seasons

Council Recommendations: The Central Flyway Council recommended that the Service change the status of the Nebraska September teal season from experimental to operational beginning with the 2004–05 hunting season. Criteria for Nebraska's September teal season would be the same as for other non-production Central Flyway states and confined to that area opened to teal hunting during the experimental phase. The Council believes that pre-sunrise shooting hours are justified given results from evaluation of non-target attempt rates.

Service Response: We concur.

iv. Canvasbacks

Council Recommendations: The Atlantic Flyway Council and the Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended modifying the current Canvasback Harvest Strategy to allow partial seasons within the regular duck season. The harvest management strategy would include 3 levels: closed, "restrictive" season length, and full season.

The Central Flyway Council recommended managing canvasbacks with the 'Hunters Choice Bag Limit' (aggregate daily bag limit of 1 hen mallard, mottled duck, pintail, or canvasback). The Council further recommends that until the 'Hunter Choice Bag Limit' becomes available the current strategy should be modified to include three levels of harvest opportunity: full, closed, and partial seasons. The partial season would consist of the "restrictive" season length (39 days in the Central Flyway).

The Pacific Flyway Council recommended modifying the current canvasback harvest management strategy to allow partial canvasback seasons within regular duck season frameworks. The harvest management strategy would include four levels for the Pacific Flyway: "liberal"—107 days, "moderate"—86 days, "restrictive"—60 days, and closed seasons. The Council also recommended that the strategy include a statement specifying that Alaska's season will maintain a fixed restriction of 1 canvasback daily in lieu of the annual prescriptions from the strategy.

Service Response: The Service concurs with the Atlantic, Mississippi, and Central Flyway Council recommendations for modification of the canvasback harvest strategy to allow for two potential levels of canvasback seasons:

(1) An open season with daily bag and possession limits of 1 and 2, respectively, for the entire regular duck season whenever the allowable harvest projects a breeding population in the subsequent year of more than 500,000 canvasbacks;

(2) A partial season at the "restrictive" package level (30 days in the Atlantic and Mississippi Flyways, 39 days in the Central Flyway, and 60 in the Pacific Flyway) within the regular duck season whenever a full season projects a breeding population in the subsequent year of less than 500,000 but a partial season projects a breeding population over 500,000 birds; and

Whenever the allowable harvest under both the full and partial seasons project a breeding population in the subsequent year of less than 500,000, the season will be closed season in all Flyways. Season splits must conform to each State's zone/split configuration for duck hunting. If a State is authorized to split its regular duck season and chooses not to do so, the partial season may still be split into two segments. In Alaska, a 1-bird daily bag limit for the entire regular duck season length will be used in all years unless we determine that a complete season closure is in the best interest of the canvasback resource and believe it necessary to close the season in Alaska as well as in the lower 48 states.

v. Pintails

Council Recommendations: The Atlantic Flyway Council recommended modifying the Interim Strategy for Northern Pintail Harvest Management to allow partial seasons within the regular duck season. The Council recommended using partial seasons to allow hunting opportunity for this species when (1) a full season is predicted to return a breeding population below 1.5 million (the threshold for season closure) and (2) when a partial season is expected to

return a breeding population at or above 1.5 million.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the current interim pintail harvest management strategy be modified to allow partial seasons within the regular duck hunting season. The harvest management strategy would include 3 levels: closed, "restrictive" season length, and full season.

The Central Flyway Council recommended that the interim pintail harvest strategy be revised as follows:

In the Central Flyway, pintails will be included in a 'Hunters Choice' daily bag limit (hen mallard, or mottled duck, or pintail, or canvasback—daily bag of 1). When the interim pintail harvest strategy model projections allow for a daily bag of =2, pintails will be removed from the 1-bird aggregate bag and the prescribed daily bag limit will be selected.

If this recommendation is not approved, the Council recommended the following modification to the existing harvest strategy:

When the May Breeding Population Survey in the traditional survey areas is below 1.5 million or the projected fall flight is predicted to be below 2 million (as calculated by the models in the interim strategy), adopt the "restrictive" AHM package season length (39 days in the Central Flyway) with a daily bag limit of 1, if these regulations are projected to produce harvest at levels that would provide for the 6% annual growth identified as an objective in the strategy. If the Restrictive package regulations are expected to provide for <6% population growth, the season on pintails will be closed.

The Pacific Flyway Council recommended maintaining the Interim Northern Pintail Harvest Strategy as originally adopted by the Service.

Service Response: In 1997, the Service formally adopted the use of the interim pintail harvest strategy (62 FR 39712). The interim harvest strategy is based on a mathematical model of the continental pintail population and predicts allowable harvest of pintails in the lower 48 States based on the current size of the pintail breeding population, anticipated recruitment, anticipated natural mortality, anticipated mortality due to hunting, and the desired size of the population in the following spring. In 2002, we updated the harvest prediction equations with the concurrence of all four Flyway Councils (67 FR 40128).

In the March 12 **Federal Register**, we requested that the Flyway Councils consider a modification to the interim harvest strategy because for the 2002–03 and 2003–04 hunting seasons we had departed from the interim strategy by implementing partial seasons (67 FR 59110 and 68 FR 55784). We concur with the recommendations of the Atlantic, Mississippi, and Central Flyway Councils to include the use of partial seasons when circumstances warrant, and propose to modify the interim harvest strategy to provide for partial seasons under the following conditions:

When the current-year breeding population estimate for northern pintails is lower than 2.5 million *and* the population projection of the model in the harvest strategy predicts that the breeding population will decline in the following year.

The partial season will consist of the number of days currently allowed in all Flyways under the "restrictive" packages with a 1-bird daily bag limit. Under all other circumstances, all existing provisions and conditions of the current harvest strategy will continue to apply. Season splits must conform to each State's zone/split configuration for duck hunting. If a State is authorized to split its regular duck season and chooses not to do so, the partial season may still be split into two segments.

4. Canada Geese

A. Special Seasons

Council Recommendations: The Atlantic Flyway Council recommended that Connecticut's September goose season framework dates of September 1 to September 25 become operational.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that Michigan be granted operational status for the September 1–10 early Canada goose season with a 5-bird daily limit within Huron, Tuscola, and Saginaw Counties.

The Central Flyway Council recommended allowing a 3-year experimental late September Canada goose season in eastern Nebraska. The Council also recommended that South Dakota's 2000–02 3-year Experimental Late-September Canada Goose Hunting Season (September 16–30) become operational in 20 eastern South Dakota counties beginning with the September 2004 hunting season.

The Pacific Flyway Council recommended expanding the September season in Wyoming to include the entire Pacific Flyway portion of Wyoming, reducing the daily bag limit from 3 to 2, and eliminating the quota on the number of geese harvested.

Service Response: We concur with the recommendations regarding Connecticut, Michigan, Nebraska, South Dakota, and Wyoming's September goose seasons.

B. Regular Seasons

Council Recommendations: The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the framework opening date for all species of geese for the regular goose seasons be September 16 in 2004 and future years. If this recommendation is not approved, the Council recommended that the framework opening date for all species of geese for the regular goose seasons in Michigan and Wisconsin be September 16, 2004.

Service Response: We concur with the objective to increase harvest pressure on resident Canada geese in the Mississippi Flyway, and a Michigan evaluation of an earlier framework opening indicates that a September 16 opening date would accomplish that objective. However, a September 16 opening date Flyway-wide would require that the regular season be established during the early-season regulations process, which presents a number of administrative problems. In addition, a September 16 opening date has implications beyond the Mississippi Flyway, and the other Flyway Councils have not had a chance to consider the advisability of such an early opening in their respective Flyways. Therefore, we propose that a decision on a September 16 opening be deferred until next year so that we and the Mississippi Flyway Council can consider the administrative ramifications of establishing regular goose season frameworks during the early-season process and to provide an opportunity for the other Flyway Councils to consider such a change.

Regarding the recommendations for a September 16 framework opening date in Wisconsin and Michigan in 2004, we concur. However, we propose that the opening dates in both States continue to be considered exceptions to the general Flyway opening date, to be reconsidered annually, until the issue of an earlier Flyway-wide opening date is addressed.

9. Sandhill Cranes

Council Recommendations: The Central Flyway Council recommended using the 2004 Rocky Mountain Population sandhill crane harvest allocation of 656 birds as proposed in the allocation formula using the 2001–2003 3-year running average.

Service Response: We concur.

16. Mourning Doves

Council Recommendations: The Pacific Flyway Council recommended that the daily bag limit in Utah be

changed from 10 mourning doves to 10 mourning and white-winged doves in the aggregate.

Written Comments: The Alabama Wildlife and Freshwater Fisheries Division requested moving Conecuh County from the South zone to the North Zone for the 2004 season.

The Texas Parks and Wildlife Department requested that a portion of the South Zone be moved to the Central Zone to allow greater hunter utilization of the white-winged dove population around San Antonio. Texas also requested clarification regarding the framework opening date in its southern zone.

An individual from Louisiana requested a split dove season in the South Zone with the opening split earlier than September 20.

Service Response: We concur with the Pacific Flyway Council's recommendation concerning Utah's daily bag limit.

Regarding the requests by Texas and Alabama, the nature of the requests made us realize that we need to work with the States to review our current policy regarding zoning for dove hunting. In particular, we ask the Flyway Councils and Mourning Dove Management Unit Technical Committees to review the current policies regarding the use of zones and split seasons for dove hunting, with a view toward establishing guidelines for the use of these harvest-management tools, as has been done for waterfowl. Items to be considered should include the number of zone/split-season configurations that could be used, the frequency with which those configurations could be changed, and the need for a restricted framework opening date in south zones.

Regarding the specific zoning requests this year, we concur with the requests by Alabama and Texas to modify their existing zone boundaries. Our approval is based largely on our past history of approving these types of requests and the fact that we anticipate no adverse biological impact by these proposed changes. In the future, however, we will be very reluctant to approve any request for zone boundary changes until the development and approval of a new policy on zoning. Additionally, we ask that all future zoning requests come through the appropriate Technical Committees and Flyway Councils.

Regarding the issue of framework opening dates in south zones prior to September 20, there is no precedent for the requested change and we desire to wait for Flyway Council and Dove Technical Committee review of the current zoning policies and the cooperative development of guidelines for the use of zones and split seasons before departing from the current policy.

18. Alaska

Council Recommendations: The Pacific Flyway Council recommends that the tundra swan season in Unit 17 become operational.

Service Response: We concur.

Public Comment Invited

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. We intend that adopted final rules be as responsive as possible to all concerned interests and, therefore, seek the comments and suggestions of the public, other concerned governmental agencies, nongovernmental organizations, and other private interests on these proposals. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations to the address indicated under the caption **ADDRESSES.**

Special circumstances involved in the establishment of these regulations limit the amount of time that we can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) The need to establish final rules at a point early enough in the summer to allow affected State agencies to adjust their licensing and regulatory mechanisms; and (2) the unavailability, before mid-June, of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, we believe that to allow comment periods past the dates specified in **DATES** is contrary to the public interest.

Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. You may inspect comments received on the proposed annual regulations during normal business hours at the Service's office in room 4107, 4501 North Fairfax Drive, Arlington, Virginia. For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. However, as in the past, we will summarize all comments received during the comment period and respond to them in the final rule.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with the Environmental Protection Agency on June 9, 1988. We published Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the address indicated under the caption **ADDRESSES.**

In a proposed rule published in the April 30, 2001, **Federal Register** (66 FR 21298), we expressed our intent to begin the process of developing a new Supplemental Environmental Impact Statement for the migratory bird hunting program. We plan to begin the public scoping process in 2005.

Endangered Species Act Consideration

Prior to issuance of the 2004–05 migratory game bird hunting regulations, we will consider provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; hereinafter the Act) to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened, or modify or destroy its critical habitat, and is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change proposals in this and future supplemental proposed rulemaking documents.

Executive Order 12866

The migratory bird hunting regulations are economically significant and were reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. As such, a cost/benefit analysis was initially prepared in 1981. This analysis was subsequently revised annually from 1990–1996, and then updated in 1998. We have updated again this year. It is further discussed below under the heading Regulatory Flexibility Act. Results from the 2004 analysis indicate that the expected welfare benefit of the annual migratory bird hunting frameworks is on the order of $734 million to $1.064 billion, with a midpoint estimate of $899 million. Copies of the cost/benefit analysis are

available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.migratorybirds.gov*.

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite 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 a copy of any comments that concern how we could make this rule easier to understand to: Office of the Executive Secretariat and Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail comments to this address: *Exsec@ios.doi.gov*.

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis discussed under Executive Order 12866. This analysis was revised annually from 1990 through 1995. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, and 2004. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2004 Analysis was based on the 2001 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $481 million and $1.2 billion at small businesses in 2004. Copies of the Analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.migratorybirds.gov*.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date required by 5 U.S.C. 801 under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 10/31/2004). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned clearance number 1018–0023 (expires 10/31/2004). The information from this survey is used to estimate the magnitude and the geographical and temporal distribution of the harvest, and the portion it constitutes of the total population.

A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 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. While this proposed rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to

warrant the preparation of a federalism assessment.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2004–05 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

Dated: July 14, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

Proposed Regulations Frameworks for 2004–05 Early Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department of the Interior approved the following proposed frameworks, which prescribe season lengths, bag limits, shooting hours, and outside dates within which States may select hunting seasons for certain migratory game birds between September 1, 2004, and March 10, 2005.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (Taking by Falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Flyways and Management Units

Waterfowl Flyways: Atlantic Flyway—includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway—includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway—includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway—includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

Management Units

Mourning Dove Management Units: Eastern Management Unit—All States east of the Mississippi River, and Louisiana.

Central Management Unit—Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

Western Management Unit—Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington.

Woodcock Management Regions: Eastern Management Region—Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Central Management Region—Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, and Wisconsin.

Other geographic descriptions are contained in a later portion of this document.

Compensatory Days in the Atlantic Flyway: In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, and Virginia, where Sunday hunting is prohibited statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

Special September Teal Season

Outside Dates: Between September 1 and September 30, an open season on all species of teal may be selected by the following States in areas delineated by State regulations:

Atlantic Flyway—Delaware, Florida, Georgia, Maryland, North Carolina, South Carolina, and Virginia.

Mississippi Flyway—Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Ohio, and Tennessee.

Central Flyway—Colorado (part), Kansas, Nebraska (part), New Mexico (part), Oklahoma, and Texas.

Hunting Seasons and Daily Bag Limits: Not to exceed 9 consecutive days. The daily bag limit is 4 teal.

Shooting Hours:

Atlantic Flyway—One-half hour before sunrise to sunset except in Maryland, where the hours are from sunrise to sunset.

Mississippi and Central Flyways—One-half hour before sunrise to sunset, except in the States of Arkansas, Illinois, Indiana, Missouri, and Ohio, where the hours are from sunrise to sunset.

Special September Duck Seasons

Florida, Kentucky and Tennessee: In lieu of a special September teal season, a 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate, of which no more than 2 may be wood ducks.

Iowa: Iowa may hold up to 5 days of its regular duck hunting season in September. All ducks that are legal during the regular duck season may be taken during the September segment of the season. The September season segment may commence no earlier than the Saturday nearest September 20 (September 18). The daily bag and possession limits will be the same as those in effect last year, but are subject to change during the late-season regulations process. The remainder of the regular duck season may not begin before October 10.

Special Youth Waterfowl Hunting Days

Outside Dates: States may select two consecutive days (hunting days in Atlantic Flyway States with compensatory days) per duck-hunting zone, designated as "Youth Waterfowl Hunting Days," in addition to their regular duck seasons. The days must be held outside any regular duck season on a weekend, holidays, or other non-school days when youth hunters would have the maximum opportunity to participate. The days may be held up to 14 days before or after any regular duck-season frameworks or within any split of a regular duck season, or within any other open season on migratory birds.

Daily Bag Limits: The daily bag limits may include ducks, geese, mergansers, coots, moorhens, and gallinules and would be the same as those allowed in the regular season. Flyway species and area restrictions would remain in effect.

Shooting Hours: One-half hour before sunrise to sunset.

Participation Restrictions: Youth hunters must be 15 years of age or younger. In addition, an adult at least 18 years of age must accompany the youth hunter into the field. This adult may not duck hunt but may participate in other seasons that are open on the special youth day.

Scoter, Eider, and Oldsquaw Ducks (Atlantic Flyway)

Outside Dates: Between September 15 and January 31.

Hunting Seasons and Daily Bag Limits: Not to exceed 107 days, with a daily bag limit of 7, singly or in the aggregate of the listed sea-duck species, of which no more than 4 may be scoters.

Daily Bag Limits During the Regular Duck Season: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina and Virginia; and provided that any such areas have been described, delineated, and designated as special sea-duck hunting areas under the hunting regulations adopted by the respective States.

Special Early Canada Goose Seasons

Atlantic Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected for the Eastern Unit of Maryland and Delaware. Seasons not to exceed 30 days during September 1–30 may be selected for the Northeast Hunt Unit of North Carolina, New Jersey, and Rhode Island. Except for experimental seasons described below, seasons may not exceed 25 days during September 1–25 in the remainder of the Flyway. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag Limits: Not to exceed 8 Canada geese.

Experimental Seasons

Experimental Canada goose seasons of up to 25 days during September 1–25 may be selected for the Montezuma Region of New York and the Lake Champlain Region of New York and Vermont. Experimental seasons of up to 30 days during September 1–30 may be selected by Connecticut, Florida, Georgia, New York (Long Island Zone), North Carolina (except in the Northeast Hunt Unit), and South Carolina. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag Limits: Not to exceed 8 Canada geese.

Mississippi Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected, except in the Upper Peninsula in Michigan, where the season may not extend beyond September 10, and in Minnesota (except in the Northwest Goose Zone), where a season of up to 22 days during September 1–22 may be selected. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

A Canada goose season of up to 10 consecutive days during September 1–10 may be selected by Michigan for Huron, Saginaw, and Tuscola Counties, except that the Shiawassee National Wildlife Refuge, Shiawassee River State Game Area Refuge, and the Fish Point Wildlife Area Refuge will remain closed. The daily bag limit may not exceed 5 Canada geese.

Central Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

A Canada goose season of up to 15 consecutive days during September 16–30 may be selected by South Dakota. The daily bag limit may not exceed 5 Canada geese.

Experimental Seasons

An experimental Canada goose season of up to 9 consecutive days during September 22–30 may be selected by Oklahoma. The daily bag limit may not exceed 5 Canada geese.

An experimental Canada goose season of up to 15 consecutive days during September 16–30 may be selected by Nebraska. The daily bag limit may not exceed 5 Canada geese.

Pacific Flyway

General Seasons

California may select a 9-day season in Humboldt County during the period September 1–15. The daily bag limit is 2.

Colorado may select a 9-day season during the period of September 1–15. The daily bag limit is 3.

Oregon may select a special Canada goose season of up to 15 days during the period September 1–15. In addition, in the NW goose management zone in Oregon, a 15-day season may be selected during the period September 1–20. Daily bag limits may not exceed 5 Canada geese.

Idaho may select a 7-day season in the special East Canada Goose Zone, as described in State regulations, during the period September 1–15. All participants must have a valid State permit, and the total number of permits issued is not to exceed 110 for this zone. The daily bag limit is 2.

Idaho may select a 7-day Canada goose season during the period September 1–15 in Nez Perce County, with a bag limit of 4.

Washington may select a special Canada goose season of up to 15 days during the period September 1–15. Daily bag limits may not exceed 5 Canada geese.

Wyoming may select an 8-day season on Canada geese between September 1–15. This season is subject to the following conditions:

1. Where applicable, the season must be concurrent with the September portion of the sandhill crane season.

2. All participants must have a valid State permit for the special season.

3. A daily bag limit of 2, with season and possession limits of 4, will apply to the special season.

Areas open to hunting of Canada geese in each State must be described, delineated, and designated as such in each State's hunting regulations.

Regular Goose Seasons

Regular goose seasons may open as early as September 16 in Wisconsin and Michigan. Season lengths, bag and possession limits, and other provisions will be established during the late-season regulations process.

Sandhill Cranes

Regular Seasons in the Central Flyway

Outside Dates: Between September 1 and February 28.

Hunting Seasons: Seasons not to exceed 37 consecutive days may be selected in designated portions of North Dakota (Area 2) and Texas (Area 2).

Seasons not to exceed 58 consecutive days may be selected in designated portions of the following States: Colorado, Kansas, Montana, North Dakota, South Dakota, and Wyoming. Seasons not to exceed 93 consecutive days may be selected in designated portions of the following States: New Mexico, Oklahoma, and Texas.

Daily Bag Limits: 3 sandhill cranes, except 2 sandhill cranes in designated portions of North Dakota (Area 2) and Texas (Area 2).

Permits: Each person participating in the regular sandhill crane seasons must have a valid Federal sandhill crane hunting permit and/or, in those States where a Federal sandhill crane permit is not issued, a State-issued Harvest Information Survey Program (HIP) certification for game bird hunting in their possession while hunting.

Special Seasons in the Central and Pacific Flyways

Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population (RMP) subject to the following conditions:

Outside Dates: Between September 1 and January 31.

Hunting Seasons: The season in any State or zone may not exceed 30 days.

Bag limits: Not to exceed 3 daily and 9 per season.

Permits: Participants must have a valid permit, issued by the appropriate State, in their possession while hunting.

Other provisions: Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Central and Pacific Flyway Councils with the following exceptions:

1. In Utah, the requirement for monitoring the racial composition of the harvest in the experimental season is waived, and 100 percent of the harvest will be assigned to the RMP quota;

2. In Arizona, the annual requirement for monitoring the racial composition of the harvest is changed to once every 3 years;

3. In Idaho, seasons are experimental, and the requirement for monitoring the racial composition of the harvest is waived; 100 percent of the harvest will be assigned to the RMP quota; and

4. In New Mexico, the season in the Estancia Valley is experimental, with a requirement to monitor the level and racial composition of the harvest; greater sandhill cranes in the harvest will be assigned to the RMP quota.

Common Moorhens and Purple Gallinules

Outside Dates: Between September 1 and January 20 in the Atlantic Flyway, and between September 1 and the Sunday nearest January 20 (January 23) in the Mississippi and Central Flyways. States in the Pacific Flyway have been allowed to select their hunting seasons between the outside dates for the season on ducks; therefore, they are late-season frameworks, and no frameworks are provided in this document.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi, and Central Flyways. Seasons may be split into 2 segments. The daily bag limit is 15 common moorhens and purple gallinules, singly or in the aggregate of the two species.

Zoning: Seasons may be selected by zones established for duck hunting.

Rails

Outside Dates: States included herein may select seasons between September 1 and January 20 on clapper, king, sora, and Virginia rails.

Hunting Seasons: The season may not exceed 70 days, and may be split into 2 segments.

Daily Bag Limits: Clapper and King Rails—In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, 10, singly or in the aggregate of the two species. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, 15, singly or in the aggregate of the two species.

Sora and Virginia Rails—In the Atlantic, Mississippi, and Central Flyways and the Pacific-Flyway portions of Colorado, Montana, New Mexico, and Wyoming, 25 daily and 25 in possession, singly or in the aggregate of the two species. The season is closed in the remainder of the Pacific Flyway.

Common Snipe

Outside Dates: Between September 1 and February 28, except in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia, where the season must end no later than January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 107 days and may be split into two segments. The daily bag limit is 8 snipe.

Zoning: Seasons may be selected by zones established for duck hunting.

American Woodcock

Outside Dates: States in the Eastern Management Region may select hunting seasons between October 1 and January 31. States in the Central Management Region may select hunting seasons between the Saturday nearest September 22 (September 25) and January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 30 days in the Eastern Region and 45 days in the Central Region. The daily bag limit is 3. Seasons may be split into two segments.

Zoning: New Jersey may select seasons in each of two zones. The season in each zone may not exceed 24 days.

Band-Tailed Pigeons

Pacific Coast States (California, Oregon, Washington, and Nevada)

Outside Dates: Between September 15 and January 1.

Hunting Seasons and Daily Bag Limits: Not more than 9 consecutive days, with a daily bag limit of 2 band-tailed pigeons.

Zoning: California may select hunting seasons not to exceed 9 consecutive days in each of two zones. The season in the North Zone must close by October 3.

Four-Corners States (Arizona, Colorado, New Mexico, and Utah)

Outside Dates: Between September 1 and November 30.

Hunting Seasons and Daily Bag Limits: Not more than 30 consecutive days, with a daily bag limit of 5 band-tailed pigeons.

Zoning: New Mexico may select hunting seasons not to exceed 20 consecutive days in each of two zones. The season in the South Zone may not open until October 1.

Mourning Doves

Outside Dates: Between September 1 and January 15, except as otherwise provided, States may select hunting seasons and daily bag limits as follows:

Eastern Management Unit

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. The hunting seasons in the South Zones of Alabama, Florida, Georgia, and Louisiana may commence no earlier than September 20. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

Central Management Unit

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15 mourning and white-winged doves in the aggregate.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods.

Texas may select hunting seasons for each of three zones subject to the following conditions:

A. The hunting season may be split into not more than two periods, except in that portion of Texas in which the special white-winged dove season is allowed, where a limited mourning dove season may be held concurrently with that special season (see white-winged dove frameworks).

B. A season may be selected for the North and Central Zones between September 1 and January 25; and for the South Zone between September 20 and January 25.

C. Daily bag limits are aggregate bag limits with mourning, white-winged, and white-tipped doves (*see* white-winged dove frameworks for specific daily bag limit restrictions).

D. Except as noted above, regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

Western Management Unit

Hunting Seasons and Daily Bag Limits:

Idaho, Oregon, and Washington—Not more than 30 consecutive days with a daily bag limit of 10 mourning doves.

Utah—Not more than 30 consecutive days with a daily bag limit that may not exceed 10 mourning doves and white-winged doves in the aggregate.

Nevada—Not more than 30 consecutive days with a daily bag limit of 10 mourning doves, except in Clark and Nye Counties, where the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

Arizona and California—Not more than 60 days, which may be split between two periods, September 1–15 and November 1–January 15. In Arizona, during the first segment of the season, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. During the remainder of the season, the daily bag limit is 10 mourning doves. In California, the daily bag limit is 10 mourning doves, except in Imperial, Riverside, and San Bernardino Counties, where the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

White-Winged and White-Tipped Doves

Hunting Seasons and Daily Bag Limits:

Except as shown below, seasons must be concurrent with mourning dove seasons.

Eastern Management Unit

In Florida, the daily bag limit may not exceed 12 mourning and white-winged doves (15 under the alternative) in the aggregate, of which no more than 4 may be white-winged doves.

In the remainder of the Eastern Management Unit, the season is closed.

Central Management Unit

In Texas, the daily bag limit may not exceed 12 mourning, white-winged, and white-tipped doves (15 under the alternative) in the aggregate, of which no more than 2 may be white-tipped doves. In addition, Texas also may select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone between September 1 and September 19. The daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves.

In the remainder of the Central Management Unit, the daily bag limit may not exceed 12 (15 under the alternative) mourning and white-winged doves in the aggregate.

Western Management Unit

Arizona may select a hunting season of not more than 30 consecutive days, running concurrently with the first segment of the mourning dove season. The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves.

In Utah, the Nevada Counties of Clark and Nye, and in the California Counties of Imperial, Riverside, and San Bernardino, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

In the remainder of the Western Management Unit, the season is closed.

Alaska

Outside Dates: Between September 1 and January 26.

Hunting Seasons: Alaska may select 107 consecutive days for waterfowl, sandhill cranes, and common snipe in each of five zones. The season may be split without penalty in the Kodiak Zone. The seasons in each zone must be concurrent.

Closures: The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain. The hunting season is closed on emperor geese, spectacled eiders, and Steller's eiders.

Daily Bag and Possession Limits:

Ducks—Except as noted, a basic daily bag limit of 7 and a possession limit of 21 ducks. Daily bag and possession limits in the North Zone are 10 and 30, and in the Gulf Coast Zone, they are 8 and 24, respectively. The basic limits may include no more than 1 canvasback daily and 3 in possession and may not include sea ducks.

In addition to the basic duck limits, Alaska may select sea duck limits of 10 daily, 20 in possession, singly or in the aggregate, including no more than 6 each of either harlequin or long-tailed ducks. Sea ducks include scoters, common and king eiders, harlequin ducks, long-tailed ducks, and common and red-breasted mergansers.

Light Geese—A basic daily bag limit of 3 and a possession limit of 6.

Dark Geese—A basic daily bag limit of 4 and a possession limit of 8.

Dark-goose seasons are subject to the following exceptions:

1. In Units 5 and 6, the taking of Canada geese is permitted from September 28 through December 16. A special, permit-only Canada goose season may be offered on Middleton Island. No more than 10 permits can be issued. A mandatory goose identification class is required. Hunters must check in and check out. The bag limit is 1 daily and 1 in possession. The season will close if incidental harvest includes 5 dusky Canada geese. A dusky Canada goose is any dark-breasted Canada goose (Munsell 10 YR color value five or less) with a bill length between 40 and 50 millimeters.

2. In Unit 10 (except Unimak Island), the taking of Canada geese is prohibited.

3. In Unit 9(D) and the Unimak Island portion of Unit 10, the limits for dark geese are 6 daily and 12 in possession.

Brant—A daily bag limit of 2.

Common snipe—A daily bag limit of 8.

Sandhill cranes—Bag and possession limits of 2 and 4, respectively, in the Southeast, Gulf Coast, Kodiak, and Aleutian Zones, and Unit 17 in the Northern Zone. In the remainder of the Northern Zone (outside Unit 17), bag and possession limits of 3 and 6, respectively.

Tundra Swans—Open seasons for tundra swans may be selected subject to the following conditions:

1. All seasons are by registration permit only.

2. All season framework dates are September 1—October 31.

3. In Game Management Unit (GMU) 17, no more than 200 permits may be issued during this operational season. No more than 3 tundra swans may be authorized per permit with no more than 1 permit issued per hunter per season.

4. In Game Management Unit (GMU) 18, no more than 500 permits may be issued during the operational season. Up to 3 tundra swans may be authorized per permit. No more than 1 permit may be issued per hunter per season.

5. In GMU 22, no more than 300 permits may be issued during the operational season. Each permittee may be authorized to take up to 3 tundra swan per permit. No more than 1 permit may be issued per hunter per season.

6. In GMU 23, no more than 300 permits may be issued during the operational season. No more than 3 tundra swans may be authorized per permit with no more than 1 permit issued per hunter per season.

Hawaii

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 65 days (75 under the alternative) for mourning doves.

Bag Limits: Not to exceed 15 (12 under the alternative) mourning doves.

Note: Mourning doves may be taken in Hawaii in accordance with shooting hours and other regulations set by the State of Hawaii, and subject to the applicable provisions of 50 CFR part 20.

Puerto Rico

Doves and Pigeons

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days.

Daily Bag and Possession Limits: Not to exceed 15 Zenaida, mourning, and white-winged doves in the aggregate, of which not more than 3 may be mourning doves. Not to exceed 5 scaly-naped pigeons.

Closed Areas: There is no open season on doves or pigeons in the following areas: Municipality of Culebra, Desecheo Island, Mona Island, El Verde Closure Area, and Cidra Municipality and adjacent areas.

Ducks, Coots, Moorhens, Gallinules, and Snipe

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

Daily Bag Limits

Ducks—Not to exceed 6.

Common moorhens—Not to exceed 6.

Common snipe—Not to exceed 8.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck, which are protected by the Commonwealth of Puerto Rico. The season also is closed on the purple gallinule, American coot, and Caribbean coot.

Closed Areas: There is no open season on ducks, common moorhens, and common snipe in the Municipality of Culebra and on Desecheo Island.

Virgin Islands

Doves and Pigeons

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days for Zenaida doves.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves.

Closed Seasons: No open season is prescribed for ground or quail doves, or pigeons in the Virgin Islands.

Closed Areas: There is no open season for migratory game birds on Ruth Cay (just south of St. Croix).

Local Names for Certain Birds: Zenaida dove, also known as mountain dove; bridled quail-dove, also known as Barbary dove or partridge; Common ground-dove, also known as stone dove, tobacco dove, rola, or tortolita; scaly-naped pigeon, also known as red-necked or scaled pigeon.

Ducks

Outside Dates: Between December 1 and January 31.

Hunting Seasons: Not more than 55 consecutive days.

Daily Bag Limits: Not to exceed 6.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck.

Special Falconry Regulations

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Extended Seasons: For all hunting methods combined, the combined length of the extended season, regular season, and any special or experimental seasons must not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

Framework Dates: Seasons must fall between September 1 and March 10.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds must not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special or experimental seasons, and regular hunting seasons in all States, including those that do not select an extended falconry season.

Regular Seasons: General hunting regulations, including seasons and hunting hours, apply to falconry in each State listed in 50 CFR 21.29(k). Regular-season bag and possession limits do not apply to falconry. The falconry bag limit is not in addition to gun limits.

Area, Unit, and Zone Descriptions

Mourning and White-Winged Doves

Alabama

South Zone—Baldwin, Barbour, Coffee, Covington, Dale, Escambia, Geneva, Henry, Houston, and Mobile Counties.

North Zone—Remainder of the State.

California

White-winged Dove Open Areas—Imperial, Riverside, and San Bernardino Counties.

Florida

Northwest Zone—The Counties of Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, Walton, Washington, Leon (except that portion north of U.S. 27 and east of State Road 155), Jefferson (south of U.S. 27, west of State Road 59 and north of U.S. 98), and Wakulla (except that portion south of U.S. 98 and east of the St. Marks River).

South Zone—Remainder of State.

Georgia

Northern Zone—That portion of the State lying north of a line running west to east along U.S. Highway 280 from Columbus to Wilcox County, thence southward along the western border of Wilcox County; thence east along the southern border of Wilcox County to the Ocmulgee River, thence north along the Ocmulgee River to Highway 280, thence east along Highway 280 to the Little Ocmulgee River; thence southward along the Little Ocmulgee River to the Ocmulgee River; thence southwesterly along the Ocmulgee River to the western border of Jeff Davis County; thence south along the western border of Jeff

Davis County; thence east along the southern border of Jeff Davis and Appling Counties; thence north along the eastern border of Appling County, to the Altamaha River; thence east to the eastern border of Tattnall County; thence north along the eastern border of Tattnall County; thence north along the western border of Evans to Candler County; thence east along the northern border of Evans County to U.S. Highway 301; thence northeast along U.S. Highway 301 to the South Carolina line.

South Zone—Remainder of the State.

Louisiana

North Zone—That portion of the State north of Interstate Highway 10 from the Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell and Interstate Highway 10 from Slidell to the Mississippi State line.

South Zone—The remainder of the State.

Nevada

White-winged Dove Open Areas—Clark and Nye Counties.

Texas

North Zone—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to TX 20; west along TX 20 to TX 148; north along TX 148 to I–10 at Fort Hancock; east along I–10 to I–20; northeast along I–20 to I–30 at Fort Worth; northeast along I–30 to the Texas-Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to State Loop 1604 west of San Antonio; then south, east and north along Loop 1604 to Interstate Highway 10 east of San Antonio; then east on I–10 to Orange, Texas.

Special White-winged Dove Area in the South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to Uvalde; south on U.S. 83 to TX 44; east along TX 44 to TX 16 at Freer; south along TX 16 to TX 285 at Hebbronville; east along TX 285 to FM 1017; southwest along FM 1017 to TX 186 at Linn; east along TX 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Area with additional restrictions—Cameron, Hidalgo, Starr, and Willacy Counties.

Central Zone—That portion of the State lying between the North and South Zones.

Band-Tailed Pigeons

California

North Zone—Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity Counties.

South Zone—The remainder of the State.

New Mexico

North Zone—North of a line following U.S. 60 from the Arizona State line east to I–25 at Socorro and then south along I–25 from Socorro to the Texas State line.

South Zone—Remainder of the State.

Washington

Western Washington—The State of Washington excluding those portions lying east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Woodcock

New Jersey

North Zone—That portion of the State north of NJ 70.

South Zone—The remainder of the State.

Special September Canada Goose Seasons

Atlantic Flyway

Connecticut

North Zone—That portion of the State north of I–95.

South Zone—Remainder of the State.

Maryland

Eastern Unit—Anne Arundel, Calvert, Caroline, Cecil, Charles, Dorchester, Harford, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester Counties, and those portions of Baltimore, Howard, and Prince George's Counties east of I–95.

Western Unit—Allegany, Carroll, Frederick, Garrett, Montgomery, and Washington Counties, and those portions of Baltimore, Howard, and Prince George's Counties west of I–95.

Massachusetts

Western Zone—That portion of the State west of a line extending south from the Vermont border on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut border.

Central Zone—That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire border on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island border; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge will be in the Coastal Zone.

Coastal Zone—That portion of Massachusetts east and south of the Central Zone.

New York

Lake Champlain Zone—The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone—That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone—That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border, except for the Montezuma Zone.

Montezuma Zone—Those portions of Cayuga, Seneca, Ontario, Wayne, and Oswego Counties north of U.S. Route 20, east of NYS Route 14, south of NYS Route 104, and west of NYS Route 34.

Northeastern Zone—That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone—The remaining portion of New York.

North Carolina

Northeast Hunt Unit—Counties of Bertie, Camden, Chowan, Currituck, Dare, Hyde, Pasquotank, Perquimans, Tyrrell, and Washington.

Vermont

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

Interior Zone: That portion of Vermont west of the Lake Champlain

Zone and eastward of a line extending from the Massachusetts border at Interstate 91; north along Interstate 91 to U.S. 2; east along U.S. 2 to VT 102; north along VT 102 to VT 253; north along VT 253 to the Canadian border.

Connecticut River Zone: The remaining portion of Vermont east of the Interior Zone.

Mississippi Flyway

Illinois

Northeast Canada Goose Zone—Cook, Du Page, Grundy, Kane, Kankakee, Kendall, Lake, McHenry, and Will Counties.

North Zone: That portion of the State outside the Northeast Canada Goose Zone and north of a line extending east from the Iowa border along Illinois Highway 92 to Interstate Highway 280, east along I–280 to I–80, then east along I–80 to the Indiana border.

Central Zone: That portion of the State outside the Northeast Canada Goose Zone and south of the North Zone to a line extending east from the Missouri border along the Modoc Ferry route to Modoc Ferry Road, east along Modoc Ferry Road to Modoc Road, northeasterly along Modoc Road and St. Leo's Road to Illinois Highway 3, north along Illinois 3 to Illinois 159, north along Illinois 159 to Illinois 161, east along Illinois 161 to Illinois 4, north along Illinois 4 to Interstate Highway 70, east along I–70 to the Bond County line, north and east along the Bond County line to Fayette County, north and east along the Fayette County line to Effingham County, east and south along the Effingham County line to I–70, then east along I–70 to the Indiana border.

South Zone: The remainder of Illinois.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I–80 to the Illinois border.

South Zone: The remainder of Iowa.

Cedar Rapids/Iowa City Goose Zone. Includes portions of Linn and Johnson Counties bounded as follows: Beginning at the intersection of the west border of Linn County and Linn County Road E2W; thence south and east along County Road E2W to Highway 920; thence north along Highway 920 to County Road E16; thence east along County Road E16 to County Road W58; thence south along County Road W58 to County Road E34; thence east along County Road E34 to Highway 13; thence south along Highway 13 to Highway 30; thence east along Highway 30 to Highway 1; thence south along Highway 1 to Morse Road in Johnson County; thence east along Morse Road to Wapsi Avenue; thence south along Wapsi Avenue to Lower West Branch Road; thence west along Lower West Branch Road to Taft Avenue; thence south along Taft Avenue to County Road F62; thence west along County Road F62 to Kansas Avenue; thence north along Kansas Avenue to Black Diamond Road; thence west on Black Diamond Road to Jasper Avenue; thence north along Jasper Avenue to Rohert Road; thence west along Rohert Road to Ivy Avenue; thence north along Ivy Avenue to 340th Street; thence west along 340th Street to Half Moon Avenue; thence north along Half Moon Avenue to Highway 6; thence west along Highway 6 to Echo Avenue; thence north along Echo Avenue to 250th Street; thence east on 250th Street to Green Castle Avenue; thence north along Green Castle Avenue to County Road F12; thence west along County Road F12 to County Road W30; thence north along County Road W30 to Highway 151; thence north along the Linn-Benton County line to the point of beginning.

Des Moines Goose Zone. Includes those portions of Polk, Warren, Madison and Dallas Counties bounded as follows: Beginning at the intersection of Northwest 158th Avenue and County Road R38 in Polk County; thence south along R38 to Northwest 142nd Avenue; thence east along Northwest 142nd Avenue to Northeast 126th Avenue; thence east along Northeast 126th Avenue to Northeast 46th Street; thence south along Northeast 46th Street to Highway 931; thence east along Highway 931 to Northeast 80th Street; thence south along Northeast 80th Street to Southeast 6th Avenue; thence west along Southeast 6th Avenue to Highway 65; thence south and west along Highway 65 to Highway 69 in Warren County; thence south along Highway 69 to County Road G24; thence west along County Road G24 to Highway 28; thence southwest along Highway 28 to 43rd Avenue; thence north along 43rd Avenue to Ford Street; thence west along Ford Street to Filmore Street; thence west along Filmore Street to 10th Avenue; thence south along 10th Avenue to 155th Street in Madison County; thence west along 155th Street to Cumming Road; thence north along Cumming Road to Badger Creek Avenue; thence north along Badger Creek Avenue to County Road F90 in Dallas County; thence east along County Road F90 to County Road R22; thence north along County Road R22 to Highway 44; thence east along Highway 44 to County Road R30; thence north along County Road R30 to County Road F31; thence east along County Road F31 to Highway 17; thence north along Highway 17 to Highway 415 in Polk County; thence east along Highway 415 to Northwest 158th Avenue; thence east along Northwest 158th Avenue to the point of beginning.

Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of, Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, east along U.S. 10 BR to U.S. 10, east along U.S. 10 to Interstate Highway 75/U.S. Highway 23, north along I–75/U.S. 23 to the U.S. 23 exit at Standish, east along U.S. 23 to Shore Road in Arenac County, east along Shore Road to the tip of Point Lookout, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canada border.

South Zone: The remainder of Michigan.

Minnesota

Twin Cities Metropolitan Canada Goose Zone—

A. All of Hennepin and Ramsey Counties.

B. In Anoka County, all of Columbus Township lying south of County State Aid Highway (CSAH) 18, Anoka County; all of the cities of Ramsey, Andover, Anoka, Coon Rapids, Spring Lake Park, Fridley, Hilltop, Columbia Heights, Blaine, Lexington, Circle Pines, Lino Lakes, and Centerville; and all of the city of Ham Lake except that portion lying north of CSAH 18 and east of U.S. Highway 65.

C. That part of Carver County lying north and east of the following described line: Beginning at the northeast corner of San Francisco Township; thence west along the north boundary of San Francisco Township to the east boundary of Dahlgren Township; thence north along the east boundary of Dahlgren Township to U.S. Highway 212; thence west along U.S. Highway 212 to State Trunk Highway (STH) 284; thence north on STH 284 to County State Aid Highway (CSAH) 10;

thence north and west on CSAH 10 to CSAH 30; thence north and west on CSAH 30 to STH 25; thence east and north on STH 25 to CSAH 10; thence north on CSAH 10 to the Carver County line.

D. In Scott County, all of the cities of Shakopee, Savage, Prior Lake, and Jordan, and all of the Townships of Jackson, Louisville, St. Lawrence, Sand Creek, Spring Lake, and Credit River.

E. In Dakota County, all of the cities of Burnsville, Eagan, Mendota Heights, Mendota, Sunfish Lake, Inver Grove Heights, Apple Valley, Lakeville, Rosemount, Farmington, Hastings, Lilydale, West St. Paul, and South St. Paul, and all of the Township of Nininger.

F. That portion of Washington County lying south of the following described line: Beginning at County State Aid Highway (CSAH) 2 on the west boundary of the county; thence east on CSAH 2 to U.S. Highway 61; thence south on U.S. Highway 61 to State Trunk Highway (STH) 97; thence east on STH 97 to the intersection of STH 97 and STH 95; thence due east to the east boundary of the State.

Northwest Goose Zone—That portion of the State encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Southeast Goose Zone—That part of the State within the following described boundaries: beginning at the intersection of U.S. Highway 52 and the south boundary of the Twin Cities Metro Canada Goose Zone; thence along the U.S. Highway 52 to State Trunk Highway (STH) 57; thence along STH 57 to the municipal boundary of Kasson; thence along the municipal boundary of Kasson County State Aid Highway (CSAH) 13, Dodge County; thence along CSAH 13 to STH 30; thence along STH 30 to U.S. Highway 63; thence along U.S. Highway 63 to the south boundary of the State; thence along the south and east boundaries of the State to the south boundary of the Twin Cities Metro Canada Goose Zone; thence along said boundary to the point of beginning.

Five Goose Zone—That portion of the State not included in the Twin Cities Metropolitan Canada Goose Zone, the Northwest Goose Zone, or the Southeast Goose Zone.

West Zone—That portion of the State encompassed by a line beginning at the junction of State Trunk Highway (STH) 60 and the Iowa border, then north and east along STH 60 to U.S. Highway 71, north along U.S. 71 to Interstate Highway 94, then north and west along I–94 to the North Dakota border.

Tennessee

Middle Tennessee Zone—Those portions of Houston, Humphreys, Montgomery, Perry, and Wayne Counties east of State Highway 13; and Bedford, Cannon, Cheatham, Coffee, Davidson, Dickson, Franklin, Giles, Hickman, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Moore, Robertson, Rutherford, Smith, Sumner, Trousdale, Williamson, and Wilson Counties.

East Tennessee Zone—Anderson, Bledsoe, Bradley, Blount, Campbell, Carter, Claiborne, Clay, Cocke, Cumberland, DeKalb, Fentress, Grainger, Greene, Grundy, Hamblen, Hamilton, Hancock, Hawkins, Jackson, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Overton, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, Van Buren, Warren, Washington, and White Counties.

Wisconsin

Early-Season Subzone A—That portion of the State encompassed by a line beginning at the intersection of U.S. Highway 141 and the Michigan border near Niagara, then south along U.S. 141 to State Highway 22, west and southwest along State 22 to U.S. 45, south along U.S. 45 to State 22, west and south along State 22 to State 110, south along State 110 to U.S. 10, south along U.S. 10 to State 49, south along State 49 to State 23, west along State 23 to State 73, south along State 73 to State 60, west along State 60 to State 23, south along State 23 to State 11, east along State 11 to State 78, then south along State 78 to the Illinois border.

Early-Season Subzone B—The remainder of the State.

Central Flyway

Kansas

September Canada Goose Kansas City/Topeka Unit—That part of Kansas bounded by a line from the Kansas-Missouri State line west on KS 68 to its junction with KS 33, then north on KS 33 to its junction with U.S. 56, then west on U.S. 56 to its junction with KS 31, then west-northwest on KS 31 to its junction with KS 99, then north on KS 99 to its junction with U.S. 24, then east on U.S. 24 to its junction with KS 63, then north on KS 63 to its junction with KS 16, then east on KS 16 to its junction with KS 116, then east on KS 116 to its junction with U.S. 59, then northeast on U.S. 59 to its junction with the Kansas-Missouri line, then south on the Kansas-Missouri line to its junction with KS 68.

September Canada Goose Wichita Unit—That part of Kansas bounded by a line from I–135 west on U.S. 50 to its junction with Burmac Road, then south on Burmac Road to its junction with 279 Street West (Sedgwick/Harvey County line), then south on 279 Street West to its junction with KS 96, then east on KS 96 to its junction with KS 296, then south on KS 296 to its junction with 247 Street West, then south on 247 Street West to its junction with U.S. 54, then west on U.S. 54 to its junction with 263 Street West, then south on 263 Street West to its junction with KS 49, then south on KS 49 to its junction with 90 Avenue North, then east on 90 Avenue North to its junction with KS 55, then east on KS 55 to its junction with KS 15, then east on KS 15 to its junction with U.S. 77, then north on U.S. 77 to its junction with Ohio Street, then north on Ohio to its junction with KS 254, then east on KS 254 to its junction with KS 196, then northwest on KS 196 to its junction with I–135, then north on I–135 to its junction with U.S. 50.

Nebraska

September Canada Goose Unit—That part of Nebraska bounded by a line from the Nebraska-Iowa State line west on U.S. Highway 30 to NE Highway 15, then south on NE Highway 15 to NE Highway 41, then east on NE Highway 41 to NE Highway 50, then north on NE Highway 50 to NE Highway 2, then east on NE Highway 2 to the Nebraska-Iowa State line.

South Dakota

September Canada Goose North Unit—Clark, Codington, Day, Deuel, Grant, Hamlin, Marshall, and Roberts County.

September Canada Goose South Unit—Beadle, Brookings, Hanson, Kingsbury, Lake, Lincoln, McCook, Miner, Minnehaha, Moody, Sanborn, and Turner Counties.

Pacific Flyway

Idaho

East Zone—Bonneville, Caribou, Fremont, and Teton Counties.

Oregon

Northwest Zone—Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Polk, Multnomah, Tillamook, Washington, and Yamhill Counties.

Southwest Zone—Coos, Curry, Douglas, Jackson, Josephine, and Klamath Counties.

East Zone—Baker, Gilliam, Malheur, Morrow, Sherman, Umatilla, Union, and Wasco Counties.

Washington

Area 1—Skagit, Island, and Snohomish Counties.

Area 2A (SW Quota Zone)—Clark County, except portions south of the Washougal River; Cowlitz, and Wahkiakum Counties.

Area 2B (SW Quota Zone)—Pacific and Grays Harbor Counties.

Area 3—All areas west of the Pacific Crest Trail and west of the Big White Salmon River that are not included in Areas 1, 2A, and 2B.

Area 4—Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla Counties.

Area 5—All areas east of the Pacific Crest Trail and east of the Big White Salmon River that are not included in Area 4.

Wyoming

Bear River Area—That portion of Lincoln County described in State regulations.

Salt River Area—That portion of Lincoln County described in State regulations.

Farson-Eden Area—Those portions of Sweetwater and Sublette Counties described in State regulations.

Teton Area—Those portions of Teton County described in State regulations.

Bridger Valley Area—The area described as the Bridger Valley Hunt Unit in State regulations.

Little Snake River—That portion of the Little Snake River drainage in Carbon County.

Ducks

Atlantic Flyway

New York

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border.

Northeastern Zone: That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

Mississippi Flyway

Indiana

North Zone: That portion of the State north of a line extending east from the Illinois border along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio border.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois border along Interstate Highway 64 to New Albany, east along State Road 62 to State 56, east along State 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio border.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I–80 to the Illinois border.

South Zone: The remainder of Iowa.

Central Flyway

Colorado

Special Teal Season Area: Lake and Chaffee Counties and that portion of the State east of Interstate Highway 25.

Kansas

High Plains Zone: That portion of the State west of U.S. 283.

Low Plains Early Zone: That portion of the State east of the High Plains Zone and west of a line extending south from the Nebraska border along KS 28 to U.S. 36, east along U.S. 36 to KS 199, south along KS 199 to Republic County Road 563, south along Republic County Road 563 to KS 148, east along KS 148 to Republic County Road 138, south along Republic County Road 138 to Cloud County Road 765, south along Cloud County Road 765 to KS 9, west along KS 9 to U.S. 24, west along U.S. 24 to U.S. 281, north along U.S. 281 to U.S. 36, west along U.S. 36 to U.S. 183, south along U.S. 183 to U.S. 24, west along U.S. 24 to KS 18, southeast along KS 18 to U.S. 183, south along U.S. 183 to KS 4, east along KS 4 to I–135, south along I–135 to KS 61, southwest along KS 61 to KS 96, northwest on KS 96 to U.S. 56, west along U.S. 56 to U.S. 281, south along U.S. 281 to U.S. 54, then west along U.S. 54 to U.S. 283.

Low Plains Late Zone: The remainder of Kansas.

Nebraska

Special Teal Season Area: That portion of the State south of a line beginning at the Wyoming State line; east along U.S. 26 to Nebraska Highway L62A; east to U.S. 385; south to U.S. 26; east to NE 92; east along NE 92 to NE 61; south along NE 61 to U.S. 30; east along U.S. 30 to the Iowa border.

New Mexico (Central Flyway Portion)

North Zone: That portion of the State north of I–40 and U.S. 54.

South Zone: The remainder of New Mexico.

Pacific Flyway

California

Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of the Klamath River with the California-Oregon line; south and west along the Klamath River to the mouth of Shovel Creek; along Shovel Creek to its intersection with Forest Service Road 46N05 at Burnt Camp; west to its junction with Forest Service Road 46N10; south and east to its Junction with County Road 7K007; south and west to its junction with Forest Service Road 45N22; south and west to its junction with Highway 97 and Grass Lake Summit; south along to its junction with Interstate 5 at the town of Weed; south to its junction with Highway 89; east and south along Highway 89 to Main Street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west

to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada State line; north along the California-Nevada State line to the junction of the California-Nevada-Oregon State lines west along the California-Oregon state line to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east 7 miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Canada Geese

Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of, Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, east along U.S. 10 BR to U.S. 10, east along U.S. 10 to Interstate Highway 75/U.S. Highway 23, north along I–75/U.S. 23 to the U.S. 23 exit at Standish, east along U.S. 23 to Shore Road in Arenac County, east along Shore Road to the tip of Point Lookout, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canada border.

South Zone: The remainder of Michigan.

Sandhill Cranes

Central Flyway

Colorado—The Central Flyway portion of the State except the San Luis Valley (Alamosa, Conejos, Costilla, Hinsdale, Mineral, Rio Grande, and Saguache Counties east of the Continental Divide) and North Park (Jackson County).

Kansas—That portion of the State west of a line beginning at the Oklahoma border, north on I–35 to Wichita, north on I–135 to Salina, and north on U.S. 81 to the Nebraska border.

New Mexico—Regular-Season Open Area—Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties.

Middle Rio Grande Valley Area—The Central Flyway portion of New Mexico in Socorro and Valencia Counties.

Estancia Valley Area—Those portions of Santa Fe, Torrance and Bernallilo Counties within an area bounded on the west by New Mexico Highway 55 beginning at Mountainair north to NM 337, north to NM 14, north to I–25; on the north by I–25 east to U.S. 285; on the east by U.S. 285 south to U.S. 60; and on the south by U.S. 60 from U.S. 285 west to NM 55 in Mountainair.

Southwest Zone—Sierra, Luna, Dona Ana Counties, and those portions of Grant and Hidalgo Counties south of I–10.

Oklahoma—That portion of the State west of I–35.

Texas—Area 1—That portion of the State west of a line beginning at the International Bridge at Laredo, north along I–35 to the Oklahoma border.

Area 2—That portion of the State east and south of a line from the International Bridge at Laredo northerly along I–35 to U.S. 290; southeasterly along U.S. 290 to I–45; south and east on I–45 to State Highway 87, south and east on TX 87 to the channel in the Gulf of Mexico between Galveston and Point Bolivar; except: That portion of the State lying within the area bounded by the Corpus Christi Bay Causeway on U.S. 181 at Portland; north and west on U.S. 181 to U.S. 77 at Sinton; north and east along U.S. 77 to U.S. 87 at Victoria; east and south along U.S. 87 to Texas Highway 35; north and east on TX 35 to the west end of the Lavaca Bay Bridge; then south and east along the west shoreline of Lavaca Bay and Matagorda Island to the Gulf of Mexico; then south and west along the shoreline of the Gulf of Mexico to the Corpus Christi Bay Causeway.

North Dakota—Area 1—That portion of the State west of U.S. 281.

Area 2—That portion of the State east of U.S. 281.

South Dakota—That portion of the State west of U.S. 281.

Montana—The Central Flyway portion of the State except that area south of I–90 and west of the Bighorn River.

Wyoming—Regular-Season Open Area—Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties.

Riverton-Boysen Unit—Portions of Fremont County.

Park and Big Horn County Unit—Portions of Park and Big Horn Counties.

Pacific Flyway

Arizona—Special-Season Area—Game Management Units 30A, 30B, 31, and 32.

Montana—Special-Season Area—*see* State regulations.

Utah—Special-Season Area—Rich, Cache, and Unitah Counties and that portion of Box Elder County beginning on the Utah-Idaho State line at the Box Elder-Cache County line; west on the State line to the Pocatello Valley County Road; south on the Pocatello Valley County Road to I–15; southeast on I–15 to SR–83; south on SR–83 to Lamp Junction; west and south on the Promontory Point County Road to the tip of Promontory Point; south from Promontory Point to the Box Elder-Weber County line; east on the Box Elder-Weber County line to the Box Elder-Cache County line; north on the Box Elder-Cache County line to the Utah-Idaho State line.

Wyoming—Bear River Area—That portion of Lincoln County described in State regulations.

Salt River Area—That portion of Lincoln County described in State regulations.

Farson-Eden Area—Those portions of Sweetwater and Sublette Counties described in State regulations.

All Migratory Game Birds in Alaska

North Zone—State Game Management Units 11–13 and 17–26.

Gulf Coast Zone—State Game Management Units 5–7, 9, 14–16, and 10 (Unimak Island only).

Southeast Zone—State Game Management Units 1–4.

Pribilof and Aleutian Islands Zone—State Game Management Unit 10 (except Unimak Island).

Kodiak Zone—State Game Management Unit 8.

All Migratory Game Birds in the Virgin Islands

Ruth Cay Closure Area—The island of Ruth Cay, just south of St. Croix.

All Migratory Game Birds in Puerto Rico

Municipality of Culebra Closure Area—All of the municipality of Culebra.

Desecheo Island Closure Area—All of Desecheo Island.

Mona Island Closure Area—All of Mona Island.

El Verde Closure Area—Those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for 1 kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public.

Cidra Municipality and adjacent areas—All of Cidra Municipality and portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality boundary to the point of the beginning.

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Federal Register

Wednesday,
July 21, 2004

Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 2, 7, 11, 16, 37, and 39
Federal Acquisition Regulation;
Performance-Based Service Acquisition;
Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 7, 11, 16, 37, 39

[FAR Case 2003–018]

RIN 9000–AK00

Federal Acquisition Regulation; Performance-Based Service Acquisition

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) by: changing the terms "performance-based contracting (PBC) and performance-based service contracting (PBSC)" to "performance-based acquisition (PBA) or performance-based service acquisition (PBSA)" in areas of the FAR where appropriate; adding applicable PBSA definitions clarifying the order of precedence for requirements; modifying the regulation to broaden the scope of PBA and give agencies more flexibility in applying PBSA methods to contracts and orders of varying complexity and reduce the burden of force-fitting contracts and orders into PBA, when it is not appropriate.

DATES: Interested parties should submit comments in writing on or before September 20, 2004, to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2003–018 by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web Site: *http://www.acqnet.gov/far/ProposedRules/proposed.htm*. Click on the FAR case number to submit comments.
- E-mail: *farcase.2003–018@gsa.gov*. Include FAR case 2003–018 in the subject line of the message.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VR), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2003–018 in all correspondence related to this case. All comments received will be posted without change to *http://www.acqnet.gov/far/ProposedRules/proposed.htm*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Julia Wise, Procurement Analyst, at (202) 208–1168. Please cite FAR case 2003–018.

SUPPLEMENTARY INFORMATION:

A. Background

Since the 1980s, performance-based contracting (PBC) and performance-based service contracting (PBSC) (now performance-based acquisition (PBA) and performance-based service acquisition (PBSA)) has been articulated in regulation, guidance, and policy. The intent has always been for agencies to contract for results describing their needs in terms of what is to be achieved, not how it is to be done. Law and regulation established a preference for PBA.

There are many laws and policies that impact how PBA methods are applied to contracts and orders. Among the most important of these reforms are the Government Performance and Results Act of 1993, the Federal Acquisition Streamlining Act of 1994 (FASA), and the Clinger-Cohen Act of 1996, Section 821(a) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106–398), and Section 1431 and 1433 of the National Defense Authorization Act for Fiscal Year 2004 (P.L. 108–136). All of these laws send an important message about performance in federal programs and acquisitions and that is that agencies should: (1) use PBA methods to the maximum extent practicable when acquiring services, and (2) carefully select acquisition and contract administration strategies, methods, and techniques that best accommodate the requirements.

Over the last two decades, agencies have made moderate progress in implementing PBA methods on service contracts but have experienced difficulties in applying PBA techniques effectively. In April 2002, the Office of Federal Procurement Policy (OFPP) convened an interagency working group to establish a broader understanding of the requirements of PBSA, and identify ways to increase agency use of PBSA. The group focused their efforts on three areas of change:

(1) Modifying the Federal Acquisition Regulation (FAR) to give agencies flexibility in applying PBSA;

(2) Modifying reporting requirements to ensure that PBSA is applied appropriately; and

(3) Improving the quality, currency, and availability of guidance.

In the interim, General Accounting Office (GAO) conducted an audit on performance-based service contracting and issued a report dated September 2002, "Contract Management: Guidance Needed for Using Performance-Based Service Contracting (GAO–02–1049)," that raised concerns as to whether agencies have a good understanding of performance-based contracting and how to take full advantage of it. The audit findings stated, that some agency officials said they would like better guidance on performance-based contracting, particularly with respect to how it can be applied in more complex situations. It further states that agency officials said that there is a need for better criteria on which contracts should be labeled as performance-based.

In July 2003, OFPP issued a report, "Performance-Based Service Acquisition: Contracting for the Future," that captured the interagency working group's PBA concerns, issues, and recommendations. The report includes recommendations to change current regulations and guidance to give agencies more flexibility in applying PBSA effectively, appropriately, and consistently (see *www.acqnet.gov* for the complete report). Most of the recommended FAR revisions are adopted in this proposed rule because the changes will make PBA more flexible, thus increasing agency use of PBA methods on services contracts and orders.

In addition, the OFPP is working with an interagency team to incorporate current policy, regulations, and vetted samples into the Governmentwide-PBSA guide, Seven Steps to PBSA (see *www.acqnet.gov* for the online guide); and interagency working group to develop appropriate guidance for reporting PBAs in the Federal Procurement Data System-Next Generation (FPDS-NG).

The proposed rule amends the FAR to modify—

- FAR Part 2 to include the definitions "performance work statement" and "statement of objectives" to support changes to FAR Part 37;
- FAR Parts 2, 7, 11, 16, 37 and 39 to incorporate the new PBA and PBSA terms, where applicable; and
- FAR Parts 11 and 37 to broaden the scope of PBSA, reduce the burden of

force-fitting requirements into PBAs when it does not apply, and give agencies more flexibility in applying PBSA techniques to contracts and orders of varying complexity.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule affects the Government's use of PBA methods on service contracts and intends to give agencies more flexibility in applying PBA methods to service contracts and orders of varying complexity. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. The Councils invite comments from small businesses and other interested parties. We will consider comments from small entities concerning the affected FAR Parts 2, 7, 11, 16, 37, and 39 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR Case 2003–018), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 7, 11, 16, 37, and 39

Government procurement.

Dated: July 13, 2004.

Laura Auletta,

Director, Contract Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2, 7, 11, 16, 37, and 39 as set forth below:

1. The authority citation for 48 CFR parts 2, 7, 11, 16, 37, and 39 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by revising the definition "performance-based contracting," and adding in alphabetical order, the definitions "performance work statement" and "statement of work objectives" to read as follows:

2.101 Definitions.

* * * * *

Performance-based acquisition (PBA) means structuring all aspects of an acquisition around the purpose of the work to be performed with the contract or order requirements set forth in clear, specific, and objective terms with measurable outcomes as opposed to either the manner by which the work is to be performed or broad and imprecise statements of work. For services, a performance-based acquisition is commonly referred to as a performance-based service acquisition (PBSA).

Performance Work Statement (PWS) means a statement that identifies the agency's requirements in clear, specific and objective terms that describe technical, functional and performance characteristics.

* * * * *

Statement of Objectives (SOO) means a statement that identifies the agency's high-level requirements by summarizing key agency objectives, desired outcomes, or both.

* * * * *

PART 7—ACQUISITION PLANNING

3. Amend section 7.103 by revising paragraph (r) to read as follows:

7.103 Agency-head responsibilities.

* * * * *

(r) Ensuring that knowledge gained from prior acquisitions is used to further refine requirements and acquisition strategies. For services, greater use of performance-based service acquisition (PBSA) methods and, therefore, fixed-price contracts (see 37.602–4) should occur for follow-on acquisitions.

* * * * *

4. Amend section 7.105 by revising the last sentences of the introductory paragraph and paragraph (b)(4)(i); and by revising paragraph (b)(6) to read as follows:

7.105 Contents of written acquisition plans.

* * * Acquisition plans for service contracts or orders must describe the strategies for implementing PBSA methods or must provide rationale for not using those methods (see Subpart 37.6).

* * * * *

(b) * * *

(4) *Acquisition considerations.* (i) * * * Provide rationale if a PBSA will not be used or if a PBSA is contemplated on other than a firm-fixed-price basis (see 37.102(a), 16.103(d), and 16.505(a)(3)).

* * * * *

(6) *Product or service descriptions.* Explain the choice of product or service description types (including PBSA descriptions) to be used in the acquisition.

* * * * *

PART 11—DESCRIBING AGENCY NEEDS

5. Amend section 11.101 by revising paragraph (a)(2) to read as follows:

11.101 Order of precedence for requirements documents.

(a) * * *

(2) Performance or function-oriented documents.

* * * * *

PART 16—TYPES OF CONTRACTS

6. Amend section 16.505 by revising paragraph (a)(3) to read as follows:

16.505 Ordering.

(a) * * *

(3) Performance work statements must be used to the maximum extent practicable, if the contract or order is for services (see 37.102(a) and 37.602–1).

* * * * *

PART 37—SERVICE CONTRACTING

7. Amend section 37.000 by revising the third sentence to read as follows:

37.000 Scope of part.

* * * This part requires the use of performance-based service acquisition (PBSA) to the maximum extent practicable and prescribes policies and procedures for use of PBSA methods (see Subpart 37.6). * * *

8. Amend section 37.102 by revising the introductory text of paragraphs (a) and (a)(1) to read as follows:

37.102 Policy.

(a) Performance-based service acquisition (see Subpart 37.6) is the preferred method for acquiring services (Public Law 106–398, section 821). When acquiring services, including those acquired under supply contracts or orders, agencies must—

(1) Use performance-based service acquisition methods to the maximum extent practicable, except for—

* * * * *

9. Revise subpart 37.6 to read as follows:

Subpart 37.6—Performance-Based Service Acquisition

Sec.

Subpart 37.6—Performance-Based Service Acquisition

37.600 Scope of subpart.

This subpart prescribes policies and procedures for use of performance-based service acquisition (PBSA) methods. PBSA includes performance-based contracts and performance-based task orders.

37.601 General.

(a) The principal objective of PBSA is to obtain optimal performance by expressing Government needs in terms of required performance objectives and/or desired outcomes, rather than the method of performance, to encourage industry-driven, competitive solutions.

(b) Solicitations for PBSA may use either a performance work statement (PWS) or a statement of objectives (see 37.602–1).

(c) PBSA contracts or orders shall include—

(1) A PWS (see 37.602–1); and

(2) Measurable performance standards. These standards may be objective (e.g., response time) or subjective (e.g., customer satisfaction), but shall reflect the level of service required by the Government to meet mission objectives. Standards shall enable assessment of contractor performance to determine whether performance objectives and/or desired outcomes are being met.

(d) PBSA contracts or orders may include performance incentives to promote contractor achievement of the desired outcomes and/or performance objectives articulated in the contract or order. Performance incentives may be of any type, including positive, negative, monetary, or non-monetary. Performance incentives, if used, shall correspond to the performance standards set forth in the contract or order.

37.602 Elements of a performance-based service acquisition.

37.602–1 Performance work statements (PWSs) and statements of objectives (SOOs).

(a) A PWS may be prepared by the Government or resultfrom a SOO prepared by the Government where the offeror proposes the PWS.

(b) A PWS shall describe the work in terms of the purpose of the work to be performed rather than either "how" the work is to be accomplished or the number of hours to be provided (see 11.002(a)(2) and 11.101);

(c) When a SOO is used in lieu of a PWS in a solicitation, the SOO shall, at a minimum, include the following information with respect to the acquisition:

(1) Purpose.

(2) Scope or mission.

(3) Period and place of performance.

(4) Background.

(5) Performance objectives and/or desired outcomes.

(6) Any operating constraints.

37.602–2 Quality assurance.

(a) Quality assurance surveillance plans shall address the means for assessing contractor accomplishment of the Government's performance objectives and/or desired outcomes stated in the contract and compliance with the appropriate inspection clauses. Agencies shall develop quality assurance surveillance plans when acquiring services (see 46.103 and 46.401(a)) or, as appropriate, rely on a contractor's commercial quality assurance system (see 46.102). These plans shall recognize the responsibility of the contractor (see 46.105) to carry out its quality control obligations and shall contain measurable inspection and acceptance criteria corresponding to the performance standards contained in the contract. The quality assurance surveillance plans shall focus on the level of performance required by the PWS, rather than the methodology used by the contractor to achieve that level of performance.

(b) The level of surveillance described in the plan should be commensurate with the dollar value, risk, and complexity of the acquisition and should utilize commercial practices to the maximum extent practicable. For example, in some simplified acquisitions the Government may decide that the inspection clauses in the contract or order provide adequate means of surveillance, without requiring a detailed quality assurance surveillance plan.

(c) Plans shall enable the contracting officer to take appropriate action in accordance with the contract or order and 46.407, as appropriate.

37.602–3 Selection procedures.

Agencies shall use competitive negotiations, when appropriate, to ensure selection of services that offer the best value to the Government, cost and other factors considered (see 15.304).

37.602–4 Contract type.

Agencies shall follow the order of precedence set forth in 37.102(a)(2) for selecting contract and order types. Fixed-price contracts or orders are generally appropriate for services that can be defined objectively and for which the risk of performance is manageable (see Subpart 16.1).

37.602–5 Follow-on and repetitive requirements.

When acquiring services that previously have been provided by contract or order, agencies shall rely on the experience gained from the prior contract or order to incorporate PBSA methods to the maximum extent practicable. This will facilitate the use of fixed-price contracts or orders for such requirements for services. (See 7.105 for requirement to address PBSA strategies in acquisition plans. See also 16.104(k)).

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

10. Amend 39.104 by revising paragraph (b) to read as follows:

39.104 Information technology services.

* * * * *

(b) Require the use of other than a performance-based service acquisition (see Subpart 37.6).

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Federal Register

Wednesday,
July 21, 2004

Part V

Department of Labor

Employment and Training Administration

20 CFR Part 656

Labor Certification for the Permanent Employment of Aliens in the United States; Backlog Reduction; Interim Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 656

RIN 1205–AB37

Labor Certification for the Permanent Employment of Aliens in the United States; Backlog Reduction

AGENCY: Employment and Training Administration, Labor.

ACTION: Interim final rule; request for comments.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (Department or DOL) is issuing this interim final rule to address an existing backlog in pending applications for labor certification for the permanent employment of aliens in the United States. This amendment to the regulations governing labor certification applications for permanent employment will allow the National Certifying Officer to transfer to a centralized ETA processing center(s) applications now awaiting processing by State Workforce Agencies (SWAs) or ETA Regional Offices. This interim final rule does not affect the pending proposal to streamline procedures for permanent labor certification under 20 CFR part 656, which was published in the **Federal Register** of May 6, 2002, and which is expected to be finalized in 2004. This interim final rule affects only applications filed under existing regulations, while the streamlined certification regulation will govern processing of new applications filed after that regulation takes effect.

DATES: This interim final rule is effective August 20, 2004. Interested persons are invited to submit written comments on this interim final rule. To ensure consideration, comments must be received on or before August 20, 2004.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1205–AB37, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the website instructions for submitting comments.
- E-mail: Comments may be submitted by e-mail to *blrcomments@dol.gov*. Include RIN 1205–AB37 in the subject line of the message.
- Mail: Submit written comments to the Assistant Secretary for Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4312, Washington, DC 20210, Attention: William Carlson, Chief, Division of Foreign Labor Certification. Because of security measures, mail directed to Washington, DC is sometimes delayed. We will only consider comments postmarked by the U.S. Postal Service or other delivery service on or before the deadline for comments.

Instructions: All submissions received must include the RIN 1205–AB37 for this rulemaking. Receipt of submissions, whether by U.S. mail or e-mail will not be acknowledged. Because DOL continues to experience delays in receiving postal mail in the Washington, DC area, commenters are encouraged to submit any comments by mail early.

Comments will be available for public inspection during normal business hours at the address listed above for mailed comments. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. Copies of this interim final rule may be obtained in alternative formats (*e.g.*, large print, Braille, audiotape, or disk) upon request. To schedule an appointment to review the comments and/or to obtain the proposed rule in an alternative format, contact the Division of Foreign Labor Certification at 202–693–3010 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Contact Denis Gruskin, Senior Specialist, Division of Foreign Labor Certification, Employment and Training Administration, 200 Constitution Avenue, NW., Room C–4312, Washington, DC 20210; Telephone: (202) 693–2953 (this is not a toll-free number).

Individuals with hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Statutory Standard

Before the United States Citizenship and Immigration Services (CIS) of the Department of Homeland Security [1] may approve petition requests and the Department of State may issue visas and admit certain immigrant aliens to work permanently in the United States, the Secretary of Labor first must certify to the Secretary of State and to the Secretary of Homeland Security that:

(a) There are not sufficient United States workers who are able, willing, qualified, and available at the time of the application for a visa and admission into the United States and at the place where the alien is to perform the work; and

(b) The employment of the alien will not adversely affect the wages and working conditions of similarly employed United States workers. *See Immigration and Nationality Act (INA)*, 8 U.S.C. 1182(a)(5)(A).

If the Secretary of Labor, through ETA, determines that there are no able, willing, qualified, and available U.S. workers and that employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers, DOL so certifies to CIS and to the Department of State by issuing a permanent alien labor certification.

If DOL cannot make one or both of the above findings, the application for permanent alien employment certification is denied.

II. Current Department of Labor Regulations

DOL has promulgated regulations, at 20 CFR part 656, governing the labor certification process for the permanent employment of immigrant aliens in the United States. Part 656 was promulgated under section 212(a)(5)(A) of the INA. 8 U.S.C. 1182(a)(5)(A).

Part 656 sets forth the responsibilities of employers who desire to employ immigrant aliens permanently in the United States. Under current regulations, employers file an "Application for Alien Employment Certification" with the State Workforce Agency (SWA) serving the area of intended employment. The SWA is responsible for various processing steps, including date stamping the application, calculating the appropriate prevailing wage, and placing the job opening into the state's employment recruitment system.

The current process for obtaining a labor certification requires employers to actively recruit U.S. workers in good faith for a period of at least 30 days for the job openings for which aliens are sought. The employer's job requirements must conform to the regulatory standards.

Job applicants either are referred directly to the employer or their résumés are sent to the employer. The employer has 45 days to report to the SWA the lawful job-related reasons for not hiring any referred U.S. worker. If the employer hires a U.S. worker for the job opening, the process stops at that point, unless the employer has more than one opening, in which case the application may continue to be processed. If, however, the SWA

[1] *See* 6 U.S.C. 236(b), 552(d), and 557.

believes that able, willing, and qualified U.S. workers are not available to take the job, the application, together with the documentation of the recruitment results and prevailing wage information, is sent to the appropriate ETA Regional Office. There, it is reviewed and a determination made as to whether to issue the labor certification based upon the employer's compliance with program regulations. If DOL/ETA determines that there is no able, willing, qualified, and available U.S. worker, and that the employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers, DOL/ETA so certifies to the CIS and the Department of State by issuing a permanent labor certification. *See* 20 CFR part 656; see also section 212(a)(5)(A) of the INA, as amended.

On May 6, 2002, the Department published a Notice of Proposed Rulemaking (NPRM) to substantially streamline part 656, which governs the permanent labor certification program. The proposed streamlined certification regulation, which is expected to be finalized in 2004, will "implement a new system for filing and processing" permanent labor certification applications. Among other things, State Workforce Agencies will no longer receive or process applications as they do under the current system, and employers will be required to conduct recruitment before filing applications. The new processing system will apply to all applications for permanent labor certifications filed on or after the revised regulation's effective date.

The interim final rule in this document does not alter the separate streamlined certification regulation, but rather is focused on reduction of the backlog of labor certification applications filed under existing regulations with State Workforce Agencies, as described in the next section. The streamlined certification regulation, once finalized, will stabilize the backlog volume, since applications will no longer be filed with a SWA on or after that regulation's effective date and streamlined procedures will govern.

III. Background

ETA's Permanent Labor Certification Program is currently experiencing an enormous backlog in pending applications for permanent employment of alien immigrants. This backlog largely stems from amendments enacted in December 2000 to section 245(i) of the INA. The amendments allow aliens who entered the United States without inspection or who fall within certain statutory categories to adjust their status to that of a lawful permanent resident if a labor certification application was filed on their behalf with a SWA on or before April 30, 2001. *See* 8 U.S.C. 1255(i)(1)(B)(ii). We estimate that approximately 236,000 applications were filed to meet the deadline of April 30, 2001, at a time when less than 100,000 applications were filed in an entire year. At the start of April 2003, over 280,000 permanent labor certification applications were in the SWA processing queues throughout the nation, with another 30,000 applications in the various ETA Regional Office queues.

To address the backlog, ETA funded a study to identify strategic options and estimate costs. The study recommended establishing centralized processing centers to achieve the economies of scale inherent in processing large numbers of applications in one location and in consolidating the functions currently performed separately by the SWAs and the ETA Regional Offices. Building upon this recommendation, ETA initiated a pilot program testing the feasibility of centralized processing, which indicated that substantial time and economic savings could be achieved.

Accordingly, this interim final rule amends part 656 by adding a new section 656.24a to provide that the National Certifying Officer (Chief, Division of Foreign Labor Certification) has the discretion to direct SWAs and ETA Regional Offices to transfer pending labor certification applications to centralized processing centers for completion of processing. The centralized processing centers will perform the required functions of the SWAs and ETA Regional Certifying Officers, consolidating steps now performed separately by the SWAs and the ETA Regional Offices to achieve efficiencies and economies of scale. The Chief will issue a directive to SWAs and the ETA Regional Offices stating how pending applications are to be identified for centralized processing, and where they are to be sent. The extent of centralized processing and the speed with which the current backlog will be reduced may vary based upon program priorities.

IV. Administrative Information

Executive Order 12866—Regulatory Planning and Review: We have determined that this interim final rule is not an "economically significant regulatory action" within the meaning of Executive Order 12866. The procedures for backlog reduction will not have an economic impact of $100 million or more because they will not add to or change requirements for employers applying for permanent labor certification, but rather create a means for consolidated processing at centralized locations. While it is not economically significant, the Office of Management and Budget (OMB) reviewed this interim final rule because of the novel legal and policy issues raised by this rulemaking.

Regulatory Flexibility Act: We have notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act (RFA) at 5 U.S.C. 605(b), that this interim final rule will not have a significant economic impact on a substantial number of small entities.

The factual basis for that certification is as follows: The interim final rule will affect only a portion of those employers whose applications for permanent employment certification are among the approximately 310,000 currently backlogged applications, or who file an application prior to the effective date of the regulations streamlining permanent labor certification. The interim final rule will not add to or change paperwork requirements for employer applicants, including small entities, but rather create a means for consolidated processing at centralized locations. Consequently, the Department believes there will be no additional economic burden on employer applicants, including small entities within that group. However, even assuming some impact on employers from the proposed changes, this impact will not fall "on a substantial number of small entities." As noted, the universe of pending applications is approximately 310,000. Based on Department experience, we estimate that about forty percent of permanent labor certification applications are filed by employers who have submitted multiple applications. Thus, the number of different employers submitting applications is approximately 186,000 (310,000 × 60%). We do not inquire about the size of employer applicants, however, the number of small entities applying is certainly less than the applicant total and significantly below the potential universe of small businesses to which the program is open. Because applications come from employers in all industry segments, we consider all small businesses as the appropriate universe for comparison purposes. According to the Small Business Administration's publication *The Regulatory Flexibility Act—An Implementation Guide for Federal Agencies,* there were 22,900,000 small businesses in the United States in 2002.

In comparison to the universe of all small businesses, the approximately 186,000 employers with pending applications would represent at most 0.8 percent of all small businesses [(186,000) 22,900,000 = 0.008; 0.008 × 100 = 0.8%)]. DOL asserts that 0.8% of small businesses does not represent a significant proportion of small entities.

The Department welcomes comments on this RFA certification.

Unfunded Mandates Reform Act of 1995: This interim final rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996: This interim final rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996 (SBREFA). The standards for determining whether a rule is a major rule as defined by section 804 of SBREFA are similar to those used to determine whether a rule is an "economically significant regulatory action" within the meaning of Executive Order 12866. Because we certified that this interim final rule is not an economically significant rule under Executive Order 12866, we certify that it also is not a major rule under SBREFA. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 13132—Federalism: This interim final rule will not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, we have determined that this interim final rule does not have sufficient federalism implications to warrant the preparation of a summary impact statement.

Assessment of Federal Regulations and Policies on Families: This interim final rule does not affect family well-being.

Paperwork Reduction Act: The collection of information under part 656 is currently approved under OMB control number 1205–0015. This interim final rule does not include a substantive or material modification of that collection of information, because it will not add to or change paperwork requirements for employers applying for permanent labor certification, but rather creates a means for consolidated processing at centralized locations. Accordingly, the Department believes the Paperwork Reduction Act is inapplicable to this interim final rule. The Department invites the public to comment on its Paperwork Reduction Act analysis.

Publication as an Interim Final Rule: The Department has determined that it is unnecessary and contrary to the public interest to publish this technical amendment to the permanent labor certification regulations as a Notice of Proposed Rulemaking, with the delays inherent to the process of publishing a proposed rule, receiving and reviewing comments, and clearing and publishing a final rule. This interim final rule will allow ETA's Division of Foreign Labor Certification to take more rapid action to reduce the serious backlog in permanent labor certification applications through transfer of applications from the SWAs and ETA Regional Offices to centralized processing sites. This processing change is based on results of a pilot program that demonstrated that centralized processing would create economic and time-saving efficiencies and speed reduction of the backlog. Centralized processing will not alter substantive requirements for certification. It will not impose an additional burden on employers who have filed permanent labor certification applications or on the immigrant aliens on whose behalf applications have been filed. Rather, centralized processing is expected to benefit applicants by reducing anticipated processing time. For these reasons, it would be contrary to the public interest, as well as unnecessary; to delay implementation of this technical regulatory amendment to establish centralized processing procedures. Therefore, the Department finds pursuant to 5 U.S.C. 553(b)(3)(B) that good cause exists for publishing this regulatory amendment as an interim final rule. While notice of proposed rulemaking is being waived, the Department is interested in comments and advice regarding this interim final rule.

Catalogue of Federal Domestic Assistance Number: This program is listed in the Catalog of Federal Domestic Assistance at Number 17.203, "Labor Certification for Alien Workers."

List of Subjects in 20 CFR Part 656

Administrative practice and procedure, Agriculture, Aliens, Crewmembers, Employment, Employment and training, Enforcement, Forest and forest products, Fraud, Guam, Health professions, Immigration, Labor, Longshore and harbor work, Migrant labor, Passports and visas, Reporting and recordkeeping requirements, Students, Unemployment, Wages, and Working conditions.

■ For the reasons stated in the Preamble, the Employment and Training Administration, Department of Labor, amends 20 CFR part 656 as follows:

PART 656—LABOR CERTIFICATION PROCESS FOR PERMANENT EMPLOYMENT OF ALIENS IN THE UNITED STATES

■ 1. The authority citation for part 656 continues to read as follows:

Authority: 8 U.S.C. 1182(a)(5)(A) and 1182(p); 29 U.S.C. 49 *et seq.*; sec. 122, Pub. L. 101–649, 109 Stat. 4978.

■ 2. Part 656, subpart C, is amended by adding section 656.24a, to be placed immediately after section 656.24, to read as follows:

§ 656.24a Centralized processing.

(a) To facilitate processing of applications and elimination of backlogs, the National Certifying Officer (Chief, Division of Foreign Labor Certification) may direct a SWA or an ETA Regional Office to transfer to a non-State centralized processing site some or all pending applications filed under part 656. The Chief will issue a directive to the SWAs and ETA Regional Offices stating how pending applications are to be identified for centralized processing and where they are to be transferred. For each transferred application, the centralized processing site will perform all required functions of the SWA (as described in § 656.21) and the Regional Certifying Officer (as described in § 656.21 and § 656.24).

(b) If the labor certification presents a special or unique problem, the centralized processing site, in consultation with or at the direction of the National Certifying Officer, may refer the application to the National Certifying Officer for determination. If the National Certifying Officer has directed that certain types of applications or specific applications be handled in the national office, the centralized processing site shall refer such applications to the National Certifying Officer.

Signed at Washington, DC, this 13th day of July, 2004.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 04–16536 Filed 7–20–04; 8:45 am]

BILLING CODE 4510–30–P

Federal Register

Wednesday,
July 21, 2004

Part VI

The President

Federal Register
Vol. 69, No. 139
Wednesday, July 21, 2004

Presidential Documents

Title 3—

The President

Memorandum of July 2, 2004

Delegation of Certain Reporting Authority

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and laws of the United States, including section 301 of title 3, United States Code, I hereby delegate to you the functions and authority conferred upon the President by section 4 of the Authorization for Use of Military Force Against Iraq Resolution of 2002, Public Law 107–243, and by section 3 of the Authorization for Use of Military Force Against Iraq Resolution, Public Law 102–1, to make the specified reports to the Congress.

You are authorized and directed to publish this memorandum in the **Federal Register**.

THE WHITE HOUSE,
Washington, July 2, 2004.

[FR Doc. 04–16755
Filed 7–20–04; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Memorandum of July 8, 2004

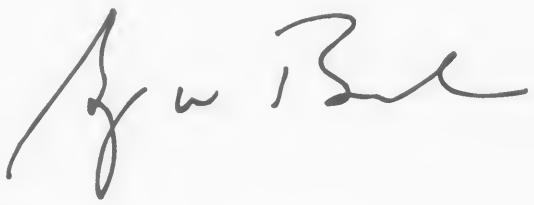
Delegation of Responsibility under Section 1523 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, As Amended

Memorandum for the Secretary of State

By virtue of the authority vested in me by the Constitution and laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to you the functions conferred upon the President by section 1523 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261), as amended (the "Act").

Any reference in this memorandum to the provision of any Act shall be deemed to include references to any hereafter-enacted provision of law that is the same or substantially the same as such provision.

You are authorized and directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, July 8, 2004.

[FR Doc. 04–16756
Filed 7–20–04; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Proclamation 7802 of July 16, 2004

Captive Nations Week, 2004

By the President of the United States of America

A Proclamation

Each year during Captive Nations Week, the United States reaffirms our commitment to building a world where human rights, democracy, and freedom are respected and protected by the rule of law. As Americans, we believe the nonnegotiable demands of human dignity must be upheld without regard to race, gender, creed, or nationality. We stand in solidarity with those living under repressive regimes who seek democracy and peaceful changes in their homelands.

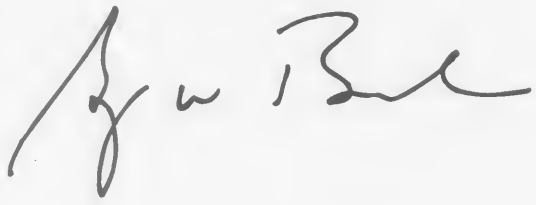
Throughout our Nation's history, our brave men and women in uniform have fought for the freedom of those suffering under authoritarian governments. From Nazi Germany to Bosnia, and Afghanistan to Iraq, American service members have fought to remove brutal leaders. The American people and their generous contributions have helped to rebuild traumatized nations and given the oppressed hope for the future. More than a year ago, American service members and our coalition partners freed the Iraqi people from a dictatorship that routinely tortured and executed innocent civilians. Since then, Americans have helped the Iraqi people establish institutions for the protection of human rights, based on democratic principles, to ensure that freedom will endure in the new Iraq.

Earlier this summer, as our Nation paid respect to President Ronald Reagan, we recognized his contributions to ending the Cold War and advancing freedom around the world. In his first Inaugural Address, President Reagan said: "Above all, we must realize that no arsenal or no weapon in the arsenals of the world is so formidable as the will and moral courage of free men and women. It is a weapon our adversaries in today's world do not have. It is a weapon that we as Americans do have." These words carry forward today as we continue to push for democratic freedoms and human rights around the world.

The Congress, by Joint Resolution approved July 17, 1959 (73 Stat. 212), has authorized and requested the President to issue a proclamation designating the third week in July of each year as "Captive Nations Week."

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim July 18 through July 24, 2004, as Captive Nations Week. I call upon the people of the United States to observe this week with appropriate ceremonies and activities and to reaffirm their commitment to all those seeking liberty, justice, and self-determination.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of July, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-ninth.



[FR Doc. 04–16757
Filed 7–20–04; 8:45 am]
Billing code 3195–01–P

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Federal Register

Vol. 69, No. 139

Wednesday, July 21, 2004

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Public Laws Update Service (numbers, dates, etc.)	741–6043
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FEDERAL REGISTER PAGES AND DATE, JULY

39811–40304..... 1
40305–40532..... 2
40533–40762..... 6
40763–41178..... 7
41179–41374..... 8
41375–41748..... 9
41749–41900.....12
41901–42086.....13
42087–42328.....14
42329–42548.....15
42549–42848.....16
42849–43282.....19
43283–43510.....20
43511–43728.....21

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7800.....40299
7801.....41179
7802.....43727
Executive Orders:
11269 (See EO 13345).....41901
12163 (Amended by EO 13346).....41905
12757 (Revoked by EO 13345).....41901
12823 (Revoked by EO 13345).....41901
13028 (Revoked by EO 13345).....41901
13131 (Revoked by EO 13345).....41901
13227 (Amended by EO 13346).....41905
13261 (Amended by EO 13344).....41747
13344.....41747
13345.....41901
13346.....41905
Administrative Orders:
Memorandums:
Memorandum of June 29, 2004.....40531
Memorandum of July 5, 2004.....42087
Memorandum of July 2, 2004.....43723
Memorandum of July 8, 2004.....43725
Presidential Determinations:
No. 2004–38 of June 24, 2004.....40305
No. 2004–39 of June 25, 2004.....40761

7 CFR

16.....41375
301.....40533, 41181, 42849, 43511
916.....41120
917.....41120
930.....41383
958.....42850
981.....40534, 41907
989.....41385
1435.....39811
Proposed Rules:
39.....40819
924.....42899
1030.....43538
3402.....41763

8 CFR

103.....39814
214.....39814, 41388
299.....39814
Proposed Rules:
236.....42901
241.....42901
1236.....42901
1240.....42901
1241.....42901

9 CFR

1.....42089
2.....42089
51.....41909
78.....40763
93.....43283
94.....41915
Proposed Rules:
2.....43538
3.....43538
50.....42288
51.....41909, 42288
52.....42288
53.....42288
54.....42288
55.....42288
56.....42288
57.....42288
58.....42288
59.....42288
60.....42288
61.....42288
62.....42288
63.....42288
64.....42288
65.....42288
66.....42288
67.....42288
68.....42288
69.....42288
70.....42288
71.....42288
72.....42288
73.....42288
74.....42288
75.....42288
76.....42288
77.....40329, 42288
78.....40556, 42288
79.....42288
80.....42288
81.....42288
82.....42288
83.....42288
84.....42288
85.....42288
309.....42288
310.....42288
311.....42288
318.....42288
319.....42288

10 CFR

2.....41749

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JULY 21, 2004

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Acequinocyl, etc.; published 7-21-04

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Lead-based paint hazards in federally owned residential property and housing receiving Federal assistance; notification, evaluation, and reduction; published 6-21-04

STATE DEPARTMENT

Visas; nonimmigrant documentation:

Crew list visas; elimination; published 7-21-04

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Boeing; published 6-16-04

Correction; published 7-8-04

Empresa Brasileira de Aeronautica S.A. (EMBRAER); published 6-16-04

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Engineering and traffic operations:

Uniform Traffic Control Devices Manual for streets and highways; revision; published 5-10-04

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cotton classing, testing and standards:

Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

Nectarines and fresh pears and peaches grown in—

California; comments due by 7-27-04; published 5-28-04 [FR 04-12137]

Raisins produced from grapes grown in—

California; comments due by 7-26-04; published 5-25-04 [FR 04-11742]

COMMERCE DEPARTMENT

International Trade Administration

Watches, watch movements, and jewelry:

Duty-exemption allocations—

Virgin Islands, Guam, American Samoa, and Northern Mariana Islands; comments due by 7-30-04; published 6-30-04 [FR 04-14854]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

West Coast States and Western Pacific fisheries—

Pacific Coast groundfish; comments due by 7-28-04; published 6-29-04 [FR 04-14717]

Marine mammals:

Incidental taking—

U.S. Navy; operations of Surveillance Towed Array Sensor System Low Frequency Active Sonar; comments due by 7-29-04; published 6-29-04 [FR 04-14718]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Payment withholding; comments due by 7-26-04; published 5-25-04 [FR 04-11736]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric rate and corporate regulation filings:

Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control:

Fuel economy testing and calculation procedures; Bluewater Network petition; comments due by 7-27-04; published 3-29-04 [FR 04-06827]

Air programs:

Ambient air quality standards, national—

Fine particulate matter and ozone; interstate transport control measures; comments due by 7-26-04; published 6-10-04 [FR 04-11923]

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:

Missouri; comments due by 7-30-04; published 6-30-04 [FR 04-14701]

Air quality implementation plans; approval and promulgation; various States:

Illinois; comments due by 7-28-04; published 6-28-04 [FR 04-14382]

Maryland; comments due by 7-29-04; published 6-29-04 [FR 04-14602]

New Jersey; comments due by 7-28-04; published 6-28-04 [FR 04-14605]

Virginia; comments due by 7-26-04; published 6-24-04 [FR 04-14214]

Environmental statements; availability, etc.:

Coastal nonpoint pollution control program—

Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Imidacloprid; comments due by 7-26-04; published 5-26-04 [FR 04-11780]

Isoxadifen-ethyl; comments due by 7-26-04; published 5-26-04 [FR 04-11561]

Ultramarine blue; comments due by 7-26-04; published 5-26-04 [FR 04-11672]

Superfund program:

National oil and hazardous substances contingency plan—

National priorities list update; comments due by 7-26-04; published 6-24-04 [FR 04-14218]

National priorities list update; comments due by 7-26-04; published 6-24-04 [FR 04-14217]

Water pollution; effluent guidelines for point source categories:

Meat and poultry products processing facilities; Open for comments until further notice; published 12-30-99 [FR 04-12017]

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

International telecommunications; U.S. providers; reporting requirements; comments due by 7-26-04; published 5-25-04 [FR 04-10837]

Radio broadcasting:

Broadcast and cable EEO rules and policies—

Revision; comments due by 7-29-04; published 7-22-04 [FR 04-16602]

Radio frequency devices:

Unlicensed operation in 3650-3700 MHz band; comments due by 7-28-04; published 5-14-04 [FR 04-11007]

FEDERAL ELECTION COMMISSION

Bipartisan Campaign Reform Act; implementation:

Coordinated and independent expenditures by party committees; comments due by 7-30-04; published 6-30-04 [FR 04-14817]

FEDERAL RESERVE SYSTEM

Collection of checks and other items by Federal Reserve banks and funds transfers through Fedwire (Regulation J):

Check Clearing for the 21st Century Act—

Check processing service options; collection of substitute checks and items converted to electronic form; comments due by 7-26-04; published 6-18-04 [FR 04-13147]

FEDERAL TRADE COMMISSION

Fair and Accurate Credit Transactions Act; implementation:

Consumer report information and records; disposal; comments due by 7-30-

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "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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H.R. 4103/P.L. 108–274

AGOA Acceleration Act of 2004 (July 13, 2004; 118 Stat. 820)

H.R. 1731/P.L. 108–275

Identity Theft Penalty Enhancement Act (July 15, 2004; 118 Stat. 831)

Last List July 9, 2004

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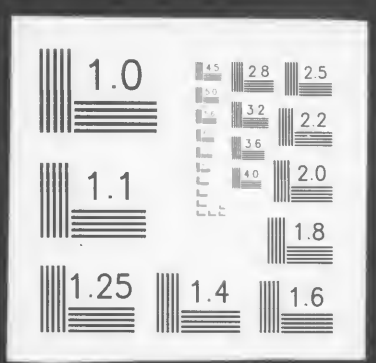
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1.25
1.4
1.6
1.8
2.0
2.2
2.5
2.8
3.2
3.6
4.0
4.5
5.0