
# Federal Register

8–13–04 Friday
Vol. 69 No. 156 Aug. 13, 2004

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(ISSN 0097-6326)


# Federal Register

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Pages 50049–50264

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

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# Presidential Documents

Title 3—

## The President

**Presidential Determination No. 2004–41 of August 6, 2004**

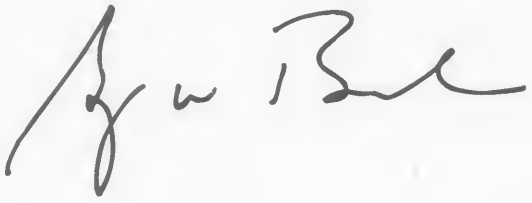
## Waiving Prohibition on United States Military Assistance with Respect to the Republic of the Congo

**Memorandum for the Secretary of State**

Consistent with the authority vested in me by section 2007 of the American Servicemembers' Protection Act of 2002 (the "Act"), title II of Public Law 107–206 (22 U.S.C. 7421 *et seq.*), I hereby:

- Determine that the Republic of the Congo has entered into an agreement with the United States pursuant to Article 98 of the Rome Statute preventing the International Criminal Court from proceeding against U.S. personnel present in such countries; and
- Waive the prohibition of section 2007(a) of the Act with respect to this country for as long as such agreement remains in force.

You are authorized and directed to report this determination to the Congress, and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
*Washington, August 6, 2004.*

[FR Doc. 04–18679
Filed 8–12–04; 8:45 am]
Billing code 4710–10–P

# Rules and Regulations

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## DEPARTMENT OF HOMELAND SECURITY

**8 CFR Part 235**

**RIN 1651–AA60**

## Extension of Time Limit on Admission of Certain Mexican Nationals

**AGENCY:** Border and Transportation Security Directorate, DHS.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This interim rule amends the Department of Homeland Security (the Department) regulations to extend the period of time certain Mexican nationals may remain in the United States without obtaining additional immigration documentation. Currently, Mexican nationals who present a Form DSP–150, B–1/B–2 Visa and Border Crossing Card (BCC) are not required to obtain a Form I–94 if their stay in the United States is less than 72 hours and they remain within 25 miles of the border (75 miles within Arizona). This interim rule extends the time limit to allow BCC holders to remain in the United States for up to 30 days without being issued a Form I–94. The geographic limitations remain unchanged. This interim rule is intended to promote commerce along the border while ensuring that sufficient safeguards are in place to prevent illegal entry into the United States.

**DATES:** This interim rule is effective August 13, 2004. Written comments must be submitted on or before October 12, 2004.

**ADDRESSES:** Written comments must be submitted to the Bureau of Customs and Border Protection, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229. Submitted comments may be inspected at the Bureau of Customs and Border Protection, 799 9th Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Diane Hinckley, Office of Field Operations, Bureau of Customs and Border Protection, (202) 344–1401.

**SUPPLEMENTARY INFORMATION:**

### Background

*Border Crossing Cards Under the Current Regulations*

Pursuant to 8 CFR 212.1(c)(1)(i), a visa and passport are not required of a Mexican national who is in possession of a BCC containing a machine-readable biometric identifier and who is applying for admission as a temporary visitor for business or pleasure from contiguous territory. If the BCC traveler is applying for admission from other than contiguous territory, he or she must present a valid passport. *See* 8 CFR 212.1(c)(2)(i).

Under Department regulations at 8 CFR 235.1(f)(1), each arriving nonimmigrant who is admitted to the United States, upon payment of the fee prescribed in 8 CFR 103.7(b)(1), is issued a Form I–94 as evidence of the terms of admission. Section 235.1(f)(1) exempts from the Form I–94 requirement a Mexican national in possession of a BCC or in possession of a passport and valid visa who is admitted as a nonimmigrant visitor, and any Mexican national entering solely for the purpose of applying for a Mexican passport or other official Mexican document at a Mexican consular office in the United States ("consular applicant"). *See* 8 CFR 212.1(c)(1)(ii). The exemption from the Form I–94 requirement only applies if the Mexican national is admitted for a period not to exceed 72 hours to visit within 25 miles of the border (75 miles in Arizona). Currently, if a BCC traveler wishes to stay longer than three days or travel further than 25 miles from the border (75 miles in Arizona), the BCC traveler may do so only upon payment of the fee prescribed at 8 CFR 103.7(b)(1) and issuance of a Form I–94. Forms I–94 are valid for multiple entries for 6 months.

*How Does This Rule Change the Current Regulations?*

This interim rule extends the current time limit to allow BCC holders to remain in the United States for up to 30 days without being issued a Form I–94. This interim rule does not alter the geographic limitation.

*Why Has the Department Decided To Extend the Time Restriction?*

With passage of the North American Free Trade Agreement in 1994, commerce, tourism, and trade across the United States and Mexico border into neighboring communities have increased the economic interdependence among cities located in the border area. However, under the current regulations, Mexican BCC holders can only spend up to 72 hours in the United States without obtaining additional immigration documentation. This interim rule extends the 72-hour time limit to 30 days. The extension of the 72-hour time limit will help to facilitate commerce, tourism, and trade along the southern border of the United States. If Mexican nationals are able to remain in the United States for a longer period of time, they will aid the economic development of the southern border states.

In addition, this change will result in greater parity between the treatment of Mexican and Canadian nationals. With few exceptions, Canadian nationals may be admitted to the United States for up to six months without obtaining an additional travel document.

Because Mexican BCC holders can already obtain a Form I–94 to remain in the United States for an additional period of time, this interim rule promotes administrative efficiency by extending the time limit from 72 hours to 30 days without requiring additional paperwork.

*Border Protection and National Security*

Pursuant to 8 U.S.C. 1101(a)(6), each BCC must include a biometric identifier (such as the fingerprints or digital photograph of the alien) that is machine readable. Prior to issuing a BCC to a Mexican national, the Department of State conducts biographic and biometric checks on the individual (including an interview), and the fingerprints and photograph of the Mexican national are then embedded into the machine-readable BCC. The Mexican national must also provide information regarding residence, employment, and the reason for frequent border crossing. At time of entry into the United States, a holder of a BCC is inspected to determine that he or she is the rightful bearer of the

document when crossing through a U.S. port-of-entry.

The Department will monitor and evaluate any changes in the patterns of violations of terms of admission that may occur. In addition, the Department will monitor data on apprehensions of those Mexican BCC holders who do not have an approved Form I–94 and who violate their terms of admission by traveling beyond the 25 mile limit (75 miles in Arizona) or who remain in the United States for more than the 30-day limit set by this rule.

*Does This Rule Extend the Time Limitation for Other Mexican Nationals Who Are Not Required To Obtain a Form I–94?*

No. The 72-hour time limit for Mexican nationals entering solely for the purpose of applying for a Mexican passport or other official Mexican document at a Mexican consular office in the United States under 8 CFR 212.1(c)(1)(ii) remains unchanged. The 72-hour time limit for Mexican nationals in possession of a passport and valid visa who are admitted as nonimmigrant visitors without obtaining a Form I–94 under 8 CFR 235.1(f)(1) also remains unchanged.

**Good Cause Exception**

Implementation of this interim rule without prior public notice and the opportunity for comment is warranted under the exceptions found under the Administrative Procedure Act (APA) at 5 U.S.C. 553(b) and (d), both for "good cause" and because this interim rule merely relieves prior existing restrictions. This interim rule will significantly reduce administrative burdens and allow critical border security resources to be focused on addressing security concerns rather than on processing paperwork.

Under the current system, if a BCC holder wishes to stay in the United States longer than three days, he or she may do so only upon issuance of a Form I–94 and paying the associated fees. This rule has resulted in many BCC travelers crossing back and forth over the border for the sole purpose of avoiding staying longer than 3 consecutive days. Other BCC travelers who frequently conduct cross-border commerce which requires stays longer than 72 hours are required to fill out identical Forms I–94 every 6 months. The result is that Department personnel at the border are confronted with longer lines and duplicative paperwork.

In light of the heightened security environment, the Department has determined that this interim rule is needed to ensure that available resources are focused on security enhancing activities to the greatest extent possible. Moreover, the Department anticipates that that security could be enhanced because the increase from 72 hours to 30 days may encourage more people to obtain BCCs that contain machine-readable biometric identifiers. Therefore, delay of the effective date of this interim rule to allow for prior notice and comment would be impracticable and contrary to the public interest.

In addition, DHS finds that good cause exists under the Congressional Review Act, 5 U.S.C. 808, to implement this interim rule immediately upon publication in the **Federal Register**.

**Comments**

The Department will consider any written comments timely submitted to the Department in preparing a final rule, including comments on the clarity of this interim rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and CBP regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, Department of Homeland Security, 799 9th Street, NW., Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

**The Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.* small businesses, small organizations, and small governmental jurisdictions). Section 603(a) of the RFA requires that agencies prepare and make available for public comment an initial regulatory flexibility analysis whenever the agency is required by law to publish a general notice of proposed rulemaking. Because good cause exists under 5 U.S.C. 553(b) for issuing this regulation as an interim rule, no regulatory flexibility analysis is required under the RFA. Accordingly, the Department has not prepared an initial regulatory flexibility analysis for this rule.

**Unfunded Mandates Reform Act of 1995**

This interim final rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually.

**Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting or recordkeeping requirements inherent in a final rule. This interim rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act. However, DHS anticipates that there will be a reduction in the number of I–94s issued as a result of this interim rule, which will reduce the burden hours associated with the I–94 collection by an estimated 5,313 hours. The OMB control number is 1651–0111

**Executive Order 12866, Regulatory Planning and Review**

The Department has examined the economic implications of this interim final rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: Having an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues. The Department concludes that this interim final rule is not an economically significant regulatory action under section 3(f)(1) of the Executive Order, since it does not have an annual effect on the economy of $100 million or more. The Department also concludes, however, that this interim final rule raises novel legal and policy issues under section 3(f)(4), and is therefore a significant regulatory action under the Executive Order.

*Costs.* DHS expects the costs of this rulemaking to be negligible. Because Mexican BCC holders already can obtain a Form I–94 to remain in the United

States for an additional period of time, this interim rule simply promotes administrative efficiency by expanding the time limit from 72 hours to 30 days without requiring additional paperwork.

*Benefits.* This rule will affect those BCC holders issued I–94s for the purpose of staying in the country, within 25 miles of the border, for longer than 3 days but less than 30 days. DHS assumes that approximately 1%, or approximately 21,250, of the total I–94s are currently issued to BCC holders for this purpose and therefore those I–94s would no longer be required to be issued under this interim rule. DHS acknowledges that this estimate is uncertain and requests comment.

BCC holders will benefit from no longer being required to obtain an I–94 in order to remain along the border for an extended period of time. These individuals will no longer be required to request and receive an I–94 which is done in secondary examination at the land border ports. The process requires an interview, the payment of a $6.00 fee, and often requires the BCC holder to produce documentation concerning their intentions in the United States. The process takes an average of approximately 15 minutes.

In addition to the previously mentioned BCC holders who will no longer be required to obtain I–94's, DHS estimates that between 200,000 and 400,000 BCC holders will utilize the expanded time period to remain in the United States for longer than the current 72 hours limit. Additionally, this interim rule will likely motivate more Mexican nationals without BCC's to obtain BCCs in order to take advantage of the extended time-limit. These factors will facilitate commerce along the U.S. border and increase the demand by BCC holders for goods and services provided by border communities in the United States. As more Mexican nationals take advantage of the extended time-limit and remain in the United States for a longer period of time, the border communities in the United States will also benefit from a greater demand for goods and services provided by those communities.

**Executive Order 12988, Civil Justice Reform**

This interim rule meets the applicable standards set forth in Executive Order 12988. Among other things, the regulation does not preempt, repeal or modify any Federal statute; provides clear standards; has no retroactive effects; defines key terms; and is drafted clearly.

**Executive Order 13132, Federalism**

This interim rule will not have federalism implications because the regulations will not have financial or other effects on States, the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government.

**Drafting Information**

The principal author of this document was Christopher W. Pappas, Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection. However, personnel from other offices participated in its development.

**List of Subjects in 8 CFR Part 235**

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

**Amendment to the Regulations**

■ Part 235 of title 8 of the Code of Federal Regulations (8 CFR part 235) is amended as follows:

## PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

■ 1. The authority citation for part 235 continues to read as follows:

**Authority:** 8 U.S.C. 1101 and note, 1103; 1183, 1185 (pursuant to E.O. 13323, published January 2, 2004), 1201, 1224, 1225, 1226, 1228, 1365a note, 1379, 1731–32.

■ 2. Section 235.1 is amended by:
■ a. Revising paragraph (f)(1)(iii); and
■ b. Revising paragraph (f)(1)(v), to read as follows:

**§ 235.1 Scope of Examination.**

* * * * *

(f) * * *

(1) * * *

(iii) Except as provided in paragraph (f)(1)(v) of this section, any Mexican national admitted as a nonimmigrant visitor who is:

(A) Exempt from a visa and passport pursuant to § 212.1(c)(1)(i) of this chapter and is admitted for a period not to exceed 30 days to visit within 25 miles of the border; or

(B) In possession of a valid visa and passport or exempt from a visa and passport pursuant to § 212.1(c)(1)(ii) of this chapter; and is admitted for a period not to exceed 72 hours to visit within 25 miles of the border;

* * * * *

(v) Any Mexican national admitted as a nonimmigrant visitor who is:

(A) Exempt from a visa and passport pursuant to § 212.1(c)(1)(i) of this chapter and is admitted at the Mexican border POEs in the State of Arizona at Sasabe, Nogales, Mariposa, Naco or Douglas to visit within the State of Arizona within 75 miles of the border for a period not to exceed 30 days; or

(B) In possession of a valid visa and passport or exempt from a visa and passport pursuant to § 212.1(c)(1)(ii) of this chapter; and is admitted at the Mexican border POEs in the State of Arizona at Sasabe, Nogales, Mariposa, Naco or Douglas to visit within the State of Arizona within 75 miles of the border for a period not to exceed 72 hours.

* * * * *

Dated: August 10, 2004.

**Tom Ridge,**

*Secretary of Homeland Security.*

[FR Doc. 04–18651 Filed 8–12–04; 8:45 am]

BILLING CODE 4410–10–P

## NUCLEAR REGULATORY COMMISSION

**10 CFR Part 72**

**RIN 3150–AH50**

## List of Approved Spent Fuel Storage Casks: NAC–MPC Revision

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations revising the NAC International, Inc., NAC–MPC cask system listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 4 to Certificate of Compliance (CoC) Number 1025. Amendment No. 4 will modify the present cask system design to incorporate vacuum drying enhancements under a general license. Specifically, the amendment will increase vacuum drying time limits, delete canister removal from concrete cask requirements, revise surface contamination removal time limits, and revise allowable contents fuel assembly limits.

**DATES:** The final rule is effective October 27, 2004, unless significant adverse comments are received by September 13, 2004. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

**ADDRESSES:** You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AH50) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including personal information such as security numbers and birth dates in your submission.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov*. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov*. Comments can also be submitted via the Federal eRulemaking Portal *http://www.regulations.gov*.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays [telephone (301) 415–1966].

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking website at *http://ruleforum.llnl.gov*.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. An electronic copy of the proposed CoC, proposed Technical Specifications (TS), and preliminary safety evaluation report (SER) can be found under ADAMS Accession Nos. ML041600307, ML041600562, and ML041600568, respectively.

CoC No. 1025, the revised TS, the underlying SER for Amendment No. 4, and the Environmental Assessment (EA), are available for inspection at the NRC PDR, 11555 Rockville Pike, Rockville, MD. Single copies of these documents may be obtained from Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *jmm2@nrc.gov*.

**FOR FURTHER INFORMATION CONTACT:** Jayne M. McCausland, telephone (301) 415–6219, e-mail *jmm2@nrc.gov*, of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

**SUPPLEMENTARY INFORMATION:**

## Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that "[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." Section 133 of the NWPA states, in part, that "[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor."

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR part 72 entitled "General License for Storage of Spent Fuel at Power Reactor Sites" (55 FR 29181; July 18, 1990). This rule also established a new subpart L within 10 CFR part 72, entitled "Approval of Spent Fuel Storage Casks" containing procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on March 9, 2000 (65 FR 12444), that approved the NAC–Multipurpose Canister (NAC–MPC) cask design and added it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance Number (CoC No.) 1025.

## Discussion

On August 1, 2003, and as supplemented on September 5 and November 5, 2003, the certificate holder (NAC International, Inc.) submitted an application to the NRC to amend CoC No. 1025 to incorporate vacuum drying enhancements. Specifically, the amendment will increase vacuum drying time limits, delete canister removal from concrete cask requirements, revise surface contamination removal time limits, and revise allowable contents fuel assembly limits under a general license. The amendment also incorporates editorial and administrative changes in the CoC. No other changes to the NAC–MPC cask system design were requested in this application. The NRC staff performed a detailed safety evaluation of the proposed CoC amendment request and found that an acceptable safety margin is maintained. In addition, the NRC staff has determined that there is still reasonable assurance that public health and safety and the environment will be adequately protected.

This direct final rule revises the NAC–MPC cask design listing in § 72.214 by adding Amendment No. 4 to CoC No. 1025. The particular TS which are changed are identified in the NRC staff's SER for Amendment No. 4.

The amended NAC–MPC cask system, when used in accordance with the conditions specified in the CoC, the TS, and NRC regulations, will meet the requirements of Part 72; thus, adequate protection of public health and safety will continue to be ensured.

## Discussion of Amendments by Section

*Section 72.214 List of Approved Spent Fuel Storage Casks*

Certificate No. 1025 is revised by adding the effective date of Amendment Number 4.

## Procedural Background

This rule is limited to the changes contained in Amendment 4 to CoC No. 1025 and does not include other aspects of the NAC–MPC cask system design. The NRC is using the "direct final rule procedure" to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on October 27, 2004. However, if the NRC receives significant adverse comments by September 13, 2004, then

the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when—

(A) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(B) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(C) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or TS.

These comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action. However, if the NRC receives significant adverse comments by September 13, 2004, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**.

### Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC would revise the NAC–MPC cask system design listed in § 72.214 (List of NRC-approved spent fuel storage cask designs). This action does not constitute the establishment of a standard that establishes generally applicable requirements.

### Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws but does not confer regulatory authority on the State.

### Plain Language

The Presidential Memorandum dated June 1, 1998, entitled "Plain Language in Government Writing," directed that the Government's writing be in plain language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

### Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in subpart A of 10 CFR part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule would amend the CoC for the NAC–MPC cask system within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. The amendment will modify the present cask system design to incorporate vacuum drying enhancements. Specifically, the amendment will increase vacuum drying time limits, delete canister removal from concrete cask requirements, revise surface contamination removal time limits, and revise allowable contents fuel assembly limits. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the environmental assessment and finding of no significant impact are available from Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *jmm2@nrc.gov*.

### Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0132.

### Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

### Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On March 9, 2000 (65 FR 12444), the NRC issued an amendment to part 72 that approved the NAC–MPC cask design by adding it to the list of NRC-approved cask designs in § 72.214. On August 1, 2003, and as supplemented on September 5 and November 5, 2003, the certificate holder (NAC International, Inc.) submitted an application to the NRC to amend CoC No. 1025 to incorporate vacuum drying enhancements. Specifically, the amendment will increase vacuum drying time limits, delete canister removal from concrete cask requirements, revise surface contamination removal time limits, and revise allowable contents fuel assembly limits. The amendment also incorporates editorial and administrative changes in the CoC.

The alternative to this action is to withhold approval of this amended cask system design and issue an exemption to each general license. This alternative would cost both the NRC and the utilities more time and money because each utility would have to pursue an exemption.

Approval of the direct final rule will eliminate this problem and is consistent with previous NRC actions. Further, the direct final rule will have no adverse effect on public health and safety. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on this discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

**Regulatory Flexibility Certification**

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and NAC International, Inc. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

**Backfit Analysis**

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined. Therefore, a backfit analysis is not required.

**Small Business Regulatory Enforcement Fairness Act**

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

**List of Subjects In 10 CFR Part 72**

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72.

## PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OFSPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

**Authority:** Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148"), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C.10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. f0198).

■ 2. In § 72.214, Certificate of Compliance 1025 is revised to read as follows:

**§ 72.214 List of approved spent fuel storage casks.**

* * * * *

Certificate Number: 1025.
Initial Certificate Effective Date: April 10, 2000.
Amendment Number 1 Effective Date: November 13, 2001.
Amendment Number 2 Effective Date: May 29, 2002.
Amendment Number 3 Effective Date: October 1, 2003.
Amendment Number 4 Effective Date: October 27, 2004.
SAR Submitted by: NAC International, Inc.
SAR Title: Final Safety Analysis Report for the NAC-Multipurpose Canister System (NAC–MPC System).
Docket Number: 72–1025.
Certificate Expiration Date: April 10, 2020.
Model Number: NAC–MPC.

* * * * *

Dated at Rockville, Maryland, this 27th day of July, 2004.

For the Nuclear Regulatory Commission.

**Martin J. Virgilio,**

*Acting Executive Director for Operations.*

[FR Doc. 04–18513 Filed 8–12–04; 8:45 am]

BILLING CODE 7590–01–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2002–CE–23–AD; Amendment 39–13772; AD 2004–17–01]**

**RIN 2120–AA64**

## Airworthiness Directives; Cessna Aircraft Company Models 208 and 208B Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA supersedes Airworthiness Directive (AD) AD 2002–22–17, which applies to all Cessna Aircraft Company (Cessna) Models 208 and 208B airplanes; and AD 2003–21–04, which applies to certain Cessna Models 208 and 208B airplanes. This AD requires you to repetitively inspect the flap bellcranks for cracks and eventually replace these bellcranks. The installation of a newly designed bellcrank to increase the life limits is terminating action for the repetitive inspections. This AD is the result of these developments: Since FAA issued AD 2002–22–17 and AD 2003–21–04, Cessna designed a new flap bell crank with a life limit of 40,000 landings instead of 7,000 landings. Also, FAA has done more analysis and examination of cracks and missing/incomplete welds in all of the bell cranks. This failure could lead to damage to the flap system and surrounding structure and result in reduced or loss of control of the airplane.

**DATES:** This AD becomes effective on September 26, 2004.

As of December 31, 2002 (67 FR 68508, November 12, 2002), the Director of the Federal Register approved the incorporation by reference of Cessna Service Bulletin No. CAB02–1, dated February 11, 2002.

As of October 21, 2003 (68 FR 59707, October 17, 2003), the Director of the

Federal Register approved the incorporation by reference of the following:

Cessna Caravan Service Bulletin No.: CAB03–11, Revision 1, dated September 24, 2003;

Cessna Caravan Service Bulletin No.: CAB02–12, revision 1, dated January 27, 2003; and

Cessna Caravan Service Kit No.: SK208–148A, dated January 27, 2003 (Original issue: October 21, 2002).

**ADDRESSES:** You may get the service information identified in this AD from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–23–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Paul Nguyen, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: 316–946–4125; facsimile: 816–946–4107.

**SUPPLEMENTARY INFORMATION:**

## Discussion

*What events have caused this AD?* The need to reduce the life limit and repetitively inspect the inboard forward flap bellcrank on Cessna Models 208 and 208A airplanes caused us to issue AD 2002–22–17, Amendment 39–12944 (67 FR 68508, November 12, 2002); and AD 2003–21–04, Amendment 39–13339 (68 FR 59707, October 17, 2003).

Since FAA issued AD 2002–22–17 and AD 2003–21–04, Cessna has designed a new flap bellcrank, part number (P/N) 2622311–7, with a life limit of 40,000 landings (instead of 7,000 landings). The new flap bellcrank (P/N 2622311–7) may be substituted for the older flap bellcranks, P/N 2622281–2, 2622281–12, or 2692001–2. Installation of this new flap bellcrank will eliminate the need for repetitive inspections.

*What is the potential impact if FAA took no action?* Cracks in the bellcrank could result in failure of this part. This failure could lead to damage to the flap system and surrounding structure and result in reduced or loss of control of the airplane.

*Has FAA taken any action to this point?* We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Cessna Models 208 and 208B airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 28, 2003 (68 FR 44252). The NPRM proposed to revise AD 2002–22–17 by proposing a new AD that would:

—Retain the actions from AD 2003–21–04, and add all flap bellcranks to the applicability;

—Retain the requirements of AD 2002–22–17; and

—Provide the option of installing the 40,000 landings life limit bellcranks.

## Comments

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

### Comment Issue No. 1: Identify the New Flap Bellcrank (Part Number (P/N) 2622311–16)

*What is the commenter's concern?* The commenter writes that including by P/N this new flap bellcrank, which has a 40,000 landings life limit, in paragraph (f)(2)(ii) of the AD would be a good idea. We conclude that the commenter wants this specific bellcrank identified by part number to make this an obvious alternative bellcrank.

*What is FAA's response to the concern?* We are not incorporating the commenter's recommendation because the proposal already identifies the intent. The FAA already allows installation of any new design flap bellcrank by the words "* * *Or FAA approved equivalent P/N." If we included this P/N, we would be obligated to revise the AD every time a new part was designed including part manufacturer approvals (PMAs).

Therefore, we are not changing the final rule AD action based on this comment.

### Comment Issue No. 2: Allow Welding of Any Bellcrank With Missing Welds

*What is the commenter's concern?* The commenter recommends that FAA change the AD to allow welding of the bellcrank following Cessna Caravan Service Bulletin CAB03–11, Revision 1, dated September 24, 2003, except for the right hand inboard forward bellcrank. The commenter writes that this welding should be allowed since Cessna identifies welding in the above service bulletin.

*What is FAA's response to the concern?* The FAA disagrees with the commenter's recommendation. The FAA has determined that the unsafe condition is prevented through inspection of the applicable Bellcranks, with necessary replacements.

Therefore, we are not changing the final rule AD action based on this comment.

### Comment Issue No. 3: Include Visual Inspection of the Aileron Bellcrank

*What is the commenter's concern?* The commenter recommends that in this AD that FAA allow inspection of the aileron bellcrank since Cessna Caravan Service Bulletin CAB04–3 requires visual inspection of the aileron bellcrank.

*What is FAA's response to the concern?* We disagree with the commenter's recommendation. Based on FAA's evaluation to this point, the unsafe condition is prevented through the inspections specified in the AD, with necessary replacement. The FAA will consider alternative methods of compliance (AMOC) on a case-by-case basis.

We are not changing the final rule AD action based on this comment.

## Conclusion

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

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

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

## Changes to 14 CFR Part 39—Effect on the AD

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

## Costs of Compliance

*How many airplanes does this AD impact?* We estimate that this AD affects 1,300 airplanes in the U.S. registry.

*What is the cost impact of this AD on owners/operators of the affected airplanes?* For the actions retained from AD 2003–21–04, and the addition of all

bellcranks to the applicability, we estimate the following costs to do this inspection:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. operators |
|---|---|---|---|
| 2 workhours × $65 per hour = $130 | No cost for parts | $130 | $130 × 1,300 = $169,000 |

We estimate the following costs to do any necessary replacements of the right inboard forward flap bellcrank (P/N 2622311–7, alternate P/N 2622311–16) that would be required based on the results of this inspection. We have no way of determining the number of airplanes that may need this replacement:

| Labor cost | Parts cost | Total cost per airplane |
|---|---|---|
| 3 workhours × $65 per hour = $195 | $1,845 | $195 + $1,845 = $2,040 |

We estimate the following costs to do any necessary replacements of the left inboard forward flap bellcrank (P/N 2622281–1) that would be required based on the results of this inspection. We have no way of determining the number of airplanes that may need this replacement:

| Labor cost | Parts cost | Total cost per airplane |
|---|---|---|
| 1 workhour × $65 per hour = $65 | $1,201 | $65 + $1,201 = $1,266 |

We estimate the following costs to do any necessary replacements of the right inboard aft flap bellcrank (P/N 2622267–8) that would be required based on the results of this inspection. We have no way of determining the number of airplanes that may need this replacement:

| Labor cost | Parts cost | Total cost per airplane |
|---|---|---|
| 1 workhour × $65 per hour = $65 | $1,273 | $65 + $1,273 = $1,338 |

We estimate the following costs to do any necessary replacements of the left inboard aft flap bellcrank (P/N 2622267–7) that would be required based on the results of this inspection. We have no way of determining the number of airplanes that may need this replacement:

| Labor cost | Parts cost | Total cost per airplane |
|---|---|---|
| 1 workhour × $65 per hour = $65 | $2,098 | $65 + $2,098 = $2,163 |

We estimate the following costs to do any necessary replacements of the left outboard flap bellcrank (P/N 2622091–17) that would be required based on the results of this inspection. We have no way of determining the number of airplanes that may need this replacement:

| Labor cost | Parts cost | Total cost per airplane |
|---|---|---|
| 1 workhour × $65 per hour = $65 | $627 | $65 + $627 = $692 |

We estimate the following costs to do any necessary replacements of the right outboard flap bellcrank (P/N 2622091–18) that would be required based on the results of this inspection. We have no way of determining the number of airplanes that may need this replacement:

| Labor cost | Parts cost | Total cost per airplane |
|---|---|---|
| 1 workhour × $65 per hour = $65 | $661 | $65 + $627 = $726 |

For the requirements from AD 2002–22–17 that you repetitively inspect the inboard forward flap bellcranks for cracks, eventually replace these bellcranks, and provides the option of installing the new design flap bellcrank to increase the life limits and terminate the repetitive inspections, we estimate the following costs to do the inspection:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. operators |
|---|---|---|---|
| 1 workhour × $65 per hour = $65 | No cost for parts | $65 | $65 × 1,300 = $84,500 |

We estimate the following costs to do any replacements using the same flap bellcrank (P/N 2622281–2, 2622281–12, 2692001–2, or FAA-approved equivalent P/N) that will be required based on the inspection or the reduced life limits:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. operators |
|---|---|---|---|
| 3 workhours × $65 per hour = $195 | $1,793 | $195 + $1,793 = $1,988 | $1,988 × 1,300 = $2,584,400 |

We estimate the following costs to do any replacements using the new flap bellcrank (P/N 2622311–7 or FAA-approved equivalent P/N) that will be required based on the inspection or the reduced life limits. We have no way of determining the number of airplanes that may need this replacement with the new flap bellcrank:

| Labor cost | Parts cost | Total cost per airplane |
|---|---|---|
| 3 workhours × $65 per hour = $195 | $1,845 | $195 + $1,845 = $2,040 |

**Regulatory Findings**

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 2002–CE–23–AD" in your request.

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 2002–22–17, amendment 39–12944 (67 FR 68508, November 12, 2002), and AD 2003–21–04, amendment 39–13339 (68 FR 59707, October 17, 2003); and by adding a new AD to read as follows:

**2004–17–01 Cessna Aircraft Company:** Amendment 39–13772; Docket No. 2002–CE–23–AD; Supersedes AD 2002–22–17, amendment 39–12944; and AD 2003–21–04, amendment 39–13339.

*When Does This AD Become Effective?*

(a) This AD becomes effective on September 26, 2004.

*What Other ADs Are Affected by This Action?*

(b) This AD supersedes AD 2002–22–17, amendment 39–12944; and AD 2003–21–04, amendment 39–13339.

*What Airplanes Are Affected by This AD?*

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

(1) Group 1 (retains the actions from AD 2003–21–04, and adds all flap bellcranks to the applicability):

| Model | Serial Nos. |
|---|---|
| 208 | 20800001 through 20800369. |
| 208B | 208B0001 through 208B1014, 208B1017, 208B1018, 208B1020 through 208B1024, 208B1026, and 208B1029 through 208B1033. |

(2) Group 2 (retains the requirement of AD 2002–22–17 that you repetitively inspect the inboard forward flap bellcranks for cracks, eventually replace these bellcranks, and provides the option of installing the new design flap bellcrank to increase the life limits and terminate the repetitive inspections): Models 208 and 208B airplanes, all serial numbers.

*What Is the Unsafe Condition Presented in This AD?*

(d) This AD is the result of (since FAA issued AD 2002–22–17) Cessna's design of a new flap bell crank with a life limit of 40,000 landings (instead of 7,000 landings), and (since FAA issued AD 2003–21–04) further analysis and examination of cracks and missing/incomplete welds in all of the bell cranks. The actions specified in this AD are intended to prevent failure of any bellcrank due to cracks, deformation, or missing/incomplete welds. This failure could lead to damage to the flap system and surrounding

structure and result in reduced or loss of control of the airplane.

*What Must I Do To Address This Problem for Group 1 Airplanes?*

(e) To address this problem for Group 1 airplanes, you must do the following:

| Actions | Compliance | Procedures |
|---|---|---|
| (1) Inspect the right inboard forward flap bellcrank assembly for cracks, deformation, and missing/incomplete welds. The affected flap bellcrank incorporates one of the following part numbers (P/N):<br>(i) P/N 2622083–18;<br>(ii) P/N 2622281–2;<br>(iii) P/N 2692001–2; or<br>(iv) P/N 2622281–12. | Within the next 25 landings after October 21, 2003 (the effective date of AD 2003–21–04). If landings are unknown, then you may multiply hours time-in-service (TIS) by 1.25. For the purposes of this AD, you may substitute 20 hours TIS for 25 landings. | Use a flashlight and a mirror as necessary to see if welds (1), (4), (5), and (6) exist and are at least 0.06-inch thick around the full circumference of the shaft. These welds and the inspection procedures are referenced in Figure 1, details A, B, and C; and Views A–A and B–B of Cessna Caravan Service Bulletin No.: CAB03–11, Revision 1, dated September 24, 2003. |
| (2) Inspect the left inboard forward bellcrank for cracks, deformation, and missing/incomplete welds. The affected flap bellcrank incorporates one of the following part P/Ns:<br>(i) P/N 262283–15; or<br>(ii) P/N 262281–1. | Within the next 25 landings after September 26, 2004, the effective date of this AD. If landings are unknown, then you may multiply hours TIS by 1.25. For the purposes of this AD, you may substitute 20 hours TIS for 25 landings. | Use a flashlight and a mirror as necessary to see if welds (1) through (4) exist and are at least 0.06-inch thick around the full circumference of the shaft. These welds and the inspection procedures are referenced in Figure 2, details A, B, and C; and Views A–A and B–B of Cessna Caravan Service Bulletin No.: CAB03–11, Revision 1, dated September 24, 2003. |
| (3) Inspect the inboard aft bellcrank for cracks, deformation, and missing/incomplete welds. The affected flap bellcrank incorporates one of the following P/Ns:<br>(i) P/N 2622267–1; or<br>(ii) P/N 2622267–2;<br>(iii) P/N 2622267–7;<br>(iv) P/N 2622267–8;<br>(v) P/N 2622083–1; or<br>(vi) P/N 2622083–2. | Within the next 25 landings after September 26, 2004, the effective date of this AD. If landings are unknown, then you may multiply hours TIS by 1.25. For the purposes of this AD, you may substitute 20 hours TIS for 25 landings. | Use a flashlight and a mirror as necessary to see if welds (1), (2), (4), and (5) exist and are at least 0.05-inch thick around the full circumference of the shaft. These welds and the inspection procedures are referenced in Figure 3, details A, B, and C; and Views A–A and B–B of Cessna Caravan Service Bulletin No.: CAB03–11, Revision 1, dated September 24, 2003. |
| (4) Inspect the outboard bellcrank for cracks, deformation, and missing/incomplete welds. The affected flap bellcrank incorporates one of the following P/Ns:<br>(i) P/N 2622091–1; or<br>(ii) P/N 2622091–2;<br>(iii) P/N 2622091–9;<br>(iv) P/N 2622091–10;<br>(v) P/N 2622091–17; or<br>(vi) P/N 2622091–28. | Within the next 25 landings after September 26, 2004, the effective date of this AD. If lands are unknown, then you may multiply hours TIS by 1.25. For the purposes of this AD, you may substitute 20 hours TIS for 25 landings. | Use a flashlight and a mirror as necessary to see if welds (1) through (4) exist and are at least 0.05-inch thick around the full circumference of the shaft. These welds and the inspection procedures are referenced in Figure 4, details A, B, and C; and Views A–A and B–B of Cessna Caravan Service Bulletin No.: CAB03–11, Revision 1, dated September 24, 2003. |
| (5) If you find cracks, deformation, or missing/incomplete welds during the inspection required by paragraphs (e)(1) through (e)(4) of this AD, then do one of the following:<br>(1) Replace the bellcrank with a new bellcrank; or<br>(ii) Prohibit the use of flaps through the actions of paragraph (g) of this AD. | Replace or do the flap prohibition actions before further flight after the inspection required in paragraphs (e)(1) through (e)(4) of this AD. If you choose the flap prohibition, you must have the replacement done within 200 hours TIS after the inspection required by paragraphs (e)(1) through (e)(4) of this AD. After the new flap bellcrank is installed, the Temporary Revision 208PHTR02, dated September 23, 2003, should be removed. | *Replacement:* Use the Accomplishment Instructions of Cessna Caravan Service bulletin No.: CAB02–12, Revision 1, dated January 27, 2003, and the Accomplishment Instructions of Cessna Caravan Service Kit No.: SK208–148A, dated January 27, 2003, or refer to the Maintenance Manual, Chapter 27, Flap System—Maintenance Practices, for bellcrank removal and installation procedures.<br>*Flap Prohibition:* Use the information in the Temporary Revision 208PHTR02, dated September 23, 2003. The action is referenced in Cessna Caravan Service Bulletin No.: CAB03–11, Revision 1, dated September 24, 2003. |

*What Must I Do To Address This Problem for Group 2 Airplanes?*

(f) To address this problem for Group 2 airplanes, you must do the following:

| Actions | Compliance | Procedures |
|---|---|---|
| (1) *Repetitive Inspections:* Inspect, using eddy current method, any inboard forward flap bellcrank (P/N 2622281–2, 2622281–12, 2692001–2, or FAA-approved equivalent P/N) for cracks. | Initially inspect upon the accumulation of 4,000 landings on the bellcrank or within the next 250 landings after December 31, 2002 (the effective date of AD 2002–22–17), whichever occurs later. Repetitively inspect thereafter at every 500 landings until 7,000 landings are accumulated at which time you must replace as required in paragraphs (f)(2) and (f)(3) of this AD. No repetitive inspections are required when a P/N 2622311–7 (or FAA-approved equivalent P/N) inboard forward flap bellcrank is installed. | Follow the Inspection Instructions of Cessna Caravan Service Bulletin No.: CAB02–1, dated February 11, 2002, and the applicable maintenance manual. |
| (2) *Initial Replacement:* Replace any inboard forward flap bellcrank (P/N 2622281–2, 2622281–12, 2692001–2, or FAA-approved equivalent P/N) with either: (i) a new flap bellcrank with the same P/N 2622281–2, 26228–12, 269001–2, or FAA-approved or equivalent P/N; or (ii) a new flap bellcrank (P/M 262231–7 or FAA-approved equivalent P/N). | If cracks are found, replace or do the flap prohibition actions before further flight after the inspection required in paragraphs (f)(1) of this AD. If you choose the flap prohibition, you must have the replacement done within 200 hours TIS after the inspection required by paragraphs (f)(1) of this AD. After the new flap bellcrank is installed, the Temporary Revision 208PHTR02, dated September 23, 2003, should be removed. If cracks are not found, initially replace at whichever occurs later: upon the accumulation of 7,000 landings on the bellcrank or within the next 75 landings after December 31, 2002 (the effective date of AD 2002–22–17). | *Replacement:* For flap bellcrank (P/N 2622281–2, 2622281–12, 2692001–2, or FAA-approved equivalent P/N): Follow the Instructions of Cessna Caravan Service Bulletin No.: CAB02–1, dated February 11, 2002, and the applicable maintenance manual. For new flap bellcrank (P/N 2622311–7 or FAA-approved equivalent P/N): Follow the Accomplishment Instructions of Cessna Caravan Service Bulletin No.: CAB02–12, Revision 1, dated January 27, 2003, and the Accomplishment Instructions of Cessna Caravan Service Kit No.: SK208–148A, dated January 27, 2003. *Flap Prohibitions:* Use the information in the Temporary Revision 208PHTR02, dated September 23, 2003. |
| (3) *Life Limits (Repetitive Replacements):* ..... (i) The life limit for the inboard forward flap bellcranks (P/N 2622281–2, 2622281–12, 2692001–2, or FAA-approved equivalent P/N) is 7,000 landings. Repetitive inspections every 500 landings begin at 4,000 landings (see paragraph (f)(1) of this AD.) (ii) The life limit for the inboard forward flap bellcranks (P/N 2622311–7 or FAA-approved equivalent P/N) is 40,000 landings. No repetitive inspections are required on these bellcranks. | Replace at the applicable referenced life limits | Use the service information referenced in paragraph (f)(2) of this AD. |

**Note 1:** Inboard forward flap bellcranks (P/N 2622281–2, 2622281–12, or 2692001–2) with 7,000 landings or more do not have to be replaced until 75 landings after December 31, 2002 (the effective date of AD 2002–22–17), unless found cracked.

**Note 2:** The compliance times of this AD are presented in landings instead of hours TIS. If the number of landings is unknown, hours TIS may be used by multiplying the number of hours TIS by 1.25.

*What Are the Actions I Must Do if I Choose the Flap Prohibition Option?*

(g) Insert Temporary Revision, 208PHTR02, dated September 23, 2003, into the applicable pilot's operating handbook and FAA-approved airplane flight manual. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may incorporate this information into the AFM. Make an entry into the aircraft records showing compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(1) This procedure applies to Cessna Models 208 and 208B landplanes. For other FAA-approved aircraft configurations (for example, amphibian, floatplanes, and so forth), you must operate with flaps up per the appropriate airplane flight manual supplement.

(2) This procedure allows for applicable deviation from the Master Minimum Equipment List (MMEL) for these airplanes until the flap bell crank is replaced. The applicable MMEL requirements go back into effect at the time of flap bell crank replacement.

*May I Request an Alternative Method of Compliance?*

(h) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Wichita Aircraft Certification Office (ACO), FAA.

(1) For information on any already approved alternative methods of compliance, contact Paul Nguyen, Aerospace Engineer, FAA, Wichita ACO, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: 316–946–4125; facsimile: 816–946–4107.

(2) Alternative methods of compliance approved under AD 2002–22–17 and AD 2003–21–04 are not approved for this AD.

*Does This AD Incorporate Any Material by Reference?*

(i) You must do the actions required by this AD following the instructions in the service information presented in paragraphs (i)(1) and (i)(2) of this AD.

(1) On December 31, 2002 (67 FR 68508, November 12, 2002) and in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, the Director of the Federal Register approved the incorporation of Cessna Service Bulletin No.: CAB02–1, dated February 11, 2002.

(2) On October 21, 2003 (68 FR 59707, October 17, 2003), and in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, the Director of the Federal Register approved the incorporation of Cessna Caravan Service Bulletin No.: CAB03–11, Revision 1, dated September 24, 2003; Cessna Caravan Service Bulletin No. CAB02–12, revision 1, dated January 27, 2003; and Cessna Caravan Service Kit No.: SK208–148A, dated January 27, 2003 (original issue: October 21, 2002).

(3) You may get a copy from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri, on August 5, 2004.

**Dorenda D. Baker,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–18554 Filed 8–12–04; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF COMMERCE

### Bureau of Economic Analysis

### 15 CFR Part 801

[Docket No. 030929241–4172–02]

RIN 0691–AA55

## International Services Surveys: BE–9, Quarterly Survey of Foreign Airline Operators' Revenues and Expenses in the United States

**AGENCY:** Bureau of Economic Analysis, Commerce.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends regulations to set forth the reporting requirements for the BE–9, Quarterly Survey of Foreign Airline Operators' Revenues and Expenses in the United States.

The survey is mandatory and will be conducted under the International Investment and Trade in Services Survey Act. Data from the BE–9 survey are needed for the compilation of the U.S. balance of payments accounts. The information collected in this survey will be used in developing the "transportation" portion of the U.S. balance of payments accounts. The balance of payments accounts, which are published quarterly in the *Survey of Current Business,* are one of the major statistical products of BEA. They are used extensively by both government and private organizations. Without the information collected in this survey, quarterly data needed for estimating an integral component of the transportation account would be unavailable. The data are utilized by private organizations and numerous government agencies for analyzing economic trends. The data collected are also used for compiling the U.S. national income and product accounts, and for reporting to international organizations such as the International Monetary Fund.

The survey will cover the transactions currently covered on the BE–36, Foreign Airline Operators' Revenues and Expenses in the United States, which is collected annually. The BE–36 will be discontinued following the final data collection for 2003.

**DATES:** *Effective Date:* This final rule will be effective September 13, 2004.

**FOR FURTHER INFORMATION CONTACT:** Edward Dozier, Balance of Payments Division (BE–58), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; via the Internet at *edward.dozier@bea.gov;* or via telephone at (202) 606–9559.

**SUPPLEMENTARY INFORMATION:** In the October 17, 2003, **Federal Register** (68 FR 59750–59751), BEA published a notice of proposed rulemaking that set forth the reporting requirements for the BE–9, Quarterly Survey of Foreign Airline Operators' Revenues and Expenses in the United States. The major purpose of the survey is for the compilation of the U.S. balance of payments accounts. The information collected in this survey is used in developing the "transportation" portion of the U.S. balance of payments accounts. The balance of payments accounts, which are published quarterly in the *Survey of Current Business,* are one of the major statistical products of BEA. They are used extensively by both Government and private organizations. Without the information collected in this survey, quarterly data needed for estimating an integral component of the transportation account would be unavailable. The data are utilized by private organizations and numerous government agencies for analyzing economic trends. The data collected are also used for compiling the U.S. national income and product accounts, and for reporting to international organizations such as the International Monetary Fund.

The BE–9 survey is mandatory and will be conducted under the International Investment and Trade in Services Survey Act. The survey requests information from foreign air carriers operating in the United States. Information is collected on a quarterly basis from foreign air carriers with total annual covered revenues or total annual covered expenses incurred in the United States of $5 million or more. Foreign air carriers with total annual covered revenues and expenses below $5 million are exempt from reporting. The exemption criterion is based on the annual revenues or expenses covered by the survey for both the current and previous year. Thus, if a foreign airline operator had revenues or expenses covered by the survey of $5 million or more during the previous year or if the company expects its revenues or expenses will be $5 million or more during the current year, then it must complete the survey for each of the four quarters of the current year.

The BE–9 quarterly survey will cover the transactions currently covered on the BE–36, Foreign Airline Operators' Revenues and Expenses in the United States, which is collected annually. The BE–36 survey will be discontinued following a final data collection for 2003.

In response to the proposed rule published on October 17, 2003, three organizations commented on the proposed rule. As a result of these comments, BEA made one change in issuing this final rule. Specifically, the estimated average number of hours per response was increased from 5 hours to 8 hours, which increased the estimated annual reporting burden from 1,120 hours to 1,792 hours. BEA addressed all comments on the proposed rule in a December 23, 2003 letter that was sent to all organizations that provided comments and to OMB. Below is a summary of the comments received and BEA's response.

*Comment:* BEA has not demonstrated the need for a quarterly collection of data.

*Response:* The Bureau of Economic Analysis (BEA) is responsible for compiling the quarterly U.S. balance of payments (BOP) accounts, which are published in the *Survey of Current Business.* U.S. exports and imports of transportation services, which are derived in part from BEA surveys such as the BE–36, are major components of these accounts. The BOP accounts are used extensively by Government and by private organizations, for supporting U.S. international economic policy, including trade negotiations, and for analyzing the impact of that policy and the policy of foreign countries on international trade in services. The accounts also are included in the quarterly national income and product (or GDP) accounts.

Annual information on transportation services are now collected by BEA on annual form BE–36. Quarterly estimates of transportation services currently must be made by extrapolating forward data pertaining to the prior year (as reported on form BE–36 for the prior year) through the use of indicator series, such as on the number of travelers or on the

value or weight of goods imports and exports. In addition to these quarterly estimates, monthly estimates must also be prepared from these data through indicator series; these estimates are included in broader aggregates in the joint BEA-Census Bureau monthly news release on trade in goods and services.

More current and accurate reported data on trade in services are needed in periods, such as now, when trade in such services may be experiencing sharp movements. One organization remarked about the sharp business downswing now being experienced by the airline industry. For BEA's quarterly estimates of international trade and GDP to accurately reflect the extent of the downswing, quarterly data are essential. For example, data on 2003 transactions are not reported to BEA until annual form BE–36 is filed, which was in the spring of 2004. At that time, only annual data was provided, which are not of significant help in monitoring changes in business conditions or for compiling the quarterly GDP or balance of payments accounts. The quality of the transportation estimates in international transactions accounts and national income and product accounts will substantially improve with the collection of accurate quarterly data on a quarterly survey. Quarterly surveys also will provide more accurate current information on U.S. trade in transportation services for use in connection with trade negotiations and for other international economic policy uses. In addition, they would provide the solid basis needed for assuring accuracy of the monthly goods and services trade estimates.

*Comment:* BEA's estimate of time and cost associated with filing the survey is substantially understated.

*Response:* BEA had estimated 5.0 hours as the average reporting burden on respondents for reviewing instructions and completing the report form. BEA first developed this estimate many years ago, based on conversations with a number of companies that file the annual BE–36 survey, and has periodically since then looked into its accuracy. For example, on April 2, 2003, BEA sent a letter and a description of the proposed BE–9 survey to 5 foreign air carriers, and requested comments and suggestions from the recipients on the proposed survey. BEA did not receive any comments on the burden estimate at that time.

Some of the concerns about the time needed to complete the survey may be based on a misunderstanding of some of the reporting requirements. For example, one organization commented that many of aircraft maintenance items are incurred and paid overseas and should be attributed to expenses contemplated in this survey. In fact, the report form is designed to capture transactions between U.S. and foreign persons, and so, for example, expenditures made overseas for aircraft maintenance (and all other overseas expenses) should be excluded (see instructions for item 3 of the report form). BEA would be pleased to talk or to meet with any respondent to discuss survey reporting requirements, and would welcome suggestions for improving the clarity of survey instructions.

Also, it should be noted that estimates are acceptable where exact accounting figures are unavailable. Proposed form BE–9 has relatively few data items (consisting of just 9 data items). Basically, BEA is looking to see what foreign airlines spent in the United States (which are U.S. exports to foreigners), and what U.S. persons paid to foreign airlines (which are U.S. imports of services from foreigners), excluding passenger fares (which are estimated by BEA using other means).

Despite the above comments, BEA agrees that the estimate of average respondent burden for form BE–9 is probably too low. Based on the comments received, BEA increased the estimate of average reporting burden from 5.0 hours to 8.0 hours. Furthermore, BEA will consult with respondents after they have experience with form BE–9, and if it is determined that the burden estimate should be revised again at that time, BEA will do so.

*Comment:* The quality of reported data may be poor.

*Response:* One organization commented that many expenditures incurred during the year will not be booked in an airline's accounting system until the end of the year; before then, the expenditures may be placed in a pending account. They expressed a similar concern about actual commissions—these may be known with certainty only after final auditing is completed, which is at or after the end of the year.

BEA recognizes that final, audited data are often unavailable in time for quarterly (or even annual) reporting on its surveys. Thus, as noted above, respondents are encouraged to use estimates where precise final data are unavailable from readily available accounting data.

BEA also believes that it can identify substantial errors in reported data and obtain respondent cooperation in providing corrected data. BEA believes that the quarterly estimates that it prepares will therefore be substantially correct and, certainly, they will be much more accurate than BEA estimates of quarterly transactions based on extrapolations of the respondent's prior year data.

It should also be noted that expenses reported on the proposed quarterly survey, as well as on the existing annual survey, must be disaggregated by major category—fuel and oil; wages and salaries; brokers' fees and commissions; aircraft handling and terminal expenses; aircraft leasing expenses; and all other expenses. Data for most of these categories should exhibit a relatively smooth trend from quarter to quarter unless there were substantial changes in the U.S. operations of the foreign air carrier. Thus, unusual quarterly changes in the reported data can easily be spotted by BEA and would be brought to the respondent's attention. If the respondent determined that the reported data incorrectly excluded major categories of expenses (or that expenses for the full year were incorrectly bunched in the fourth quarter of that year), corrected estimates would be provided.

Finally, BEA notes that it has collected quarterly revenue and expenses data from U.S. air carriers for many years, on quarterly form BE–37. That is, U.S. carriers have been providing the information on their foreign revenues and expenses for a considerable number of years, and BEA's proposal for the BE–9 is to collect similar information from foreign air carriers. While BEA agrees that the BE–9 entails some increase in burden for respondents now reporting on the annual BE–36 survey, our experience in collecting information from U.S. air carriers leads us to conclude that the quality of the quarterly data will be high.

**Executive Order 12866**

This final rule is not significant for purposes of E.O. 12866.

**Executive Order 13132**

This final rule does not contain policies with Federalism implications as that term is defined in E.O. 13132.

**Paperwork Reduction Act**

The collection of information required in this final rule was approved by the Office of Management and Budget under the Paperwork Reduction Act. Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject

to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid Office of Management and Budget Control Number; such a Control Number (0608–0068) will be displayed.

The BE–9 survey is expected to result in the filing of reports from about 56 respondents on a quarterly basis, or about 224 responses annually. The average number of hours per response is 8.0 hours, or an annual reporting burden of 1,792 hours (224 responses multiplied by 8 hours average burden). This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The actual burden may vary from reporter to reporter, depending upon the number and variety of the respondent's transactions and the ease of assembling the data.

Comments regarding the burden estimate or any aspect of this collection of information should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; or faxed (202) 395–7245) or e-mailed (*pbugg@omb.eop.gov*) to the Office of Management and Budget, O.I.R.A. (Attention PRA Desk Officer for BEA).

**Regulatory Flexibility Act**

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this rule will not have a significant economic impact on a substantial number of small entities as that term is defined in the Regulatory Flexibility Act. The factual basis for the certification was published with the proposed rule. No comments were received regarding the economic impact of the rule. As a result, no final regulatory flexibility analysis was prepared.

**List of Subjects in 15 CFR Part 801**

International transactions, Economic statistics, Foreign trade, Penalties, Reporting and recordkeeping requirements.

Dated: August 5, 2004.

**J. Steven Landefeld,**

*Director, Bureau of Economic Analysis.*

■ For the reasons set forth in the preamble, BEA amends 15 CFR part 801, as follows:

## PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS

■ 1. The authority citation for 15 CFR Part 801 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101–3108; and E.O. 11961, January 19,1977 (as amended by E.O. 12318, August 21, 1981; and E.O. 12518, June 3, 1985).

■ 2. Section 801.9 is amended by adding new paragraph (c)(3) to read as follows:

**§ 801.9 Reports required.**

(c) Quarterly surveys. * * *

(3) BE–9, Quarterly Survey of Foreign Airline Operators' Revenues and Expenses in the United States:

(i) *Who must report.* A BE–9 report is required from U.S. offices, agents, or other representatives of foreign airlines that are engaged in transporting passengers or freight and express to or from the United States. If the U.S. office, agent, or other representative does not have all the information required, it must obtain the additional information from the foreign airline operator.

(ii) *Exemption.* A U.S. person otherwise required to report is exempt from reporting if total annual covered revenues and total annual covered expenses incurred in the United States were each less than $5 million during the previous year and are expected to be less than $5 million during the current year. If either total annual covered revenues or total annual covered expenses were or are expected to be $5 million or more, a report must be filed.

* * * * *

[FR Doc. 04–18497 Filed 8–12–04; 8:45 am]

BILLING CODE 3510–06–P

## DEPARTMENT OF HOMELAND SECURITY

### Bureau of Customs and Border Protection

### 19 CFR Part 101

**[CPB Dec. 04–24]**

### Extension of Port Limits of Chicago, IL

**AGENCY:** Customs and Border Protection; Department of Homeland Security.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs and Border Protection (CBP) Regulations pertaining to the field organization of the Bureau of Customs and Border Protection by extending the geographical limits of the port of Chicago, Illinois, to include parts of the City of Elwood, Illinois. There is an intermodal facility in Elwood. The change is part of CBP's continuing program to more efficiently utilize its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public.

**DATES:** Effective September 13, 2004.

**FOR FURTHER INFORMATION CONTACT:** Dennis Dore, Office of Field Operations, 202–927–6871.

**SUPPLEMENTARY INFORMATION:**

**Background**

In order to facilitate the clearance of international freight at an intermodal facility in the City of Elwood, Illinois, the Bureau of Customs and Border Protection (CBP) is amending § 101.3(b)(1) of the Customs and Border Protection Regulations (19 CFR 101.3(b)(1)) by extending the port limits of the port of Chicago to include certain parts of the City of Elwood, Illinois. The extension of the port limits to include the specified territory will provide better service to importers and the rail transportation industry in central Illinois.

A Notice of Proposed Rulemaking concerning this extension was published in the **Federal Register** (68 FR 42650) on July 18, 2003.

**Analysis of Comments and Conclusion**

No comments were received in response to the Notice of Proposed Rulemaking. As CBP believes that the extension of the port of Chicago, Illinois, to include parts of the City of Elwood, Illinois, will improve service to importers and the rail transportation industry in central Illinois, CBP is expanding the limits of the port of Chicago as proposed.

**New Port Limits of the Port of Chicago, Illinois**

CBP extends the limits of the port of Chicago, Illinois, to include additional territory in the City of Elwood, Illinois, so that the description of the limits of port will read as follows:

Beginning at the point where the northern limits of Cook County, Illinois, intersect Lake Michigan, thence westerly along the Cook County-Lake County Line to the point where Illinois State Highway Fifty-Three (53) intersects this Line, thence in a southerly direction along Illinois State Highway Fifty-Three (53) to the point where the highway intersects Interstate Highway Fifty-Five (55), thence southwesterly along Interstate Highway Fifty-Five (55) to the point where this highway intersects the north bank of the Kankakee River, thence southeasterly to

the point where the Kankakee River intersects State Highway Fifty-Three (53), thence northeasterly to the point where this highway intersects Interstate Highway Eighty (80), thence easterly to the point where this highway intersects the Cook County-Will County Line, thence in a general easterly and southerly direction along the northern and eastern limits of Will County, Illinois, to the point where the Will County-Cook County Line intersects the Illinois-Indiana State Line, thence northerly along the Illinois-Indiana State Line to the point near Dyer, Indiana, where U.S. Route Thirty (30) intersects this Line, thence easterly along U.S. Route Thirty (30) to the point where this highway and the Indiana State Highway Forty-Nine (49) intersect, thence in a northerly direction along Indiana State Highway Forty-Nine (49) to a place where this highway meets Lake Michigan.

### Authority

This change is being made under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66 and 1624.

### The Regulatory Flexibility Act and Executive Order 12866

CBP establishes, expands and consolidates CBP ports of entry throughout the United States to accommodate the volume of CBP-related activity in various parts of the country. Thus, although a notice was issued requesting public comment on this subject matter, because this document relates to agency management and organization, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Office of Management and Budget has determined this rule to be non-significant under Executive Order 12866.

### Delegations of Authority: Signature of Customs and Border Protection Regulations

The signing authority for this document falls under § 0.2(a), CBP Regulations (19 CFR 0.2(a)) because this port extension is not within the bounds of those regulations for which the Secretary of the Treasury has retained sole authority. Accordingly, the final rule may be signed by the Secretary of Homeland Security (or his or her delegate).

### Drafting Information

The principal author of this document was Christopher W. Pappas, Regulations Branch, Office of Regulations and Rulings, CBP. However, personnel from other offices participated in its development.

### List of Subjects in 19 CFR Part 101

Customs duties and inspection, Customs ports of entry, Exports, Imports, Organization and functions (Government Agencies).

### Amendments to the Regulations

■ For the reasons set forth above, part 101, CBP Regulations (19 CFR 101), is amended as set forth below.

## PART 101—GENERAL PROVISIONS

■ 1. The general authority citation for part 101 and specific authority provision for § 101.3 continue to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

Sections 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b;

* * * * *

### § 101.3 [Amended]

■ 2. In the list of ports in § 101.3(b)(1), under the state of Illinois, the "Limits of port" column adjacent to "Chicago" in the "ports of entry" column is amended by removing the citation "T.D. 71–121" and by adding in its place "CBP Dec. 04–24".

**Robert C. Bonner,**

*Commissioner, Customs and Border Protection.*

**Tom Ridge,**

*Secretary, Department of Homeland Security.*

[FR Doc. 04–18515 Filed 8–12–04; 8:45 am]

BILLING CODE 4820–02–P

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[TD 9150]**

**RIN 1545–BC40**

## Remedial Actions Applicable To Tax-Exempt Bonds Issued by State and Local Governments

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations on the exempt facility bond rules applicable to tax-exempt bonds issued by state and local governments. The regulations affect issuers of tax-exempt bonds and amend provisions in the current regulations permitting remedial actions for tax-exempt bonds issued by state and local governments.

**DATES:** *Effective Date:* These regulations are effective August 13, 2004.

*Applicability Date:* For dates of applicability, see § 1.141–16(c) and (d) of these regulations.

**FOR FURTHER INFORMATION CONTACT:** Vicky Tsilas, (202) 622–3980 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

This document amends 26 CFR part 1 under sections 141 and 142 of the Internal Revenue Code by amending rules pertaining to remedial actions (the final regulations). On July 21, 2003, the IRS published in the **Federal Register** a notice of proposed rulemaking (REG–132483–03) (68 FR 43059) (the proposed regulations). The proposed regulations would amend (1) the definition of nonqualified bonds in § 1.141–12, (2) the rules in §§ 1.141–12 and 1.142–2, pertaining to the allocation of nonqualified bonds, and (3) the effective date provisions under §§ 1.141–15(e) and 1.141–16(c). A public hearing was scheduled for November 4, 2003. The public hearing was cancelled because no requests to speak were received. Written comments on the proposed regulations were received. After consideration of the written comments, the proposed regulations under §§ 1.141–16 and 1.142–2 are adopted as revised by this Treasury decision. The revisions are discussed below.

### Explanation of Provisions

*A. Proposed Regulations*

The proposed regulations propose two changes to the remedial action rules contained in §§ 1.141–12 and 1.142–2. First, the proposed regulations would change the definition of nonqualified bonds under § 1.141–12 to provide that the nonqualified bonds are a portion of the outstanding bonds in an amount that, if the remaining bonds were issued on the date on which the deliberate action occurs, the remaining bonds would not satisfy the private business use test or private loan financing test, as applicable. For this purpose, the proposed regulations provide that the amount of private business use is the greatest percentage of private business use in any one-year period commencing with the deliberate action.

Second, the proposed regulations would amend the provisions of § 1.141–12 (relating to redemption or defeasance) and § 1.142–2 relating to allocations of nonqualified bonds.

Under the proposed regulations, allocations of nonqualified bonds must be made on a pro rata basis, except that an issuer may treat any bonds of an issue as the nonqualified bonds so long as (i) the remaining weighted average maturity of the issue, determined as of the date on which the nonqualified bonds are redeemed or defeased (determination date), and excluding from the determination the nonqualified bonds redeemed or defeased by the issuer, is not greater than (ii) the remaining weighted average maturity of the issue, determined as of the determination date, but without regard to the redemption or defeasance of any bonds (including the nonqualified bonds) occurring on the determination date.

The proposed regulations also would amend §§ 1.141–15(e) and 1.141–16(c) to provide that for bonds issued before May 16, 1997, issuers may apply §§ 1.141–12 and 1.142–2 without regard to the 10½ year limitation on defeasances contained in those regulations.

*B. Final Regulations*

Public comments were received regarding the proposed regulations. These comments request that the amount of nonqualified bonds be determined in a manner consistent with the general measurement rules under § 1.141–3(g). Because of the interrelationship between the remedial action provisions of § 1.141–12 and the allocation and accounting rules of § 1.141–6 (which are currently reserved), the proposed regulations under §§ 1.141–12 and 1.141–15 are not being finalized at this time. It is anticipated that these proposed regulations will be finalized in connection with the provision of the allocation and accounting rules.

Commentators agreed with the proposed change that allows any bonds of an issue to be treated as the nonqualified bonds, provided that the redemption or defeasance does not have the effect of extending the weighted average maturity (WAM) of the issue. However, the commentators stated that under the bond indentures for certain fixed rate bonds, the redemption or defeasance of bonds with the longest maturities in an issue could result in an extension of the WAM of the issue. Under some bond indentures, optional redemptions of a portion of a term bond must be used first to reduce the earliest mandatory sinking fund payments on the bond. In this case, the redemption or defeasance of the longest bonds could result in an extension of the WAM. Commentators indicated that requiring an issuer to use the pro rata allocation method in these circumstances is inappropriate and recommended that the regulations be revised to permit the longer bonds to be treated as the nonqualified bonds, which is permitted under the existing regulations. The IRS and Treasury Department agree that additional flexibility should be provided for outstanding bonds with bond indentures that prevent compliance with the WAM rule, but believe that extensions of the WAM should not be permitted on a prospective basis. As a result, the final regulations provide that for purposes of § 1.142–2(e)(2), in addition to the allocation methods permitted in § 1.142–2(e)(2), an issuer may treat bonds with the longest maturities (determined on a bond-by-bond basis) as the nonqualified bonds, but only with respect to failures to properly use proceeds that occur on or after May 14, 2004 with respect to bonds sold before August 13, 2004.

Other comments were received that are beyond the scope of this project. The IRS and Treasury Department continue to consider these comments.

**Effective Dates**

The final regulations apply to failures to properly use proceeds that occur on or after August 13, 2004 and may be applied by issuers to failures to properly use proceeds that occur on or after May 14, 2004, provided that the bonds are subject to § 1.142–2. The final regulations that amend § 1.141–16(c) apply to bonds issued before May 16, 1997, that are subject to § 1.142–2, for purposes of failures to properly use proceeds that occur on or after April 21, 2003.

**Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the rule does not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply.

**Drafting Information**

The principal authors of these regulations are Rebecca L. Harrigal and Vicky Tsilas, Office of Associate Chief Counsel (Tax-exempt and Government Entities), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

■ Accordingly, 26 CFR part 1 is amended as follows:

**PART 1—INCOME TAXES**

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

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

■ **Par. 2.** Section 1.141–0 is amended by adding an entry to the table for § 1.141–16(d) to read as follows:

**§ 1.141–0 Table of contents.**

* * * * *

**§ 1.141–16 Effective dates for qualified private activity bond provisions.**

* * * * *

(d) Certain remedial actions.

(1) General rule.

(2) Special rule for allocations of nonqualified bonds.

■ **Par. 3.** Section 1.141–16 is amended by revising paragraph (c) and adding paragraph (d) to read as follows:

**§ 1.141–16 Effective dates for qualified private activity bond provisions.**

* * * * *

(c) *Permissive application.* The regulations designated in paragraph (a) of this section may be applied by issuers in whole, but not in part, to bonds outstanding on the effective date. For this purpose, issuers may apply § 1.142–2 without regard to paragraph (c)(3) thereof to failures to properly use proceeds that occur on or after April 21, 2003.

(d) *Certain remedial actions*—(1) *General rule.* The provisions of § 1.142–2(e) apply to failures to properly use proceeds that occur on or after August 13, 2004 and may be applied by issuers to failures to properly use proceeds that occur on or after May 14, 2004, provided that the bonds are subject to § 1.142–2.

(2) *Special rule for allocations of nonqualified bonds.* For purposes of § 1.142–2(e)(2), in addition to the allocation methods permitted in § 1.142–2(e)(2), an issuer may treat bonds with the longest maturities (determined on a bond-by-bond basis) as the nonqualified bonds, but only with respect to failures to properly use proceeds that occur on or after May 14, 2004, with respect to bonds sold before August 13, 2004.

■ **Par. 4.** Section 1.142–0 is amended by revising the entry to the table for § 1.142–

2 and adding paragraphs (e)(1) and (2) to read as follows:

**§ 1.142–0 Table of contents.**

* * * * *

**§ 1.142–2 Remedial actions.**

* * * * *

(e) * * *

(1) Amount of nonqualified bonds.

(2) Allocation of nonqualified bonds.

* * * * *

■ **Par. 5.** Section 1.142–2 is amended by revising paragraph (e) to read as follows:

**§ 1.142–2 Remedial actions.**

* * * * *

(e) *Nonqualified bonds*—(1) *Amount of nonqualified bonds.* For purposes of this section, the nonqualified bonds are a portion of the outstanding bonds in an amount that. if the remaining bonds were issued on the date on which the failure to properly use the proceeds occurs, at least 95 percent of the net proceeds of the remaining bonds would be used to provide an exempt facility. If no proceeds have been spent to provide an exempt facility, all of the outstanding bonds are nonqualified bonds.

(2) *Allocation of nonqualified bonds.* Allocations of nonqualified bonds must be made on a pro rata basis, except that an issuer may treat any bonds of an issue as the nonqualified bonds so long as—

(i) The remaining weighted average maturity of the issue, determined as of the date on which the nonqualified bonds are redeemed or defeased (determination date), and excluding from the determination the nonqualified bonds redeemed or defeased by the issuer to meet the requirements of paragraph (c) of this section, is not greater than

(ii) The remaining weighted average maturity of the issue, determined as of the determination date, but without regard to the redemption or defeasance of any bonds (including the nonqualified bonds) occurring on the determination date.

**Nancy Jardini,**

*Acting Deputy Commissioner of Internal Revenue.*

Approved: July 18, 2004.

**Gregory Jenner,**

*Acting Assistant Secretary of the Treasury.*

[FR Doc. 04–18371 Filed 8–12–04; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[TD 9151]**

**RIN 1545–BD26**

## Additional Rules for Exchanges of Personal Property Under Section 1031(a)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final and temporary regulations.

**SUMMARY:** This document contains final and temporary regulations replacing the use of the Standard Industrial Classification (SIC) system with the North American Industry Classification System (NAICS) for determining what properties are of a like class for purposes of section 1031 of the Internal Revenue Code (Code). The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the proposed rules section in this issue of the **Federal Register**. The final regulations consist of technical revisions to reflect the issuance of the temporary regulations.

**DATES:** *Effective Date:* These final and temporary regulations are effective August 12, 2004.

*Applicability Date:* For date of applicability, see § 1.1031(a)–2T(d).

**FOR FURTHER INFORMATION CONTACT:** J. Peter Baumgarten, (202) 622–4920 (not a toll free number).

**SUPPLEMENTARY INFORMATION:**

### Background

This document contains amendments to 26 CFR part 1 under section 1031(a) relating to the exchange of items of personal property that are within the same product class. Section 1031(a)(1) generally provides that no gain or loss shall be recognized on the exchange of property held for productive use in a trade or business or for investment if the property is exchanged solely for property of like kind to be held either for productive use in a trade or business or for investment. Thus, for a transaction to qualify as an exchange under section 1031, the transaction must constitute an exchange, the property relinquished and the property received in the exchange must be held for use in a trade or business or for investment, and the exchanged properties must be of like kind.

Section 1.1031(a)–2(a) provides that personal properties of a like class are to be considered of like kind for purposes of section 1031. Under § 1.1031(a)–2(b), depreciable tangible personal property is of a like class to other depreciable tangible personal property if the exchanged properties are either within the same *general asset class* or within the same *product class*. The general asset classes are derived from Rev. Proc. 87–56 (1987–2 C.B. 674) (dealing with depreciation of personal property). Section 1.1031(a)–2(b)(2) adopts certain of those general asset classes to determine what property is of like kind for purposes of exchanging depreciable tangible personal property under section 1031, and identifies the types of personal property included in each general asset class listed.

Section 1.1031(a)–2(b)(3) provides, in part, that property within a product class consists of depreciable tangible personal property that is listed in a 4-digit product class (or "code") within Division D (pertaining to the manufacturing sector of the economy) of Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manuale* (1987) (SIC Manual). Section 1.1031(a)–2(b)(4) states that the SIC Manual generally is modified every 5 years and that the product classes for section 1031 purposes will follow the modifications of product classes in the SIC Manual.

Effective January 1, 1997, the Department of Commerce discontinued the SIC system set forth in the SIC Manual and adopted NAICS as set forth in Executive Office of the President, Office of Management and Budget, *North American Industry Classification System, United States,* 1997 (NAICS Manual). The NAICS Manual was updated in 2002. Copies of the NAICS Manual may be obtained from the National Technical Information Service of the Department of Commerce and may be accessed, with a more complete listing of manufactured products and manufacturing industries, on the internet at *http://www.census.gov/naics.*

### Explanation of Provisions

As a result of the replacement of the SIC system with NAICS, these temporary regulations discontinue the use of SIC codes and adopt Sectors 31 through 33 of NAICS (pertaining to manufacturing) as the system for defining the product classes for purposes of like-kind exchanges of depreciable tangible personal property. Within NAICS, product classes are designated using 6-digit codes rather than the 4-digit codes assigned to product classes under the SIC system. However, properties within the same product class under the 4-digit SIC

system generally will be of the same product class under the 6-digit NAICS. For example, under the SIC codes, dairy equipment and haying machinery are within the same product class (SIC code 3523). Under NAICS, milking machines and haying machines are also within the same product class (NAICS code 333111).

The temporary regulations generally incorporate the provisions of § 1.1031(a)–2(b)(3) relating to the use of product classes but substitute NAICS codes for SIC codes. For example, § 1.1031(a)–2(b)(3) provides that, under the 4-digit SIC system, any 4-digit product class ending in 9 (a miscellaneous category) is not property within a product class. Similarly, the temporary regulations provide that any NAICS 6-digit product class ending in 9 is not property within a product class. Accordingly, such property, and property that is not listed in a 6-digit product class, cannot be of a like class to other property based on the 6-digit NAICS Manual classification. Taxpayers, however, may still demonstrate that these properties are of a like kind.

Comments are specifically requested regarding the continued utility of SIC codes and any potential problems in adopting the 6-digit NAICS codes in lieu of the 4-digit SIC codes, including specific examples of how a product class is narrowed if the 6-digit NAICS code is used and whether this would be a disadvantage to any class of taxpayers.

The temporary regulations incorporate the provisions of § 1.1031(a)–2(b)(4) that permit taxpayers, in structuring like-kind exchanges, to rely on modifications to the product classes resulting from revisions to the NAICS Manual. The temporary regulations omit the provisions of § 1.1031(a)–2(b)(4) that permit taxpayers to rely on modifications to the general asset classes in Rev. Proc. 87–56 for purposes of structuring like-kind exchanges. Under section 6253 of the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100–647, 102 Stat. 3342), the Commissioner may not modify the asset classes in Rev. Proc. 87–56 for depreciation purposes. However, the temporary regulations provide that the Commissioner may, through published guidance of general applicability, supplement, modify, clarify and update the rules for the classification of properties. Therefore, the Commissioner may determine through published guidance not to follow a general asset class or product class for purposes of identifying property of like class or may determine that other properties not listed within the same or in any product class or general asset class nevertheless are of a like class.

**Effective Date**

In general, the temporary regulations apply to transfers of property made by taxpayers on or after August 12, 2004. However, taxpayers may apply the temporary regulations to transfers of property made by taxpayers on or after January 1, 1997, in taxable years for which the period of limitation has not expired. The temporary regulations include a transition rule permitting taxpayers to treat properties within the same product classes under a 4-digit SIC code as properties of like class for transfers of property made by taxpayers on or before the date these temporary regulations are published as final regulations in the **Federal Register**. Comments are specifically requested on whether a longer transition period should be provided before the use of the SIC codes is discontinued.

**Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Please refer to the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the **Federal Register** for applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6). Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

**Drafting Information**

The principal author of these temporary regulations is J. Peter Baumgarten of the Office of the Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury participated in their development.

**Amendments to the Regulations**

■ Accordingly, 26 CFR part 1 is amended as follows:

## PART 1—INCOME TAXES

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

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

■ **Par. 2.** In § 1.1031(a)–2, paragraphs (b)(3) through (b)(6) and paragraph (b)(7), *Example 3* and *Example 4* are revised and a sentence is added at the end of paragraph (d) to read as follows:

**§ 1.1031(a)–2 Additional rules for exchanges of personal property.**

* * * * *

(b)(3) through (b)(6) [Reserved]. For further guidance, see § 1.1031(a)–2T(b)(3) through (b)(6).

(b)(7) * * *

*Example 3.* [Reserved]. For further guidance see § 1.1031(a)–2T(b)(7), *Example 3.*

*Example 4.* [Reserved]. For further guidance see § 1.1031(a)–2T(b)(7), *Example 4.*

* * * * *

(d) *Effective date.* For transfers of property made by taxpayers on or after January 1, 1997, see § 1.1031(a)–2T(d).

■ **Par. 3.** Section 1.1031(a)–2T is added to read as follows:

**§ 1.1031(a)–2T Additional rules for exchanges of personal property (temporary).**

(a) through (b)(2) [Reserved]. For further guidance, see § 1.1031(a)–2(a) through (b)(2).

(3) *Product classes.* Except as provided in paragraphs (b)(4) and (b)(5) of this section, or as provided by the Commissioner in published guidance of general applicability, property within a product class consists of depreciable tangible personal property that is described in a 6-digit product class within Sectors 31, 32, and 33 (pertaining to manufacturing industries) of the North American Industry Classification System (NAICS), set forth in Executive Office of the President, Office of Management and Budget, *North American Industry Classification System,* United States, 2002 (NAICS Manual), as periodically updated. Copies of the NAICS Manual may be obtained from the National Technical Information Service, an agency of the U.S. Department of Commerce, and may be accessed on the internet. Sectors 31 through 33 of the NAICS Manual contain listings of specialized industries for the manufacture of described products and equipment. For this purpose, any 6-digit NAICS product class with a last digit of 9 (a miscellaneous category) is not a product class for purposes of this section. If a property is listed in more than one product class, the property is treated as listed in any one of those product classes. A property's 6-digit product class is referred to as the property's NAICS code.

(4) *Modifications of NAICS product classes.* The product classes of the NAICS Manual may be updated or otherwise modified from time to time as the manual is updated, effective on or after the date of the modification. The NAICS Manual generally is modified every five years, in years ending in a 2 or 7 (such as 2002, 2007, and 2012). The applicability date of the modified NAICS Manual is announced in the **Federal Register** and generally is January 1 of the year the NAICS Manual is modified. Taxpayers may rely on these modifications as they become effective in structuring exchanges under this section. Taxpayers may rely on the previous NAICS Manual for transfers of property made by a taxpayer during the one-year period following the effective date of the modification. For transfers of property made by a taxpayer on or after January 1, 1997, and on or before January 1, 2003, the NAICS Manual of 1997 may be used for determining product classes of the exchanged property.

(5) *Administrative procedures for revising general asset classes and product classes.* The Commissioner may, through published guidance of general applicability, supplement, modify, clarify, or update the guidance relating to the classification of properties provided in this paragraph (b). (See § 601.601(d)(2) of this chapter.) For example, the Commissioner may determine not to follow (in whole or in part) a general asset class for purposes of identifying property of like class, may determine not to follow (in whole or in part) any modification of product classes published in the NAICS Manual, or may determine that other properties not listed within the same or in any product class or general asset class nevertheless are of a like class. The Commissioner also may determine that two items of property that are listed in separate product classes or in product classes with a last digit of 9 are of a like class, or that an item of property that has a NAICS code is of a like class to an item of property that does not have a NAICS code.

(6) *No inference outside of section 1031.* The rules provided in this section concerning the use of general asset classes or product classes are limited to exchanges under section 1031. No inference is intended with respect to the classification of property for other purposes, such as depreciation.

(7) *Examples.* The provisions of this paragraph (b) are illustrated by the following examples:

*Example 1* and *Example 2* [Reserved]. For further guidance, see § 1.1031(a)–2(b)(7), *Example 1* and *Example 2*.

*Example 3.* Taxpayer E transfers a grader to F in exchange for a scraper. Neither property is within any of the general asset classes. However, both properties are within the same product class (NAICS code 333120). The grader and scraper are of a like class and deemed to be of a like kind for purposes of section 1031.

*Example 4.* Taxpayer G transfers a personal computer (asset class 00.12), an airplane (asset class 00.21) and a sanding machine (NAICS code 333210), to H in exchange for a printer (asset class 00.12), a heavy general purpose truck (asset class 00.242) and a lathe (NAICS code 333210). The personal computer and the printer are of a like class because they are within the same general asset class; the sanding machine and the lathe are of a like class because they are within the same product class (although neither property is within any of the general asset classes). The airplane and the heavy general purpose truck are neither within the same general asset class nor within the same product class, and are not of a like kind.

(8) *Transition rule.* Properties within the same product classes based on the 4-digit codes contained in Division D of the Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987), will be treated as property of a like class for transfers of property made by taxpayers on or before [the date these regulations are published as final regulations in the **Federal Register**].

(c) [Reserved]. For further guidance, see § 1.1031(a)–2(c).

(d) *Effective dates.* This section applies to transfers of property made by taxpayers on or after August 12, 2004. However, taxpayers may apply this section to transfers of property made by taxpayers on or after January 1, 1997, in taxable years for which the period of limitation for filing a claim for refund or credit under section 6511 has not expired. For all other exchanges occurring prior to August 12, 2004, see § 1.1031(a)–2(d).

**Linda M. Kroening,**

*Acting Deputy Commissioner for Services and Enforcement.*

Approved: July 28, 2004.

**Gregory F. Jenner,**

*Acting Assistant Secretary of the Treasury.*

[FR Doc. 04–18479 Filed 8–12–04; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

[TD 9140]

RIN 1545–BA90

## Transfers to Provide for Satisfaction of Contested Liabilities; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correcting amendment.

**SUMMARY:** This document contains corrections to final regulations (TD 9140), which was published in the **Federal Register** on July 20, 2004 (69 FR 43302). The document contains final regulations relating to transfers of money or other property to provide for the satisfaction of contested liabilities.

**DATES:** This correction is effective on July 20, 2004.

**FOR FURTHER INFORMATION CONTACT:** Norma Rotunno, (202) 622–7900(not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

The final regulations (TD 9140) that is the subject of this correction are under section 461 of the Internal Revenue Code.

### Need for Correction

As published, (TD 9140) contains an error that may prove to be misleading and is in need of clarification.

### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

### Correction of Publication

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

## PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.461–2T is removed.

**LaNita Van Dyke,**

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

[FR Doc. 04–18561 Filed 8–12–04; 8:45 am]

BILLING CODE 4830–01–P

## PENSION BENEFIT GUARANTY CORPORATION

### 29 CFR Parts 4022 and 4044

### Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in September 2004. Interest assumptions are also published on the PBGC's Web site (*http://www.pbgc.gov*).

**EFFECTIVE DATE:** September 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, (202) 326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–(800)–877–8339 and ask to be connected to (202) 326–4024.)

**SUPPLEMENTARY INFORMATION:** The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) a set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to part 4022).

Accordingly, this amendment (1) adds to Appendix B to part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during September 2004, (2) adds to Appendix B to part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during September 2004, and (3) adds to Appendix C to part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during September 2004.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 4.20 percent for the first 20 years following the valuation date and 5.00 percent thereafter. These interest assumptions represent a decrease (from those in effect for August 2004) of 0.10 percent for the first 20 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 3.25 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent a decrease (from those in effect for August 2004) of 0.25 percent for the period during which a benefit is in pay status and are otherwise unchanged.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during September 2004, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

**List of Subjects**

*29 CFR Part 4022*

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

*29 CFR Part 4044*

Employee benefit plans, Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

## PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

**Authority:** 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 131, as set forth below, is added to the table. (The introductory text of the table is omitted.)

**Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments**

* * * * *

| Rate set | For plans with a valuation date | | Immediate annuity rate (percent) | Deferred annuities (percent) | | | | |
|---|---|---|---|---|---|---|---|---|
| | On or after | Before | | $i_1$ | $i_2$ | $i_3$ | $n_1$ | $n_2$ |
| * | * | * | * | * | * | * | * | * |
| 131 | 9–1–04 | 10–1–04 | 3.25 | 4.00 | 4.00 | 4.00 | 7 | 8 |

■ 3. In appendix C to part 4022, Rate Set 131, as set forth below, is added to the table. (The introductory text of the table is omitted.)

**Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments**

* * * * *

| Rate set | For plans with a valuation date | | Immediate annuity rate (percent) | Deferred annuities (percent) | | | | |
|---|---|---|---|---|---|---|---|---|
| | On or after | Before | | $i_1$ | $i_2$ | $i_3$ | $n_1$ | $n_2$ |
| * | * | * | * | * | * | * | * | * |
| 131 | 9–1–04 | 10–1–04 | 3.25 | 4.00 | 4.00 | 4.00 | 7 | 8 |

## PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

**Authority:** 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

**Appendix B to Part 4044—Interest Rates Used To Value Benefits**

* * * * *

| For valuation dates occurring in the month— | The values of $i_t$ are: | | | | | |
|---|---|---|---|---|---|---|
| | $i_1$ | for t = | $i_t$ | for t = | $i_t$ | for t = |
| * | * | * | * | * | * | * |
| September 2004 | .0420 | 1–20 | .0500 | >20 | N/A | N/A |

Issued in Washington, DC, on this 10th day of August 2004.

**Joseph H. Grant,**

*Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.*

[FR Doc. 04–18538 Filed 8–12–04; 8:45 am]

BILLING CODE 7708–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[R01–OAR–2004–CT–0003; A–1–FRL–7801–2]**

### Approval and Promulgation of Air Quality ImplementationPlans; Connecticut; Carbon Monoxide Maintenance Plan Updates; Limited Maintenance Plans

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision establishes limited maintenance plans for the Hartford-New Britain-Middletown, the New Haven-Meriden-Waterbury, and the Connecticut portion of the New York-Northern New Jersey-Long Island carbon monoxide attainment areas, and provides the ten-year update to these three carbon monoxide maintenance plans. EPA is taking this action under the Clean Air Act.

**DATES:** Effective Date: This rule will become effective on September 13, 2004.

**ADDRESSES:** EPA has established a docket for this action under Regional Material in EDocket (RME) Docket ID Number R01–OAR–2004–CT–0003. All documents in the docket are listed in the Regional Material in EDocket (RME) index at *http://docket.epa.gov/rmepub/*, once in the system, select "quick search," then key in the appropriate RME Docket identification number. Although listed in the electronic docket, 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 Regional Material in EDocket or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

Copies of the documents relevant to this action are also available for public inspection during normal business hours, by appointment at the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

**FOR FURTHER INFORMATION CONTACT:** Donald O. Cooke, Air Quality Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, telephone number (617) 918–1668, fax number (617) 918–0668, e-mail *cooke.donald@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On June 28, 2004, the Connecticut Department of Environmental Protection (CT DEP) submitted a revision to its State Implementation Plan (SIP) for "Limited Maintenance Plans for the Hartford, the New Haven, and the Connecticut Portion of the New York/New Jersey/Connecticut Carbon Monoxide Maintenance Areas." The revision consists of a second follow-on ten-year carbon monoxide maintenance plan for the Hartford-New Britain-Middletown carbon monoxide attainment area (period 2006 to 2015) and a request for a limited carbon monoxide maintenance plan designation. The State of Connecticut also requested limited maintenance plan approval and early approval of the second follow-on ten-year maintenance plans for both the New Haven-Meriden-

Waterbury carbon monoxide attainment area (period 2009 to 2018), and the Connecticut portion of the New York-Northern New Jersey-Long Island (period 2011 to 2020) carbon monoxide attainment area.

In the case of the Hartford, New Haven and Southwest Connecticut carbon monoxide limited maintenance plan areas, EPA believes that it is unreasonable to expect so much growth during the period of the maintenance plan as to result in a violation of the carbon monoxide National Ambient Air Quality Standard (NAAQS). In other words, EPA concludes that emissions are not constraining and need not be capped for the maintenance period. Therefore, Federal actions that require conformity determinations under the transportation conformity rule are considered to satisfy the regional emissions analysis and "budget test" requirements in 40 CFR 93.118 of the rule. Other specific requirements of Connecticut's SIP revision and the rationale for EPA's approval action are explained in EPA's June 23, 2004 notice of proposed rulemaking (69 FR 34976) and will not be restated here.

Under EPA's parallel process procedures, EPA-New England Regional Office worked closely with the CT DEP, the State air agency, while the State developed its SIP revision. The State submitted a copy of its proposed SIP revisions to EPA on May 11, 2004 before conducting its June 17, 2004 public hearing. EPA reviewed this proposed State action, and prepared a notice of proposed rulemaking which was published in the **Federal Register** on June 23, 2004 (69 FR 34976). The State and EPA then provided for concurrent public comment periods on both the State action and Federal action. No oral or written comments were submitted to the State or EPA. The State of Connecticut's formal SIP submittal dated June 28, 2004 was unchanged from the May 11, 2004 draft revision. EPA is now proceeding with its final action to approve Connecticut's SIP revisions.

## II. Final Action

EPA is approving the State Implementation Plan (SIP) revision submitted on June 28, 2004 by the State of Connecticut. This SIP revision establishes limited maintenance plans for the Hartford-New Britain-Middletown, the New Haven-Meriden-Waterbury, and the Connecticut portion of the New York-Northern New Jersey-Long Island carbon monoxide attainment areas, and approves the ten-year update to these three carbon monoxide maintenance plans. As a result of approving the limited maintenance plan revisions, the three carbon monoxide (CO) attainment areas with maintenance plans will satisfy their obligation to submit sequential second ten-year maintenance plans, and eliminate the need to prepare regional carbon monoxide emissions analysis for transportation conformity.

## III. 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 (Public Law 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), because it 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. section 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. section 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 October 12, 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, Carbon monoxide, Intergovernmental relations.

Dated: August 6, 2004.

**Ira W. Leighton,**

*Acting Regional Administrator, EPA New England.*

■ 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.*

■ 2. Section 52.376 is amended by revising paragraphs (b), (d) and (f) and adding paragraph (h) to read as follows:

**§ 52.376 Control strategy: Carbon monoxide.**

* * * * *

(b) Approval—On September 30, 1994, the Connecticut Department of Environmental Protection submitted a request to redesignate the Hartford/New Britain/Middletown Area carbon monoxide nonattainment area to attainment for carbon monoxide. The redesignation request and the 1995–2005 initial ten-year maintenance plan meet the redesignation requirements in sections 107(d)(3)(E) and 175A of the Act as amended in 1990, respectively.

* * * * *

(d) Approval—On January 17, 1997, the Connecticut Department of Environmental Protection submitted a request to redesignate the New Haven/Meriden/Waterbury carbon monoxide nonattainment area to attainment for carbon monoxide. The redesignation request and the 1998–2008 initial ten-year maintenance plan meet the redesignation requirements in sections 107(d)(3)(E) and 175A of the Act as amended in 1990, respectively.

* * * * *

(f) Approval—On May 29, 1998, the Connecticut Department of Environmental Protection submitted a request to redesignate the Connecticut portion of the New York-N. New Jersey-Long Island carbon monoxide nonattainment area to attainment for carbon monoxide. The redesignation request and the 2000–2010 initial ten-year maintenance plan meet the redesignation requirements in sections 107(d)(3)(E) and 175A of the Act as amended in 1990, respectively.

* * * * *

(h) Approval—On June 28, 2004, the Connecticut Department of Environmental Protection (CT DEP) submitted a request to establish limited maintenance plans for the Hartford-New Britain-Middletown Connecticut carbon monoxide attainment area, the New Haven-Meriden-Waterbury Connecticut carbon monoxide attainment area, and the Connecticut portion of the New York-Northern New Jersey-Long Island carbon monoxide attainment area for the remainder of the individual area's initial ten-year maintenance plan. As part of the maintenance plan request, CT DEP also requested approval of a second follow-on ten-year carbon monoxide maintenance plan for the Hartford-New Britain-Middletown carbon monoxide attainment area (period 2006 to 2015), for the New Haven-Meriden-Waterbury carbon monoxide attainment area (period 2009 to 2018), and for the Connecticut portion of the New York-Northern New Jersey-Long Island carbon monoxide attainment area (period 2011 to 2020). The State of Connecticut has committed to: maintain a continuous carbon monoxide monitoring network in each carbon monoxide maintenance area; implement contingency measures in the event of an exceedance of the carbon monoxide National Ambient Air Quality Standard (NAAQS) in any of the three maintenance areas; coordinate with EPA in the event the carbon monoxide design value(s) in any maintenance area(s) exceed 7.65 ppm, to verify the validity of the data and, if warranted based on the data review, develop a full maintenance plan(s) for the affected maintenance area(s); and, ensure that project-level carbon monoxide evaluations of transportation projects in each area are carried out as part of environmental reviews or Connecticut's indirect source permitting program. The limited maintenance plans satisfy all applicable requirements of section 175A of the Clean Air Act. Approval of a Limited Maintenance Plan is conditioned on maintaining levels of ambient carbon monoxide levels below the required limited maintenance plan 8-hour carbon monoxide design value criterion of 7.65 parts per million. If the Limited Maintenance Plan criterion is no longer satisfied, Connecticut must develop a full maintenance plan to meet Clean Air Act requirements.

[FR Doc. 04–18555 Filed 8–12–04; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

**[OH159–2; FRL–7799–8]**

### Approval and Promulgation of Air Quality Implementation Plans; Ohio; Withdrawal of Direct Final Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Withdrawal of direct final rule.

**SUMMARY:** Due to the receipt of an adverse comment, the EPA is withdrawing the July 8, 2004 (69 FR 41336) direct final rule which would have approved revisions to Ohio's State Implementation Plan for Sulfur Dioxide ($SO_2$) for Cuyahoga, Lake, Mahoning, Monroe, Washington, Adams, Allen, Clermont, Lawrence, Montgomery, Muskingum, Pike, Ross and Wood Counties. It also would have approved the redesignation of Cuyahoga County to attainment of the national ambient air quality standards for $SO_2$ and the $SO_2$ maintenance plan for Cuyahoga County. In the direct final rule, EPA stated that if EPA received an adverse comment by August 9, 2004, the rule would be withdrawn and not take effect. On July 12, 2004, EPA received a comment. EPA believes this comment is adverse and, therefore, EPA is withdrawing the direct final rule. EPA will address the comment received in a subsequent final action based upon the proposed action also published on July 8, 2004 (69 FR 41344). EPA will not institute a second comment period on this action.

**DATES:** The direct final rule published at 69 FR 41336 on July 8, 2004 is withdrawn as of August 13, 2004.

**FOR FURTHER INFORMATION CONTACT:** John Summerhays, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone: (312) 886–6067. E-mail Address: *summerhays.john@epa.gov*.

**List of Subjects**

*40 CFR Part 52*

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

*40 CFR Part 81*

Air pollution control, National parks, Wilderness areas.

Dated: August 3, 2004.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

**PART 52—[AMENDED]**

■ Accordingly, the amendments to 40 CFR 52.1870, 40 CFR 52.1881 and 40 CFR 81.336 published in the **Federal Register** on July 8, 2004 (69 FR 41336 on pages 41342–41343) are withdrawn as of August 13, 2004.

[FR Doc. 04–18459 Filed 8–12–04; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[OPP–2004–0204; FRL–7368–3]

## Isodecyl Alcohol Ethoxylated (2–8 moles) Polymer with Chloromethyl Oxirane; Tolerance Exemption

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of isodecyl alcohol ethoxylated (2–8 moles) polymer with chloromethyl oxirane; when used as an inert ingredient in a pesticide chemical formulation. Cognis Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA) requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of isodecyl alcohol ethoxylated (2–8 moles) polymer with chloromethyl oxirane.

**DATES:** This regulation is effective August 13, 2004. Objections and requests for hearings must be received on or before October 12, 2004.

**ADDRESSES:** To submit a written objection or hearing request follow the detailed instructions as provided in Unit XI of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket Identification number OPP–2004–0204. 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:** Bipin Gandhi, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308 8380; e-mail address: *gandhi.bipin@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

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

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

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

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

In addition to using EDOCKET *http://www.epa.gov/edocket/* youmay 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/.*

### II. Background and Statutory Findings

In the **Federal Register** of May 12, 2004 (69 FR 26386) (FRL–7357–7), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Pub. L. 104–170), announcing the filing of a pesticide petition (PP 4E6820) by Cognis Corporation, 4900 Este Avenue, Cincinnati, OH 45232.

The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of isodecyl alcohol ethoxylated (2–8 moles) polymer with chloromethyl oxirane; (CAS Registry No. is not available). That notice included a summary of the petition prepared by the petitioner. There was one comment received from the public in response to the notice of filing. See Unit IX.

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for 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(c)(2)(A)(ii) of the 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 the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption from the requirement of 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. . . ." and specifies factors EPA is to consider in establishing an exemption.

### III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has

exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

## IV. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of majoridentifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers that should present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b). The following exclusion criteria for identifying these low risk polymers are described in 40 CFR 723.250(d).

1. The polymer, isodecyl alcohol ethoxylated (2–8 moles) polymer with chloromethyl oxirane, is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymer, isodecyl alcohol ethoxylated (2–8 moles) polymer with chloromethyl oxirane, also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's number average MW of 2,500 daltons is greater than 1,000 and less than 10,000 daltons. The polymer contains less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW 1,000, and the polymer does not contain any reactive functional groups.

Thus, isodecyl alcohol ethoxylated (2–8 moles) polymer with chloromethyl oxirane meets all the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the above criteria, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to isodecyl alcohol ethoxylated (2–8 moles) polymer with chloromethyl oxirane.

## V. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that isodecyl alcohol ethoxylated (2–8 moles) polymer with chloromethyl oxirane could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of isodecyl alcohol ethoxylated (2–8 moles) polymer with chloromethyl oxirane is 2,500 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since isodecyl alcohol ethoxylated (2–8 moles) polymer with chloromethyl oxirane conforms to the criteria that identify a low risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

## VI. Cumulative Effects

Section 408 (b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider "available information" concerning the cumulative effects of a particular chemical'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 isodecyl alcohol ethoxylated (2–8 moles) polymer with chloromethyl oxirane and any other substances and isodecyl alcohol ethoxylated (2–8 moles) polymer with chloromethyl oxirane 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 isodecyl alcohol ethoxylated (2–8 moles) polymerwith chloromethyl oxirane 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 Office of Pesticide Programs 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/*.

## VII. Additional Safety Factor for the Protection of Infants and Children

Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of isodecyl alcohol ethoxylated (2–8 moles) polymer with chloromethyl oxirane, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

## VIII. Determination of Safety

Based on the conformance to the criteria used to identify a low risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to

residues of isodecyl alcohol ethoxylated (2–8 moles) polymer with chloromethyl oxirane.

## IX. Other Considerations

### A. Endocrine Disruptors

There is no available evidence that isodecyl alcohol ethoxylated (2–8 moles) polymer with chloromethyl oxirane is an endocrine disruptor.

### B. Existing Exemptions from a Tolerance

There are no existing tolerance exemptions for this polymer.

### C. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

### D. International Tolerances

The Agency is not aware of any country requiring a tolerance for isodecyl alcohol ethoxylated (2–8 moles) polymer with chloromethyl oxirane nor have any CODEX Maximum Residue Levels been established for any food crops at this time.

### E. Public Comment

One comment was received from a private citizen opposing the "production or selling" of isodecyl alcohol ethoxylated (2–8 moles) polymer with chloromethyl oxirane. The commentor further stated that it was their wish that no exemptions be issued and that no tolerances should be approved. The Agency understands the commentor's concerns and recognizes that some individuals believe that pesticides should be banned completely. However, under the existing legal framework provided by section 408 of the FFDCA, EPA is required to establish pesticide tolerances or exemptions where persons seeking such exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute. The commentor has not provided the Agency with a specific rationale or additional information pertaining to the legal standards in FFDCA Section 408 for opposing the establishment of a tolerance exemption for isodecyl alcohol ethoxylated (2–8 moles) polymer with chloromethyl oxirane. In the absence of any additional information of a factual nature, the Agency can not effectively respond to the commentor's disagreement with the Agency's decision.

## X. Conclusion

Accordingly, EPA finds that exempting residues of isodecyl alcohol ethoxylated (2–8 moles) polymer with chloromethyl oxirane from the requirement of a tolerance will be safe.

## XI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the 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 the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPAunder new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the 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–2004–0204 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 12, 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 (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460--0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit XI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2004–0204, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

## XII. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under section 408(d) of the 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 TitleII 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 the FFDCA, such as the exemption 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 the 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.

### XIII. 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 rule in the **Federal Register**. This 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 29, 2004.

**Betty Shackleford,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

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

## PART 180—[AMENDED]

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

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

■ 2. In § 180.960 the table is amended by adding alphabetically the following inert ingredient.

**§ 180.960 Polymer exemptions from the requirement of a tolerance.**

* * * * *

| Polymer | CAS NO. |
|---|---|
| * * * * * | |
| Isodecyl alcohol ethoxylated (2–8 moles) polymer with chloromethyl oxirane, minimum number average molecular weight (in amu) 2,500. | None |
| * * * * * | |

* * * * *

[FR Doc. 04–18574 Filed 8–12–04; 8:45 am]

BILLING CODE 6560–50–S

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 573

**[Docket No. NHTSA–2001–10856; Notice 3]**

**RIN 2127–AI29**

## Motor Vehicle Safety; Disposition of Recalled Tires

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This document implements section 7 of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act by adding regulations that provide that a manufacturer's remedy program for the replacement of defective or noncompliant tires shall include a plan addressing how to prevent, to the extent

reasonably within the manufacturer's control, the replaced tires from being resold for installation on a motor vehicle, and also how to limit, to the extent reasonably within the manufacturer's control, the disposal of replaced tires in landfills. In addition, pursuant to section 7, this rule also requires the manufacturer to include information about the implementation of the plan in quarterly reports to the Secretary about the progress of notification and remedy campaigns.

**EFFECTIVE DATE:** This final rule will take effect on November 12, 2004.

*Petitions for reconsideration:* Any petition for reconsideration of this rule must be received by NHTSA no later than September 27, 2004.

**ADDRESSES:** Petitions for reconsideration may be submitted in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Petitions for reconsideration may also be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov*. Click on "Help & Information" or "Help/info" to obtain instructions for filing your petition electronically.

Regardless of how a petition is submitted, the docket number of this document should be referenced in that petition.

You may call Docket Management at 202–366–9324. You may visit the Docket from 9 a.m. to 5 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** For technical issues: Mr. George Person, Office of Defects Investigation, NHTSA. Telephone 202–366–5210. For legal issues: Ms. Jennifer Timian, Office of Chief Counsel, NHTSA. Telephone 202–366–5263.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On November 1, 2000, the TREAD Act, Public Law 106–414, 114 Stat. 1800, was enacted. The statute was, in part, a response to congressional concerns regarding the manner in which various entities dealt with defective motor vehicles and motor vehicle equipment, including tires. During congressional consideration of the bill that eventually was adopted as the TREAD Act, there had been media reports that some persons were selling defective Firestone ATX or Wilderness AT tires that had been returned to dealers for replacement under an ongoing safety recall.

Pre-TREAD Act law, 49 U.S.C. 30120(d), required the manufacturer of defective or noncompliant tires to file with the Secretary a copy of the manufacturer's program for remedying safety defects and noncompliances with Federal motor vehicle safety standards. But section 30120(d) did not require the manufacturer's program to include a plan for the disposition or disposal of recalled tires that were returned by the tire owners or purchasers.

Section 7 of the TREAD Act expanded 49 U.S.C. 30120(d) to require a manufacturer's remedy program for tires to include a plan for preventing, to the extent reasonably within the manufacturer's control, the resale of replaced tires for use on motor vehicles, as well as a plan for the disposition of replaced tires other than in landfills, particularly through methods such as shredding, crumbling, recycling, recovery, or other "beneficial non-vehicular uses." Further, Section 7 requires the manufacturer to include information about the implementation of its plan in quarterly reports that it is required to make to the Secretary about the progress of its notification and remedy campaigns involving tires.

## II. The New Regulatory Provisions

In order to implement section 7's new requirements, we are amending our regulations governing "Defect Notification," 49 CFR part 573, at sections 573.6 and 573.7. These amendments are somewhat different from those we originally proposed in our December 18, 2001, Notice of Proposed Rulemaking (NPRM) on Disposition of Recalled Tires (66 FR 65165), primarily based upon comments we received in response to the NPRM and to the Supplemental Notice of Proposed Rulemaking ("SNPRM") that we issued on July 26, 2002 (67 FR 48852). We are retaining the proposed regulatory structure that requires creation of manufacturers' plans for all tire safety recalls, regardless of size; prompt incapacitation of all returned recalled tires by retail outlets; and "exceptions" reporting, by tire dealers under the manufacturers' control to manufacturers, and then by manufacturers in the quarterly reports required by 49 CFR 573.7. However, in response to the comments, we are modifying the mechanisms for disposing of recalled tires and the contents of the proposed reports. The subsection numbers in the regulatory have been redesignated, as a result of the issuance of our Early Warning Reporting rule. *See* 67 FR 45872 (July 10, 2002), and we are using the resulting new section numbers in the regulatory text. Also, we have reorganized some of the subsections to improve their clarity.

In the NPRM, we proposed requirements for both manufacturers and tire dealers. We proposed to require manufacturers that conduct tire recalls to submit programs and file reports with us about their plans for incapacitating and disposing of recalled tires that addressed three major concerns: (1) Ways of assuring that entities replacing the tires are aware of the legal prohibitions on the sale of defective or noncompliant tires; (2) mechanisms to impair recalled tires so that they cannot be used on a vehicle; and (3) the disposition of recalled tires, consistent with applicable laws and in ways that minimize their deposit in landfills. The manufacturers would have to implement those plans. In addition, we proposed to require that tire dealers render returned recalled tires unsuitable for use on the day the tires are removed from the vehicle or from stock, and then dispose of them in accordance with manufacturers' plans and applicable laws, in ways that minimize the deposit of the tires in landfills. We also proposed to require "exceptions reporting," by manufacturer-controlled tire outlets to manufacturers monthly, and by manufacturers to NHTSA in quarterly reports, to identify aggregate numbers of recalled tires that have not been rendered unsuitable for reuse or that have been disposed of in violation of applicable state and local requirements, and that describe failures by tire outlets to act in accordance with manufacturers' directions for disposing of recalled tires, including an identification of the outlets in question. We sought comments on the reporting burdens. Subsequently, in the SNPRM, we sought comments on an alternative proposal by the Rubber Manufacturers Association (RMA) that, among other things, would have restricted the applicability of the final rule to those recalls that involve more than 10,000 tires and that would not have required "exceptions reporting" by manufacturers to NHTSA.

After considering the comments on the NPRM and the SNPRM, we have decided to retain the basic outlines of the notification and reporting requirements for manufacturers and for tire outlets that we originally proposed. We also have concluded that, under section 7 of TREAD, the notification and reporting requirements in §§ 573.6(c)(9) and 573.7(b)(7), set out below, must apply to all remedy programs involving the replacement of tires, rather than only to those remedy programs involving 10,000 or more tires, as suggested by RMA. However, in response to RMA's suggestions, we are modifying the notification requirement proposed for § 573.6(c)(9) to permit

manufacturers a choice of notifying retail outlets of the contents of their programs for the disposition of recalled tires either annually or for each tire recall that they conduct, and we have decided to permit permanent disposition of the returned recalled tires by either the manufacturer (normally but not necessarily from one or more central locations) or the retail outlets, at the manufacturer's option.

We are retaining the requirement that manufacturers notify retail outlets that they own, franchise or authorize to replace tires of the statutory prohibition on the resale or reintroduction into commerce of returned recalled tires. If the manufacturer elects to dispose of returned recalled tires from one or more central locations and requires retail outlets to send recalled tires to those locations promptly, we are not requiring the manufacturer to notify retail outlets of the requirement to dispose of the tires in accordance with applicable state and local regulations. If the manufacturer elects to have the retailers dispose of the returned recalled tires, we are requiring the manufacturers to notify the retail outlets of that requirement. However, because state and local requirements vary, we are not requiring manufacturers to advise the retail outlets of the particular requirements that are applicable in the jurisdictions in which they are operating.

For safety reasons, we have decided to retain a requirement for prompt incapacitation of returned recalled tires by retail outlets and others under the manufacturer's control that receive such tires from consumers, regardless of whether the retail outlets return the recalled tires to the manufacturer for disposition or dispose of the recalled tires themselves. However, we have modified the proposed requirement to permit retail outlets to incapacitate recalled tires within 24 hours of receipt rather than by the close of business on the day of receipt.

Finally, we have decided to retain the requirement for "exceptions reporting," from retail outlets under the manufacturers" control to manufacturers and from manufacturers to NHTSA, of deviations from the manufacturer's plan and/or failures to destroy returned recalled tires within the specified timeframe. In response to a suggestion by RMA, we are modifying the requirement by permitting retail outlets to report any such deviations to manufacturers either on a monthly basis or within 30 days of the occurrence of the deviation.

## III. Discussion of Comments and Issues Raised Therein

We received five comments on the NPRM, including three from trade associations (the Rubber Manufacturers Association ("RMA")) (two comments), the National Solid Waste Management Association ("NSWMA") and the National Automobile Dealers Association ("NADA")) and one from a vehicle manufacturer (Ford Motor Company ("Ford")) that recently conducted a number of recalls of tires manufactured by other companies that were installed on its vehicles. RMA's second comment on the NPRM was filed after we met with RMA representatives on March 26, 2002. (That meeting was documented in a memorandum that we docketed on April 1, 2002, and resulted in our publication of the SNPRM.) We received six comments on the SNPRM, from three trade associations: RMA (two comments), NADA, and the Tire Industry Association ("TIA"), and one consumer advocacy group, Advocates for Highway and Auto Safety ("Advocates") (two comments). The second comments filed by both RMA and Advocates are responses to comments filed by others.

The comments are discussed below. Because the same issues were discussed in both sets of comments, we have organized our discussion by issue rather than chronologically or by commenter.

### *A. Contents of Manufacturers' Notices*

We proposed that, for each tire recall, manufacturers include language notifying all entities that are authorized to replace the recalled tires of the prohibitions and notifications in the Safety Act as they apply to recalled tires, specifically including the ban on the sale of new defective or noncompliant tires (49 U.S.C. 30120(i), *see also* 49 CFR 573.11); the prohibition on the sale of new and used defective and noncompliant tires (49 U.S.C. 30120(j), *see also* 49 CFR 573.12; and the duty to notify NHTSA of any knowing and willful sale of a new or used recalled tire for use on a motor vehicle (49 U.S.C. 30166(n), *see also* 49 CFR 573.10). The manufacturer was to provide informational materials on the prohibitions to all authorized replacement outlets. For those outlets that are company-owned or otherwise subject to the control of the manufacturer, the manufacturer was also to provide written direction to the person in charge of each outlet to comply with the law and to notify all employees involved in replacing, handling or disposing of recalled tires of the requirements.

RMA stated that there was no statutory requirement for manufacturers to make these notifications, but acknowledged that manufacturers could include such notifications in the materials they provide to dealers. NADA stated that "perhaps" manufacturer instructions should reference these prohibitions. Both RMA and NADA argued that retailers who are adequately compensated by manufacturers for properly handling recalled tires would have an economic incentive for complying with the requirements.

We have decided to retain the proposed notification requirements, and to require that they be furnished to retail outlets either annually or for each individual tire recall that a manufacturer conducts. The requirements further the safety objectives of section 7 of the TREAD Act, which broadly refers to preventing replaced tires from being resold, and manufacturers have acknowledged that they are feasible. Given that manufacturers must already notify dealers of decisions to conduct safety recalls and of procedures for implementing a remedy, it will not be difficult to add to those notices short instructions that satisfy these requirements.

We are also retaining the proposed requirement that manufacturers notify all of their retail outlets about the means for altering recalled tires to prevent their re-use and about the need to dispose of recalled tires in environmentally sound manner. Again, given that manufacturers must already notify retail outlets of decisions to conduct tire safety recalls, it will not be difficult to add to those notices short instructions regarding compliance with the prevention of resale and the environmental aspects of section 7 of the TREAD Act.

Based on our consideration of RMA's request, we are modifying the proposed notifications to permit manufacturers to select among alternative disposition procedures. Manufacturers may choose to manage the collection and disposition of recalled tires, which may involve having retail outlets return the tires to a designated location(s) or may involve employing contractors to collect the tires from the retail outlets. Or, manufacturers may choose to authorize retail outlets to dispose of recalled tires themselves. In the latter case, manufacturers must advise retail outlets of the requirement that they comply with applicable state and local laws and regulations governing the disposition of tires. The manufacturer may establish differing procedures regarding the disposition of recalled tires on a recall-

by-recall basis, so long as the manufacturer's plan for each such recall includes all of the elements of these regulations (§ 573.6(c)(9)). The choice of approaches is up to the manufacturer; however, at a minimum, a manufacturer must notify retail outlets about tire disposition programs annually.

*B. RMA Proposal To Limit Reporting Requirements to Recalls Involving at Least 10,000 Tires*

RMA proposed to limit the applicability of this rule to recalls that involve at least 10,000 tires, stating that the previously existing requirements of part 573 were sufficient for recalls of lesser magnitude. According to figures submitted by RMA in its comments, this would exempt most tire recalls from the requirements of this rule. Other commenters did not take a position on this aspect of RMA's proposal; however, Advocates argued that section 7 of TREAD applies to all recalled tires that are within the manufacturer's control, regardless of the quantity of tires covered by the recall.

Although we understand RMA's desire to minimize reporting requirements, we decline to grant this RMA request. Section 7 of the TREAD Act covers all tire recalls. That section states that a manufacturer's remedy program involving the replacement of tires shall include a plan addressing how to prevent replaced tires from being resold for installation on a motor vehicle and how to limit the disposal of replaced tires in landfills, particularly through beneficial non-vehicular uses. Section 7 also states that the manufacturer shall include information about the implementation of such plans with each quarterly report to NHTSA regarding the progress of the recall campaign. See 49 U.S.C. 30120(d). The use of the phrase "shall include" in both the sentence regarding the establishment of the plan and the sentence regarding quarterly reporting demonstrates that these elements are mandatory rather than optional. 2A Sutherland, Statutory Construction (6th Ed. Singer, 2000) at § 46.06, citing *United States* v. *Menasche*, 348 U.S. 528 (1955) and *Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211 (1995). The RMA proposal would eliminate the need for a plan for most tire recalls. In any event, we do not agree that existing part 573 is sufficient for small volume recalls because it does not contain any provisions regarding disposition of recalled tires or any provisions for reporting of failures to implement recall plans. Therefore, we have concluded that the notification and reporting requirements in §§ 573.6(c)(9) and 573.7(b)(7) will apply to all remedy programs involving the replacement of tires.

However, in response to RMA's comments, we are modifying the proposed reporting requirement in § 573.6 to permit manufacturers a choice of notifying retail outlets of their programs either annually or for each tire recall they conduct. We do not see a reason to restrict this choice to recalls covering a particular number of tires.

*C. Disposition By Tire Outlets or at a Central Location*

RMA suggested that manufacturers be permitted the option of requiring tire outlets to return recalled tires to the manufacturer for disposal, rather than having the outlets dispose of the tires themselves. RMA asserted that this would enhance public safety and permit accurate assessments of the progress of recalls by allowing for systematic accounting for collected recalled tires. RMA also claimed that this would permit manufacturers to test recalled tires to analyze their performance and potentially improve their design and would permit manufacturers to return to service any tires that had been included in the recall by mistake or that did not contain the defect or noncompliance that was the subject of the recall. RMA stated that linking reimbursement for replacement of recalled tires to a requirement to return the recalled tires would create an incentive for retail outlets to return recalled tires to the manufacturer.

NADA, representing automobile dealers, supported this aspect of RMA's proposal, stating that manufacturer plans normally should involve "take-back programs" and that manufacturers rather than retailers should physically arrange for tire disposition or, alternatively, instruct retailers to use specific transporters and third-party management facilities. NADA noted that this would give manufacturers more control over tire disposition and thus make it more likely that tires will be disposed of in an environmentally sound manner. The Tire Industry Association (TIA), representing tire dealers, wholesalers and distributors, and others, also supported RMA's proposal. Advocates did not object to this aspect of RMA's proposal.

We have decided to permit manufacturers the option of disposing of tires centrally or having tire outlets dispose of tires. We agree with RMA and NADA that there are advantages to the manufacturers' managing the disposition of the tires, rather than having the tire outlets do so, and that linking reimbursement to return of the tires will encourage tire outlets to return the tires to the manufacturers. We also agree that there are advantages to placing disposal responsibility on the manufacturers. This should improve accounting for the progress of the recall, and thereby contribute to safety.

*D. Incapacitation of Tires at Retail Outlets*

RMA proposed to eliminate the requirement for tire outlets to incapacitate those returned recalled tires that they ship to the manufacturer's designated central location, and also to modify the requirement for tire outlets to destroy by the close of business on the day of receipt those recalled tires that they dispose of themselves. This issue engendered the most controversy of any issue raised in this rulemaking.

RMA argued that requiring retailers to incapacitate tires that are returned to the manufacturer would not increase safety, and that eliminating the requirement would permit manufacturers to do research and testing on the returned tires, and also to confirm that the returned tires were in fact subject to the recall and to return improperly returned tires to service. RMA also claimed that in some cases tire outlets were not sufficiently expert to determine whether tires are included in recalls.

NADA and TIA supported this aspect of RMA's proposal. NADA commented that it made no sense to require dealers to destroy tires in the event of a "manufacturer take-back," and that, for those recalls in which retail outlets dispose of returned recalled tires, the requirement should be modified to permit retail outlets to destroy returned tires within 24 hours of receipt rather than by the close of business on the day of receipt. TIA claimed that destroying tires could be a needless waste of fully compliant or non-defective tires that are erroneously removed from vehicles.

Ford stated, in commenting on the NPRM, that it agreed that preventing the inadvertent reuse of tires that are subject to a recall campaign is important and that, in communications to its affected dealers regarding its owner notification campaign to replace Firestone Wilderness AT tires, Ford requested that its dealers render tires unusable as soon as they were removed from the vehicle.

Advocates opposed RMA's proposal, arguing that the interest of safety requires immediate destruction of all returned recalled tires and that retail outlets are capable of determining from the labeling on a tire whether the tire was included in the recall, by reason of experience and training. Advocates acknowledged that compliance with such a requirement would probably not

be universal, but thought it likely that the requirement would increase the number of recalled tires damaged on removal from the vehicle and thereby decrease the likelihood that recalled tires would inadvertently be reinstalled on vehicles. Advocates argued that, in light of experience during the recent Firestone recall, it was better to err on the side of caution and safety rather than take a chance that recalled and defective tires will be resold, and that the best way to accomplish this is by damaging the tread or sidewall of recalled tires immediately. Advocates also argued that repair facility personnel could be trained to recognize recalled tire markings, citing NHTSA's statements in rulings on inconsequentiality petitions with respect to tire labeling that such personnel are adequately trained to identify tire labeling problems. Advocates did not address the testing issue raised by RMA.

We have decided to retain the proposed requirement to incapacitate all returned recalled tires, regardless of whether they are sent back to the manufacturer for disposition or disposed of by the retail outlet, subject to one exception discussed below. There are numerous identifiers on tires, including the manufacturer (or brand name), size, tire identification number (TIN) in which information is encoded, and production period. As in other recalls, we believe that an inspection process for recalled defective or noncompliant tires can be sufficiently well defined to enable the entity or technician performing the recall to determine whether tires are included in the recall and should be replaced. Furthermore, we agree with Advocates that the best mechanism for ensuring that recalled tires are not reinstalled on vehicles (inadvertently or otherwise) is a requirement for prompt destruction of those tires. We believe that immediate incapacitation upon removal of the tires from a vehicle, as Ford requested of its dealers during its Firestone tire replacement campaign, is the most efficient way to ensure this. However, to accommodate possible differences in retail outlets' allocation of personnel, we are adopting NADA's proposed modification of the period for incapacitation, to permit alteration within 24 hours from receipt of the tires rather than requiring it to occur by the close of business on the day of receipt.

With respect to RMA's point that manufacturers can only do research on returned tires that are not incapacitated prior to being returned, we are allowing manufacturers to include a limited "testing exception" in their plans. The manufacturer's plan could describe a test program under which a limited number of tires would be tested, including the outlets that would supply those tires. The tires to be tested would have to be specially labeled and promptly returned to the manufacturer for testing. We note that some meaningful research would be possible even on incapacitated tires, as it has been done on tires that failed. For example, peel strength tests and X-raying could be performed on tires in which holes had been drilled in the sidewall or the tread, and general analysis of such tires would also be possible.

*E. "Exceptions Reporting"*

We proposed to require manufacturers to report to us quarterly (as part of their quarterly reports on the progress of recall campaigns), based on reports from outlets they control, about the numbers of incidents in which tire outlets had either failed to dispose of tires in accordance with applicable laws and regulations or failed to promptly incapacitate returned tires. NADA commented that this requirement seemed unnecessary and that perhaps manufacturers should be required to file reports only if and when they are forced to arrange to stockpile used recalled tires in an environmentally safe manner in the event of a collapse of the marketplace for beneficial reuse. TIA urged that the "exceptions reporting" be limited to instances in which a company deviates from the manufacturer's recall plan, in order to reduce paperwork. RMA stated in its comments on the NPRM that it doubted the constitutionality or effectiveness of this proposal. It argued that the proposed monthly report from the outlet to the manufacturer was unnecessary and that the proposed "exceptions report" was not described and is not necessary or helpful. RMA subsequently stated that it "recognizes that NHTSA believes that reports * * * are necessary," but urged NHTSA to minimize the number of reports and to consider "exceptions reporting" requiring reporting of deviations by retail outlets to the manufacturer within 30 days. RMA's proposed regulatory text, appended to its May 9, 2002, comment, did not contain any proposal for amending 49 CFR 573.6 (2001).

We are not adopting RMA's implicit suggestion to eliminate reporting by manufacturers to this agency about the success (or lack thereof) of their tire disposition programs. In section 7 of the TREAD Act, Congress mandated such reporting by manufacturers. We have tried to minimize the burden of the required reporting by limiting it to the "exceptions" in which requirements were not met, rather than providing for fuller reporting that would include reporting on activities that are in compliance with the regulations. We do not understand RMA's comment that the contents of the required "exceptions reports" are not clear. Although it does not use the term "exceptions reporting," the regulatory text that we proposed in the NPRM clearly identified what we intended manufacturers to include in their reports.

We are adopting most of the regulatory text for § 573.7 that we proposed. The requirements now include three items of information: The aggregate number of recalled tires which the manufacturer becomes aware have not been rendered unsuitable for resale in accordance with the manufacturer's instructions; the aggregate number of recalled tires which the manufacturer becomes aware have been disposed of in violation of applicable state and local laws and regulations; and a description of any failure of a tire outlet to act in accordance with the directions in the manufacturer's plan, including an identification of the outlets in question. These requirements are intended to assist us in tracking the success of recalls from both a safety and an environmental perspective. We note that these limitations are similar to those requested by TIA in its comments.

We are not certain whether RMA continues to claim that these requirements are unconstitutional, but if so, we deny that claim.

*F. Scope of Applicability of Requirements*

Advocates proposed that we extend the incapacitation requirements of the rule to retail outlets that are not within the manufacturers' control. While Advocates appeared to recognize that our power to regulate tire disposition under the TREAD Act is not without limit, that organization argued that we have inherent authority and a "public safety obligation" to do so. RMA claimed that we lacked statutory authority to extend the mandatory elements of this rule (primarily the requirement to report deviations to the manufacturer) beyond outlets that the manufacturer controls.

We have concluded that Advocates' proposal goes beyond the TREAD Act. Congress was careful to insert, at two locations in the statutory section that mandates the manufacturer's inclusion of a plan for tire disposition in its tire remedy program, the phrase "to the extent reasonably within the control of the manufacturer. * * *"

Under the ordinary rules of statutory construction, statutes are to be read to effectuate all of their provisions: "It is an elementary rule of construction that effect must be given, if possible, to every word, clause and sentence of a statute." 2A Sutherland, Statutory Construction, *supra*, at § 46.06. If we followed Advocates' suggestion and ignored the phrase "to the extent reasonably within the control of the manufacturer" despite the fact that it appears twice in the statute, the regulation would not be consistent with this rule of construction.

We disagree with Advocates' claim that extension of the incapacitation requirements of the rule to retail outlets outside of the manufacturer's direct control is necessary to ensure the elimination of the safety problem of resale of unremedied recalled tires. This final rule does require manufacturers to notify outlets that are not under their direct control of the prohibition in 49 U.S.C. 30120(i) and (j) on the resale of unremedied recalled tires. Moreover, failure to comply with these requirements is an independent violation of the Safety Act, and the regulations promulgated thereunder, that can subject a retail outlet to substantial civil penalties.

Advocates also proposed that we include an explicit definition of the term "to the extent reasonably within the control of the manufacturer" in the regulation, arguing that the meaning of the phrase is not self-evident. Ford made a related request, asking that we specifically recognize that motor vehicle dealers that implement tire recalls are not reasonably within the control of motor vehicle manufacturers who initiate tire recalls. NADA supported Ford's view that there are significant differences between the degree of control that manufacturers exercise over their authorized retail outlets and the degree of control that vehicle manufacturers exercise over their dealers, many of which are independently owned and operated.

We do not find it necessary to include a definition of the statutory term "reasonably within the control of the manufacturer" in this final rule. We believe that this phrase is sufficiently clear to be applied without a definition. In any event, the comments were not sufficiently comprehensive and detailed for us to formulate such a definition that would cover various arrangements between manufacturers and the wide variety of retail outlets that may participate in tire recalls. As to vehicle manufacturers, we believe that it is appropriate for vehicle manufacturers that conduct tire recalls to be required to provide their dealers with the information. Vehicle manufacturers already have in place systems under which they notify dealers of recalls and require dealers to report remedy activities to the manufacturer. It will not be unduly burdensome for vehicle manufacturers and dealers to include in those notifications and reports the limited information specified in § 573.6(c)(9) in the relatively rare instances in which vehicle manufacturers conduct tire recalls.

*G. Disposition of Tires in Landfills*

The National Solid Waste Management Association (NSWMA) urged us to permit the use of scrap tires in landfills, in recognition of newer, environmentally friendly landfilling techniques that assertedly are sanctioned by applicable state landfill permitting regulations and unspecified regulations promulgated by the Environmental Protection Agency (EPA) under subtitle D of the Resource Conservation and Recovery Act, as amended. NSWMA stated that these types of uses are among those classified by the Scrap Tire Management Council as "civil engineering applications" for scrap tires, and attached to its comments a table containing a partial list of landfills that use tires or tire chips for construction purposes. RMA, which runs the Scrap Tire Management Council, likewise urged NHTSA to acknowledge that scrap tires are now used in an economical and environmentally viable fashion as construction materials in landfill operations, such as lining, engineered fill, and daily cover.

Even if some State and local jurisdictions now permit specific uses of scrap tires in landfills, we cannot grant NSWMA and RMA's request to authorize such uses in this regulation. Section 7 of the TREAD Act specifically requires that the manufacturers' plans must address how to limit the disposal of replaced tires in landfills, particularly through various alternative beneficial non-vehicular uses. If NSWMA and RMA wish to utilize recalled tires in environmentally sanctioned mechanisms in landfills, they must convince Congress to amend section 7 of TREAD. Unless that occurs, we cannot adopt their comments.

*H. Recycling and Reuse Opportunities*

TIA recommended that the final rule include a requirement that manufacturers seek the highest and best recycling or reuse opportunities for recalled tires when it is practical and safe to do so. RMA opposed this request, stating that it supports all scrap tire market applications that are environmentally sound and that it is inappropriate for NHTSA to make subjective judgments that would value certain markets over others.

We are not adopting TIA's recommendation. Section 7 of TREAD permits manufacturers who dispose of recalled tires to choose to among "beneficial non-vehicular reuse" applications and does not specifically authorize NHTSA to favor certain uses over others. In any event, TIA's comment was in the nature of an undefined goal. Also, the market conditions for recycling may change from time to time, and it would be inadvisable for us to advocate particular uses over others when those uses might become commercially infeasible, or when additional uses might subsequently be developed. Some uses may be impractical in some states. For these reasons, we are leaving the choice of "beneficial non-vehicular reuse" applications to the manufacturers.

*I. Anti-stockpiling Provision*

TIA recommended adding a provision to require manufacturers who conduct centralized recalls to accept shipments of recalled tires from retail outlets, either every 30 days or once a minimum weight is reached, whichever comes first. RMA stated that it understood TIA's concern and recommended that manufacturers include in the recall plan a description of the frequency of shipments, rather than specifying a default frequency in the final rule, in order to allow the manufacturer to set shipment frequency at levels appropriate to specific recalls.

We agree both with TIA's concern about stockpiling and with RMA's recommendation against specifying a default frequency. Excessive stockpiling could have negative environmental consequences, such as the potential for mosquito propagation in collected water and emissions and runoff from tire fires. Therefore, we are adding a provision to the final rule that requires manufacturers that wish to limit the frequency of shipments of recalled tires to include in the recall plan a provision on the frequency of shipments, that includes both a minimum period of time and a minimum weight (to be specified by the manufacturer), whichever comes first, but does not specify default frequencies for either time or weight.

*J. Costs*

In the NPRM, we estimated the costs associated with our proposed reporting requirements and sought comments on our estimates. We estimated the maximum cost to manufacturers of notification at $1.00 per manufacturer

per affected retail outlet. We estimated the costs of recycling tires at approximately $1.00 per tire for transportation and $2.00 per tire for recycling, and noted that manufacturers and entities that replace tires might already be incurring these costs. We also estimated the cost of equipment to incapacitate the tires, as explained more fully below.

We received only one comment on our cost estimates. TIA addressed the cost of recycling; it stated that the cost of recycling is between $1.00 and $1.20 per passenger tire and that if tires are stockpiled, the cost is about $1.50 per tire (or $2.00 per tire if a fire were to result). Both the upper and the lower boundaries of the range of TIA's cost estimate for recycling are lower than our single estimate of $2.00 per tire. We note that TIA's estimate does not include the costs of notification, and that no commenter addressed the cost of the equipment to incapacitate tires.

Accordingly, we are not modifying our original cost estimates.

## IV. Regulatory Analyses and Notices

### *A. E.O. 12866 and DOT Regulatory Policies and Procedures*

This final rule has not been reviewed under E.O. 12866, "Regulatory Planning and Review." After considering the impacts of this rulemaking action, and consultation with the Office of Management and Budget, we have determined that the action is not "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The impact of this rule does not warrant preparation of a full regulatory evaluation because these provisions only involve restriction on the disposition of recalled defective and noncompliant tires. Tire recalls are uncommon and most involve fewer than 10,000 tires. In light of the statutory requirements, this action does not involve a substantial public interest or controversy.

### *B. Regulatory Flexibility Act*

We have also considered the impacts of this notice under the Regulatory Flexibility Act. For the reasons discussed above under "E.O. 12866 and the DOT Policies and Procedures," I certify that this final rule will not have a significant economic impact on a substantial number of small entities. The primary impact of this final rule will be felt by the major manufacturers, which are not small entities. This impact will be minor, since it primarily will involve adding a description of plans for incapacitating and disposing of recalled noncompliant or defective tires to the manufacturers' remedy programs, notifying affected retail outlets of the plans, and providing minimal reporting on the plans in the quarterly reports that manufacturers already must file with NHTSA. We have estimated this cost at $1.00 per manufacturer per affected retail outlet, but the cost could well be less because manufacturers may already be including some of this information in their notices to dealers. We received no comments on this cost estimate.

Disposal requirements will be governed by applicable State and local laws and regulations. It is likely that manufacturers and entities that replace tires already are complying with applicable requirements for tire disposal. If not, manufacturers, which we understand currently pay for tire recalls, will ultimately incur the costs associated with tire disposal, *e.g.* the costs of transporting disabled tires and the costs of recycling the tires. We have estimated these costs at approximately $1.00 per tire for transportation and $2.00 per tire for recycling. As indicated above, the sole cost estimate we received, from TIA, was lower.

This final rule could also have an impact on the nation's 3,500 tire dealers, many of which are small entities. If they do not comply with applicable requirements for tire disposal, manufacturer-controlled tire dealers will incur the costs of "exceptions reporting" to manufacturers of any instances in which the dealer did not comply with the manufacturer's plan for disposing of recalled tires. We estimate these reporting costs at $1.00 per affected dealer per recall. Each dealer could also incur a one-time cost for obtaining equipment to incapacitate tires so that the tires cannot be resold to the public. The one time-cost would likely range between $70.00 (to purchase a power drill and a drill bit) and $95.00 (to purchase a cutoff saw and blade(s)) per affected dealer, or a maximum of between $245,000 and $332,500, assuming that each of the 3,500 dealers purchases a new drill and bit or cutoff saw and blade. We believe that many dealers already own such equipment and that therefore the maximum aggregate one-time cost would be far lower. Also, we note that, because not every dealer is involved in a tire recall every year, the aggregate one-time cost would be incurred over a multi-year time period. We received no comment on these estimates.

### *C. National Environmental Policy Act*

We have reviewed this proposal for the purposed of compliance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and determined that, although it should have environmental benefits, it will not have a significant impact on the quality of the human environment. The final rule will not require manufacturers to conduct any recalls beyond those that they already are required to conduct. The sale of recalled tires is prohibited by other provisions in the Safety Act. Other State laws and regulations already govern disposal requirements, but we anticipate that this rule will increase compliance with those requirements. Hundreds of millions of tires are replaced each year, but this rule will address only a very small fraction of them.

### *D. Paperwork Reduction Act*

This rule contains provisions that are considered to be information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320.

Pursuant to the Paperwork Reduction Act of 1995 (PRA), and OMB's regulation at 5 CFR 1320.5(b)(2), NHTSA will seek approval from OMB for an amendment to a previously approved information collection requirement (OMB control number 2127–0004). As part of that process, the agency has issued a notice seeking public comment on the PRA burdens of the rule. See 69 FR 21881 (April, 22, 2004). In its submission to OMB, NHTSA will summarize the public comments received in response to the April 22, 2004, notice, and discuss any changes in the estimates of the collection of information resulting from the comments.

### *E. Executive Order 13132 (Federalism)*

Executive Order 13132 on "Federalism" requires us 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." The E.O. defines this phrase 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, which requires that manufacturers include a plan for disposal of recalled tires in their remedy programs under section 30120 of the Safety Act, 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, as specified in E.O. 13132. This rulemaking does not have those effects because it applies directly only to manufacturers that already are required to file remedy plans under section 30120, rather than to the States or local governments, and because it directs manufacturers to file plans that conform with applicable state and/or local requirements.

*F. Civil Justice Reform*

This final rule does not have a retroactive or preemptive effect. Judicial review of the rule may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

*G. Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribunal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this rule will not have a $100 million annual effect, no Unfunded Mandates assessment is necessary and one has not been prepared.

*H. Data Quality Guidelines*

The information that NHTSA is mandated to collect may be made available to the public via the agency's Web site. The distribution of such data via the agency's Web site may constitute "information dissemination" as that term is defined under the Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies ("Information Quality Guidelines"), issued by the Office of Management and Budget (OMB) (67 FR 8452, Feb. 22, 2002), and in Department of Transportation Guidelines that were issued on September 25, 2002 (67 FR 61719, October 1, 2002), and are available through the Department's Docket Management System (DMS) Web site at *http://dms.dot.gov* at OST–2002–11996.

If a determination were made that the public distribution of the manufacturer's programs and reports to ODI concerning the disposition of recalled tires constituted information dissemination and was, therefore, subject to the OMB/DOT Information Quality Guidelines, then the agency would review the information prior to distribution to ascertain its utility, objectivity, and integrity (collectively, "quality"). Under the Guidelines, any affected person who believed that the information ultimately disseminated by NHTSA was of insufficient quality could file a complaint with the agency. The agency would review the disputed information, make an initial determination of whether it agreed with the complainant, and notify the complainant of its initial determination. Once notified of the initial determination, the affected person could file an appeal with the agency.

**List of Subjects in 49 CFR Part 573**

Defects, Motor vehicle safety, Noncompliance, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, 49 CFR part 573 is amended as follows:

## PART 573—DEFECT AND NONCOMPLIANCE RESPONSIBILITY AND REPORTS

■ 1. The authority citation for part 573 continues to read as follows:

**Authority:** 49 U.S.C. 30102, 30103, 30116–121, 30166; delegation of authority at 49 CFR § 1.50.

■ 2. Section 573.6 is amended by redesignating paragraphs (c)(9) through (c)(11) as paragraphs (c)(10) through (c)(12) respectively and by adding a new paragraph (c)(9) to read as follows:

**§ 573.6 Defect and noncompliance information report.**

* * * * *

(c) * * *

(9) In the case of a remedy program involving the replacement of tires, the manufacturer's program for remedying the defect or noncompliance shall:

(i) Address how the manufacturer will assure that the entities replacing the tires are aware of the legal requirements related to recalls of tires established by 49 U.S.C. Chapter 301 and regulations thereunder. At a minimum, the manufacturer shall notify its owned stores and/or distributors, as well as all independent outlets that are authorized to replace the tires that are the subject of the recall, annually or for each individual recall that the manufacturer conducts, about the ban on the sale of new defective or noncompliant tires (49 CFR 573.11); the prohibition on the sale of new and used defective and noncompliant tires (49 CFR 573.12); and the duty to notify NHTSA of any sale of a new or used recalled tire for use on a motor vehicle (49 CFR 573.10). For tire outlets that are manufacturer-owned or otherwise subject to the control of the manufacturer, the manufacturer shall also provide directions to comply with these statutory provisions and the regulations thereunder.

(ii) Address how the manufacturer will prevent, to the extent reasonably within its control, the recalled tires from being resold for installation on a motor vehicle. At a minimum, the manufacturer shall include the following information, to be furnished to each tire outlet that it owns, or that is authorized to replace tires that are recalled, either annually or for each individual recall the manufacturer conducts:

(A) Written directions to manufacturer-owned and other manufacturer-controlled outlets to alter the recalled tires permanently so that they cannot be used on vehicles. These shall include instructions on the means to render recalled tires unsuitable for resale for installation on motor vehicles and instructions to perform the incapacitation of each recalled tire, with the exception of any tires that are returned to the manufacturer pursuant to a testing program, within 24 hours of receipt of the recalled tire at the outlet. If the manufacturer has a testing program for recalled tires, these directions shall also include criteria for selecting recalled tires for testing and instructions for labeling those tires and returning them promptly to the manufacturer for testing.

(B) Written guidance to all other outlets which are authorized to replace the recalled tires on how to alter the recalled tires promptly and permanently so that they cannot be used on vehicles.

(C) A requirement that manufacturer-owned and other manufacturer-controlled outlets report to the manufacturer, either on a monthly basis or within 30 days of the deviation, the number of recalled tires removed from vehicles by the outlet that have not been rendered unsuitable for resale for installation on a motor vehicle within the specified time frame (other than those returned for testing) and describe any such failure to act in accordance with the manufacturer's plan;

(iii) Address how the manufacturer will limit, to the extent reasonably within its control, the disposal of the recalled tires in landfills and, instead, channel them into a category of positive reuse (shredding, crumbling, recycling, and recovery) or another alternative beneficial non-vehicular use. At a minimum, the manufacturer shall include the following information, to be furnished to each tire outlet that it owns or that is authorized to replace tires that are recalled, either annually or for each individual recall that the manufacturer conducts:

(A)(*1*) Written directions that require manufacturer-owned and other manufacturer-controlled outlets either:

(*i*) To ship recalled tires to one or more locations designated by the manufacturer as part of the program or allow the manufacturer to collect and dispose of the recalled tires; or

(*ii*) To ship recalled tires to a location of their own choosing, provided that they comply with applicable state and local laws and regulations regarding disposal of tires.

(*2*) Under option (c)(9)(iii)(A)(*1*)(*ii*) of this section, the directions must also include further direction and guidance on how to limit the disposal of recalled tires in landfills and, instead, channel them into a category of positive reuse (shredding, crumbling, recycling, and recovery) or another alternative beneficial non-vehicular use.

(B)(*1*) Written guidance that authorizes all other outlets that are authorized to replace the recalled tires either:

(*i*) To ship recalled tires to one or more locations designated by the manufacturer or allow the manufacturer to collect and dispose of the recalled tires; or

(*ii*) To ship recalled tires to a location of their own choosing, provided that they comply with applicable state and local laws and regulations regarding disposal of tires.

(*2*) Under option (c)(9)(iii)(B)(*1*)(*ii*) of this section, the manufacturer must also include further guidance on how to limit the disposal of recalled tires in landfills and, instead, channel them into a category of positive reuse (shredding, crumbling, recycling, and recovery) or another alternative beneficial non-vehicular use.

(C) A requirement that manufacturer-owned and other manufacturer-controlled outlets report to the manufacturer, on a monthly basis or within 30 days of the deviation, the number of recalled tires disposed of in violation of applicable state and local laws and regulations, and describe any such failure to act in accordance with the manufacturer's plan; and

(D) A description of the manufacturer's program for disposing of the recalled tires that are returned to the manufacturer or collected by the manufacturer from the retail outlets, including, at a minimum, statements that the returned tires will be disposed of in compliance with applicable state and local laws and regulations regarding disposal of tires, and will be channeled, insofar as possible, into a category of positive reuse (shredding, crumbling, recycling and recovery) or another alternative beneficial non-vehicular use, instead of being disposed of in landfills.

(iv) To the extent that the manufacturer wishes to limit the frequency of shipments of recalled tires, it must specify both a minimum time period and a minimum weight for the shipments and provide that shipments may be made at whichever minimum occurs first.

(v) Written directions required under this paragraph to be furnished to a manufacturer-owned or controlled outlet shall be sent to the person in charge of each outlet by first-class mail or by electronic means, such as FAX transmissions or e-mail, with further instructions to notify all employees of the outlet who are involved with removal, rendering unsuitable for use, or disposition of recalled tires of the applicable requirements and procedures.

(vi) Manufacturers must implement the plans for disposition of recalled tires that they file with NHTSA pursuant to this paragraph. The failure of a manufacturer to implement its plan in accordance with its terms constitutes a violation of the Safety Act.

* * * * *

■ 3. Section 573.7 is amended by adding paragraph (b)(7) to read as follows:

**§ 573.7 Quarterly reports.**

* * * * *

(b) * * *

(7) For all recalls that involve the replacement of tires, the manufacturer shall provide:

(i) The aggregate number of recalled tires that the manufacturer becomes aware have not been rendered unsuitable for resale for installation on a motor vehicle in accordance with the manufacturer's plan provided to NHTSA pursuant to § 573.6(c)(9);

(ii) The aggregate number of recalled tires that the manufacturer becomes aware have been disposed of in violation of applicable state and local laws and regulations; and

(iii) A description of any failure of a tire outlet to act in accordance with the directions in the manufacturer's plan, including an identification of the outlet(s) in question.

* * * * *

Issued on: August 5, 2004.

**Jeffrey W. Runge,**

*Administrator.*

[FR Doc. 04–18354 Filed 8–12–04; 8:45 am]

BILLING CODE 4910–59–P

# Proposed Rules

Federal Register
Vol. 69, No. 156
Friday, August 13, 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

### Food Safety and Inspection Service

### 9 CFR Part 327

**[Docket No. 01–029P]**

**RIN 0583–AC91**

## Addition of San Marino to the List of Countries Eligible To Export Meat and Meat Products to the United States

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is proposing to add San Marino to the list of countries eligible to export meat and meat products to the United States. Reviews of San Marino's laws, regulations, and other written materials show that its meat processing system meets requirements equivalent to all provisions in the Federal Meat Inspection Act (FMIA) and its implementing regulations.

Although a foreign country may be listed as eligible to export meat and meat products, products from that country must also comply with all other U.S. requirements, including those of the U.S. Customs Service and the restrictions under Title 9, part 94 of the Animal and Plant Health Inspection Service (APHIS) regulations that relate to the importation of meat and meat products from foreign countries into the United States. FSIS and APHIS work closely together to ensure that meat and meat products imported into the United States comply with the regulatory requirements of both agencies.

Establishments that would be certified under this proposed regulation would only be exporting pork products to the United States. Pork products from San Marino may be imported into the United States only if these products are from swine slaughtered in certified slaughter establishments located in other countries eligible to export meat to the United States and are processed in certified establishments in San Marino. All meat products exported from San Marino to the United States would be subject to reinspection at the U.S. ports-of-entry by FSIS inspectors as required by law.

**DATES:** Comments must be received on or before October 12, 2004.

**ADDRESSES:** FSIS invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

- Mail, including floppy disks or CD–ROM's, and hand-or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions at that site for submitting comments.

All submissions received must include the Agency name and docket number 01–029P.

All comments submitted in response to this proposal, as well as research and background information used by FSIS in developing this document, will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. The comments also will be posted on the Agency's Web site at *http://www.fsis.usda.gov/OPPDE/rdad/FRDockets.htm*.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sally White, Director, International Equivalence Staff, Office of International Affairs; (202) 720–6400.

**SUPPLEMENTARY INFORMATION:**

### Background

FSIS is proposing to amend the Federal meat inspection regulations to add San Marino to the list of countries eligible to export meat and meat products to the United States.

Section 20 of the FMIA (21 U.S.C. 620) prohibits the importation into the United States of carcasses, parts of carcasses, meat or meat food products of cattle, sheep, swine, goats, horses, mules, or other equines which are capable of use as human food that are adulterated or misbranded. The FMIA also requires that livestock from which imported meat products are produced be slaughtered and handled in connection with slaughter in accordance with the Humane Slaughter Act (7 U.S.C. 1901–1906). Imported meat products must be in compliance with part 327 of title 9, Code of Federal Regulations (9 CFR part 327) to ensure that they meet the standards provided in the FMIA. 9 CFR 327.2 establishes the procedures by which foreign countries wanting to export meat and meat products to the United States may become eligible to do so.

Section 327.2(a) requires authorities in a foreign country's meat inspection system to certify that (1) the system provides standards equivalent to those of the United States and (2) the legal authority for the system and its implementing regulations are equivalent to those of the United States. Specifically, a country's regulations must impose requirements equivalent to those of the United States in the following areas: (1) Ante-mortem and post-mortem inspection; (2) official controls by the national government over plant construction, facilities, and equipment; (3) direct and continuous supervision of slaughter activities, where applicable, and product preparation by official inspection personnel; (4) separation of establishments certified to export from those not certified; (5) maintenance of a single standard of inspection and sanitation throughout certified establishments; (6) official controls over condemned product; and (7) requirements of a Hazard Analysis and Critical Control Point (HACCP) system within certified establishments.

Section 327.2 also requires a meat inspection system maintained by a foreign country, with respect to establishments preparing products in that country for export to the United States, to ensure that those establishments and their meat products comply with requirements equivalent to the provisions of the FMIA and the meat product inspection regulations. Foreign country authorities must be able to ensure that all certifications required under part 327 of the meat product inspection regulations (Imported Products) can be relied upon before USDA-FSIS will grant approval to export meat products to the United States.

In addition to meeting the certification requirements, a foreign country's inspection system must be evaluated by FSIS before eligibility to

export meat products can be granted. This evaluation consists of two processes: a document review and an on-site review. The document review is an evaluation of the laws, regulations, and other written materials used by the country to operate its meat inspection program. To help the country in organizing its material, FSIS gives the country questionnaires asking for detailed information about the country's inspection practices and procedures in five risk areas, which are the focus of the evaluation. These five risk areas comprise sanitation, animal disease, slaughter/processing, residues, and enforcement. FSIS evaluates the information to verify that the critical points in the five risk areas are addressed satisfactorily with respect to standards, activities, resources, and enforcement. If the document review is satisfactory, an on-site review is scheduled using a multi-disciplinary team to evaluate all aspects of the country's inspection program, including laboratories and individual establishments within the country.

The process of determining equivalence is described fully on the FSIS Web site at *http://www.fsis.usda.gov/OPPDE/IPS/EQ/EQProcess.htm*. Besides relying on its initial determination of a country's eligibility, coupled with ongoing reviews to ensure that products shipped to the United States are safe, wholesome and properly labeled and packaged, FSIS randomly samples imported meat and poultry products for reinspection as they enter the United States.

**Evaluation of the San Marino Inspection System**

In response to a request from San Marino in 1997 for approval to export meat and meat products to the United States, FSIS conducted a thorough review of the San Marino meat inspection system to determine if it was equivalent to the U.S. meat inspection system. First, FSIS compared San Marino's meat inspection laws and regulations with U.S. requirements. The study concluded that the requirements contained in San Marino's meat inspection laws and regulations are equivalent to those mandated by the FMIA and implementing regulations. FSIS then conducted an on-site review of the San Marino meat inspection system in operation. The FSIS review team concluded that San Marino's implementation of meat processing standards and procedures was equivalent to those of the United States.

All meat products exported to the United States from San Marino will be subject to reinspection at the ports-of-entry for transportation damage, labeling, proper certification, general condition and accurate count. Other types of inspection will also be conducted, including examining product for defects and performing laboratory analyses to detect chemical residues or microbial contamination.

Products that pass reinspection will be stamped with the official mark of inspection and allowed to enter U.S. commerce. If they do not meet U.S. requirements, they will be "Refused Entry" and must be re-exported, destroyed or allowed entry for the purpose of converting to animal food.

Accordingly, FSIS is proposing to amend § 327 of the Federal meat inspection regulations to add San Marino as a country from which meat and meat products may be eligible for import into the United States. As a country eligible to export meat products to the United States, the government of San Marino would certify to FSIS those establishments wishing to export such products to the U.S. and operating according to U.S. requirements. FSIS would retain the right to verify that establishments certified by the San Marino government are meeting the U.S. requirements. This would be done through annual on-site reviews of the establishments while they are in operation.

Although a foreign country may be listed as eligible to export meat and meat products, products from that country must also comply with all other U.S. requirements, including those of the U.S. Customs Service and the restrictions under Title 9, part 94 of the Animal and Plant Health Inspection Service (APHIS) regulations that relate to the importation of meat and meat products from foreign countries into the United States. The Agency notes that APHIS has classified San Marino as having a substantial risk associated with Bovine Spongiform Encephalopathy (BSE). Although pork is the specific product proposed for import into the United States from San Marino, FSIS considered BSE risk in its evaluation process. APHIS is responsible for keeping foreign animal diseases out of the United States. APHIS sets forth restrictions on the importation of any fresh, frozen, and chilled meat, meat products, and edible products from countries in which certain animal diseases exist. Those products that APHIS has restricted from entering the United States will be refused entry.

FSIS and APHIS work closely together and communicate regularly to ensure that meat and meat products imported into the United States comply with the regulatory requirements of both agencies.

The full report on San Marino can be found on the FSIS Web site at *http://www.fsis.usda.gov/OPPDE/Far/index.htm*.

**Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

**Executive Order 12866 and Regulatory Flexibility Act**

This proposed rule has been reviewed under Executive Order 12866. It has been determined to be not significant for purposes of E.O. 12866 and therefore, has not been reviewed by the Office of Management and Budget (OMB).

There is only one establishment in San Marino that has applied to export meat products to the United States. This establishment would export non-shelf stable cooked meat products. U.S. imports from this establishment are expected to total approximately 500,000 pounds per year.

U.S. firms export small amounts of pork and poultry products to San Marino. Table A reports the most current information, from 1996–2000, on U.S. exports of poultry and pork products to San Marino. Poultry exports were highest in 1994, before declining and eventually falling to zero. Poultry exports reappeared again in 1998, but again at relatively low levels. Between 1994 and 2000, U.S. firms exported pork products to San Marino only once, in 1994. Since then, there have been no further exports of pork products.

Adoption of this proposed rule would continue to open trade between the U.S. and San Marino. This proposed rule would also increase the U.S. food supply.

The impact of this proposed rule on U.S. consumers is voluntary in that consumers will not be required to purchase meat products produced and processed in San Marino, although they may choose to do so. Expected benefits from this type of proposed rule would accrue primarily to consumers in the form of competitive prices due to a larger market variety of meat products. The volume of trade stimulated by this proposed rule, however, will likely be so small as to have little effect on supply and prices. Consumers, apart from any change in prices, would

benefit from increased choices in the marketplace.

The costs of this rule will accrue primarily to producers in the form of greater competition from San Marino. Again, it must be noted that the volume of trade stimulated by this rule would be very small, likely having little effect on supply and prices. Nonetheless, it is possible that U.S. firms that produce products that would compete with San Marino imports could face short-term difficulty. However, in the long run, such firms could adjust their product mix in order to compete effectively.

TABLE A.—U.S. EXPORTS OF POULTRY AND PORK PRODUCTS TO SAN MARINO 1996–2000

| Calendar year | Quantity (tons) | Value ($1,000) | Average price per ton |
|---|---|---|---|
| Poultry: | | | |
| 1996 | 0 | $0.00 | NA |
| 1997 | 0 | 0.00 | NA |
| 1998 | 68 | 68 | $1.00 |
| 1999 | 24 | 14 | 0.58 |
| 2000 | 69 | 55 | 0.80 |
| Pork: | | | |
| 1996 | 0 | $0.00 | NA |
| 1997 | 0 | 0.00 | NA |
| 1998 | 0 | 0.00 | NA |
| 1999 | 0 | 0.00 | NA |
| 2000 | 0 | 0.00 | NA |

**Effect on Small Entities**

The Administrator, FSIS, has made an initial determination that this proposed rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). This proposed rule would add San Marino to the list of countries eligible to export meat products into the United States. Currently, only one San Marino establishment has applied to export product to the United States. This establishment is planning to export approximately 500,000 pounds of non-shelf stable cooked meat products to the United States per year. The volume of trade stimulated by this rule would be very small, likely having little effect on supply and prices. Therefore, this proposed rule is not expected to have a significant impact on small entities that produce these types of products domestically.

**Paperwork Requirements**

No new paperwork requirements are associated with this proposed rule. Foreign countries wanting to export livestock products to the United States are required to provide information to FSIS certifying that its inspection system provides standards equivalent to those of the United States and that the legal authority for the system and its implementing regulations are equivalent to those of the United States before they may start exporting such product to the United States. FSIS collects this information one time only. FSIS gave San Marino questionnaires asking for detailed information about the country's inspection practices and procedures to assist the country in organizing its materials. This information collection was approved under OMB number 0583–0094. The proposed rule contains no other paperwork requirements.

**Additional Public Notification**

Public awareness of all segments of rulemaking and policy development is important. In an effort to ensure that this notice comes to the attention of the public—including minorities, women, and persons with disabilities—FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov*. The Regulations.gov Web site is the central online rulemaking portal of the United States government. It is being offered as a public service to increase participation in the Federal government's regulatory activities. FSIS participates in Regulations.gov and will accept comments on documents published on the site. The site allows visitors to search by keyword or Department or Agency for rulemakings that allow for public comment. Each entry provides a quick link to a comment form so that visitors can type in their comments and submit them to FSIS. The Web site is located at *http://www.regulations.gov*.

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a broader and more diverse audience.

**List of Subjects in 9 CFR Part 327**

Imports, Meat and meat products.

For the reasons set out in the preamble, 9 CFR part 327 would be amended as follows:

## PART 327—IMPORTED PRODUCTS

1. The authority citation for part 327 would continue to read as follows:

**Authority:** 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

**§ 327.2 [Amended]**

2. Section 327.2 would be amended by adding "San Marino" in alphabetical order to the list of countries in paragraph (b).

Done in Washington, DC, on August 1, 2004.

**Barbara J. Masters,**

*Acting Administrator.*

[FR Doc. 04–18567 Filed 8–12–04; 8:45 am]

BILLING CODE 3410–DM–P

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 72

**RIN 3150—AH50**

### List of Approved Spent Fuel Storage Casks: NAC–MPC Revision

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations revising the NAC International, Inc., NAC–MPC cask system listing, within the "List of Approved Spent Fuel Storage Casks," to include Amendment No. 4 to Certificate of Compliance (CoC) Number 1025. Amendment No. 4 will modify the present cask system design to incorporate vacuum drying enhancements under a general license. Specifically, the amendment will increase vacuum drying time limits, delete canister removal from concrete cask requirements, revise surface contamination removal time limits, and revise allowable contents fuel assembly limits.

**DATES:** Comments on the proposed rule must be received on or before September 13, 2004.

**ADDRESSES:** You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AH50) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including personal information such as security numbers and birth dates in your submission.

*Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

*E-mail comments to: SECY@nrc.gov.* If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov.* Comments can also be submitted via the Federal eRulemaking Portal *http://www.regulations.gov.*

*Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays (telephone (301) 415–1966).

*Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov.*

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* An electronic copy of the proposed CoC, proposed Technical Specifications (TS), and preliminary safety evaluation report (SER) can be found under ADAMS Accession Nos. ML041600307, ML041600562, and ML041600568, respectively.

**FOR FURTHER INFORMATION CONTACT:** Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *jmm2@nrc.gov.*

**SUPPLEMENTARY INFORMATION:** For additional information, see the direct final rule published in the final rules section of this **Federal Register**.

#### Procedural Background

This rule is limited to the changes contained in Amendment 4 to CoC No. 1025 and does not include other aspects of the NAC–MPC cask system design. The NRC is using the "direct final rule procedure" to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured.

Because NRC considers this action noncontroversial and routine, the proposed rule is being published concurrently as a direct final rule. The direct final rule will become effective on October 27, 2004. However, if the NRC receives significant adverse comments by September 13, 2004, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to the proposed revisions in a subsequent final rule. The NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when—

(A) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(B) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(C) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or TS.

#### List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 72.

## PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

1. The authority citation for part 72 continues to read as follows:

**Authority:** Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1025 is revised to read as follows:

**§ 72.214 List of approved spent fuel storage casks.**

* * * * *

Certificate Number: 1025.

Initial Certificate Effective Date: April 10, 2000.

Amendment Number 1 Effective Date: November 13, 2001.

Amendment Number 2 Effective Date: May 29, 2002.

Amendment Number 3 Effective Date: October 1, 2003.

Amendment Number 4 Effective Date: October 27, 2004.

SAR Submitted by: NAC International, Inc.

SAR Title: Final Safety Analysis Report for the NAC-Multipurpose Canister System (NAC–MPC System).

Docket Number: 72–1025.

Certificate Expiration Date: April 10, 2020.

Model Number: NAC–MPC.

* * * * *

Dated in Rockville, Maryland, this 27th day of July, 2004.

For the Nuclear Regulatory Commission.

**Martin J. Virgilio,**

*Acting Executive Director for Operations.*

[FR Doc. 04–18511 Filed 8–12–04; 8:45 am]

BILLING CODE 7590–01–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Parts 121, 125, 135

**[Docket No. FAA–2004–18596; SFAR No. XX; Notice No. 04–10]**

**RIN 2120–AI30**

## Use of Certain Portable Oxygen Concentrator Devices Onboard Aircraft; Extension of Comment Period

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM); extension of comment period.

**SUMMARY:** This action extends the comment period for an NPRM that was published on July 14, 2004. In that document, the FAA proposed to permit the use of certain portable oxygen devices onboard aircraft. This extension is a result of a request from the Air Transport Association (ATA) to extend the comment period to the proposal.

**DATES:** Comments must be received on or before August 30, 2004.

**ADDRESSES:** You may send comments to Docket No. FAA–2004–18596 using any of the following methods:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Fax: 1–(202)–493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

*Privacy:* We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* To read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** James Whitlow, Deputy Chief Counsel, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone: (202) 267–3222, or facsimile (202) 267–3227.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the Web address in the **ADDRESSES** section.

*Privacy Act:* Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov*.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

**Proprietary or Confidential Business Information**

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD ROM, mark the outside of the disk or CD ROM and also identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

**Background**

On July 14, 2004, the Federal Aviation Administration (FAA) issued Notice No. 04–10, Use of Certain Portable Oxygen Concentrator Devices Onboard Aircraft (69 FR 42324, 7/14/2004). Comments to that document were to be received on or before August 13, 2004.

In a letter dated August 4, 2004, ATA requested that the FAA extend the comment period for Notice No. 04–10 for 60 days. ATA stated that the NPRM came as a surprise and that they had not completed testing the Airsep Lifestyle portable oxygen concentrator (POC). ATA also feels that the NPRM raises questions of important technical, operational, and legal issues, such as the potential impact of having to train employees on the operation of POC devices. On August 6, 2004, we received a letter from the Regional Airline Association (RAA) supporting ATA's request to extend the comment period for 60 days. RAA specifically cited the uncertainty that the Airsep device would not affect navigation or communication systems onboard regional aircraft.

In response, two separate letters were received on August 5, 2004, objecting to ATA's request to extend the comment period on the NPRM. Gary Ewart, Director of the American Thoracic Society, wrote to inform the FAA that he had personally met with ATA and other concerned parties for over 3 years and that the NPRM was not unexpected in the physician, patient, oxygen device, or airline communities. Phillip Porte, Executive Director of the National Association for Medical Direction of Respiratory Care, and Jon Tiger, President of the National Home Oxygen Patients Association, jointly submitted their opposition to extending the comment period for the NPRM. They believe the 30 day comment period was enough time to develop comments and that any extension would unnecessarily delay promulgation of the final regulation.

We have considered the request for extension presented by ATA and weighed that request against the work done by the Department of Transportation, the opposition referenced above, and the momentum of the rulemaking, and the specific proposal. We agree that it is important for ATA and its members to review and consider this rule, but we feel that a 60-day extension of the comment period would be excessive.

Notice No. 04–10 makes very clear that this is an enabling proposal. No operator will be required to permit passengers to carry a POC device onboard an aircraft. If an operator decides to allow a passenger to use the Airsep (or any future approved device), it would have to determine if the device would interfere with the navigation or communication systems on its own. We also recognize that an operator would have to take several steps to train crewmembers and make appropriate administrative changes, but examining those potential actions is not necessary before our proposal is completed.

We will extend the comment period for Notice No. 04–10 for an additional 15 days only. We believe the total of 45 days is adequate for all interested parties to comment on this proposal. Absent unusual circumstances, the FAA does not anticipate any further extension of the comment period for this rulemaking.

**Extension of Comment Period**

In accordance with § 11.29(c) of Title 14, Code of Federal Regulations, the FAA has reviewed the petitions made by the Air Transport Association for extension of the comment period to Notice No. 04–10. The petitioner has a substantive interest in the proposed rule and the FAA has determined that a short extension of the comment period is consistent with the public interest.

Accordingly, the comment period for Notice No. 04–10 is extended until August 30, 2004.

Issued in Washington, DC, on August 10, 2004.

**James W. Whitlow,**

*Deputy Chief Counsel.*

[FR Doc. 04–18645 Filed 8–11–04; 11:50 am]

BILLING CODE 4910–13–P

## FEDERAL TRADE COMMISSION

**16 CFR Part 316**

**[Project No. R411008]**

**RIN 3084–AA96**

## Definitions, Implementation, and Reporting Requirements Under the CAN–SPAM Act

**AGENCY:** Federal Trade Commission (FTC).

**ACTION:** Notice of proposed rulemaking; request for public comment.

**SUMMARY:** In this document, the Federal Trade Commission (the "Commission" or "FTC") proposes rules to implement the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 ("CAN–SPAM Act" or "Act"). Sections 7702(2)(C) and 7711(a) of the Act direct the FTC to prescribe rules, within 12 months after December 16, 2003, defining the relevant criteria to facilitate the determination of the primary purpose of an electronic mail message and making such other modifications as the Commission deems appropriate to implement the provisions of the Act.

This document invites written comments on issues raised by the proposed Rule and seeks answers to the specific questions set forth in Section VII of this NPRM.

**DATES:** Written comments will be accepted until Monday, September 13, 2004. Due to the time constraints of this rulemaking proceeding, the Commission does not contemplate any extensions of this comment period or any additional periods for written comment or rebuttal comment.

**ADDRESSES:** Interested parties are invited to submit written comments. Comments should refer to "CAN–SPAM Act Rulemaking, Project No. R411008" 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 to the following address: Federal Trade Commission, CAN–SPAM Act, Post Office Box 1030, Merrifield, VA 22116–1030. Please note that courier and overnight deliveries cannot be accepted at this address. Courier and overnight deliveries should be 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. Comments filed in electronic form should be submitted by clicking on the following weblink: *https://secure.commentworks.com/ftc-canspam/* and following the instructions on the web-based form.

To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the *https://secure.commentworks.com/ftc-canspam/* weblink. You may also visit *http://www.regulations.gov* to read this proposed Rule, and may file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.

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 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:** Michael Goodman, Staff Attorney, (202) 326–3071; or Catherine Harrington-McBride, Staff Attorney, (202) 326–2452; Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. CAN–SPAM Act of 2003*

On December 16, 2003, the President signed into law the CAN–SPAM Act.[1] The Act, which took effect on January 1, 2004, imposes a series of new requirements on the use of commercial electronic mail ("email") messages. In addition, the Act gives federal civil and criminal enforcement authorities new tools to combat unsolicited commercial email ("UCE" or "spam"). The Act also allows state attorneys general to enforce its civil provisions, and creates a private right of action for providers of Internet access services.

In enacting the CAN–SPAM Act, Congress made the following determinations of public policy, set forth in § 7701(b) of the Act:

> (1) There is a substantial government interest in regulation of commercial electronic mail on a nationwide basis;
>
> (2) Senders of commercial electronic mail should not mislead recipients as to the source or content of such mail; and
>
> (3) Recipients of commercial electronic mail have a right to decline to receive additional commercial electronic mail from the same source.

Based on these policy determinations, Congress set forth in §§ 7704(a) and (b) of the CAN–SPAM Act certain acts and practices that are unlawful in connection with the transmission of commercial email messages, including those practices which are aggravated violations that compound the available statutory damages when alleged and proven in combination with other CAN–SPAM violations. Section 7704(a)(1) of the Act prohibits transmission of any email that contains false or misleading header or "from" line information, and clarifies that a header will be considered materially misleading if it fails to identify accurately the computer used to initiate the message because the person initiating the message knowingly uses another protected computer to relay or retransmit the message in order to disguise its origin.[2] The Act also prohibits false or misleading subject headings,[3] and requires a functioning return email address or similar Internet-based mechanism for recipients to use to "opt-out" of receiving future commercial email messages.[4] The Act prohibits the sender, or others acting on the sender's behalf, from initiating a commercial email to a recipient more than 10 business days after the recipient has requested not to receive additional emails from the sender,[5] and prohibits sending a commercial email message without providing three disclosures: (1) clear and conspicuous identification that the message is an advertisement or solicitation, (2) clear and conspicuous notice of the opportunity to decline to receive further commercial email messages from the sender, and (3) a valid physical postal address of the sender.[6] Section 7704(b) of the Act specifies four aggravated violations: address harvesting, dictionary attacks, automated creation of multiple email accounts, and relaying or retransmitting through unauthorized access to a protected computer or network.[7]

The Act authorizes the Commission to enforce violations of the Act in the same manner as an FTC trade regulation rule.[8] Section 7706(f) authorizes the attorneys general of the states to enforce compliance with certain provisions of § 7704(a) of the Act by initiating enforcement actions in federal court, after serving prior written notice upon the Commission when feasible.[9] Finally, CAN–SPAM authorizes providers of Internet access services to bring a federal court action for violations of certain provisions of §§ 7704(a), (b), and (d).[10]

Congress directed the Commission to issue regulations, not later than 12 months after December 16, 2003, "defining the relevant criteria to facilitate the determination of the primary purpose of an electronic mail message."[11] The term "primary purpose" is incorporated in the Act's definition of the key term "commercial electronic mail message." Specifically, "commercial electronic mail message" encompasses "any electronic mail message the *primary purpose* of which is the commercial advertisement or

[1] 15 U.S.C. 7701–7713.

[2] 15 U.S.C. 7704(a)(1).

[3] 15 U.S.C. 7704(a)(2).

[4] 15 U.S.C. 7704(a)(3).

[5] 15 U.S.C. 7704(a)(4).

[6] 15 U.S.C. 7704(a)(5).

[7] 15 U.S.C. 7704(b). The Act's provisions relating to enforcement by the states and providers of Internet access service create the possibility of increased statutory damages if the court finds a defendant has engaged in one of the practices specified in § 7704(b) while also violating § 7704(a). Specifically, §§ 7706(f)(3)(C) and (g)(3)(C) permit the court to increase a statutory damages award up to three times the amount that would have been granted without the commission of an aggravated violation. Sections 7706(f)(3)(C) and (g)(3)(C) also provide for this heightened statutory damages calculation when a court finds that the defendant's violations of § 7704(a) were committed "willfully and knowingly."

[8] Sections 7706(a) and (c) of the CAN–SPAM Act provide that a violation of the Act shall be treated as a violation of a rule issued under § 18(a)(1)(B) of the FTC Act. 15 U.S.C. 57a(a)(1)(B).

[9] 15 U.S.C. 7706(f). Specifically, the state attorneys general may bring enforcement actions for violations of §§ 7704(a)(1), 7704(a)(2), or 7704(d). The states may also bring an action against any person who engages in a pattern or practice that violates §§ 7704(a)(3), (4), or (5).

[10] 15 U.S.C. 7706(g). Section 7704(d) of the Act requires warning labels on email containing sexually oriented material. 15 U.S.C. 7704(d). The Commission recently promulgated its final rule regarding such labels: "Label for Email Messages Containing Sexually Oriented Material" ("Sexually Explicit Labeling Rule"). 69 FR 21024 (Apr. 19, 2004). The Commission is integrating the provisions of that existing rule into the proposed Rule, renumbering certain provisions as follows: former §§ 316.1(a) and (b) appear at § 316.4(a) and (b) in the proposed Rule; former § 316.1(c) [definitions] appears at § 316.2 in the proposed Rule; and former § 316.1(d) [severability] appears at 316.5 and applies to the entire rule, not only the Sexually Explicit Labeling Rule provisions.

[11] 15 U.S.C. 7702(2)(C).

promotion of a commercial product or service (including content on an Internet web site operated for a commercial purpose)." [12] In addition to the mandatory rulemaking regarding the definition of "primary purpose," CAN–SPAM also provides discretionary authority for the Commission to issue regulations concerning certain of the Act's other definitions and provisions.[13] Specifically, the Commission is authorized to:

- Modify the definition of the term "transactional or relationship message" under the Act "to the extent that such modification is necessary to accommodate changes in electronic mail technology or practices and accomplish the purposes of [the] Act"; [14]
- Modify the 10-business-day period prescribed in the Act for honoring a recipient's opt-out request; [15]
- Specify activities or practices as aggravated violations (in addition to those set forth as such in § 7704(b) of CAN–SPAM) "if the Commission determines that those activities or practices are contributing substantially to the proliferation of commercial electronic mail messages that are unlawful under subsection [7704(a) of the Act]"; [16] and
- "issue regulations to implement the provisions of this Act." [17]

[12] 15 U.S.C. 7702(3)(A) (Emphasis supplied). The term primary purpose is also used in the Act's definition of "transactional or relationship message." 15 U.S.C. 7702(17).

[13] The Act authorizes the Commission to use notice and comment rulemaking pursuant to the Administrative Procedures Act, 5 U.S.C. 553. 15 U.S.C. 7711.

[14] 15 U.S.C. 7702(17)(B).

[15] 15 U.S.C. 7704(c)(1)(A)–(C).

[16] 15 U.S.C. 7704(c)(2).

[17] 15 U.S.C. 7711(a). This provision excludes from the scope of its general grant of rulemaking authority § 7703 of the Act (relating to criminal offenses) and § 7712 of the Act (expanding the scope of the Communications Act of 1934). In addition, § 7711(b) limits the general grant of rulemaking authority in § 7711(a) by specifying that the Commission may not use that authority to establish "a requirement pursuant to Section 7704(a)(5)(A) to include any specific words, characters, marks, or labels in a commercial electronic mail message, or to include the identification required by Section 7704(a)(5)(A) * * * in any particular part of such a mail message (such as the subject line or body)." Section 7704(a)(5)(A) provides that, among other things, "it is unlawful for any person to initiate the transmission of any commercial electronic mail message to a protected computer unless the message provides clear and conspicuous identification that the message is an advertisement or solicitation. * * *" Thus, § 7711(b) explicitly precludes the Commission from promulgating rule provisions requiring inclusion of any specific words, characters, marks, or labels in a commercial email message, or inclusion of the identification required by § 7704(a)(5)(A)(i) in any particular part of a commercial email message.

*B. Advance Notice of Proposed Rulemaking*

On March 11, 2004, the Commission published an Advance Notice of Proposed Rulemaking ("ANPR") which solicited comments on a number of issues raised by the CAN–SPAM Act, most importantly, the definition of "primary purpose." In addition, the ANPR requested comment on the modification of the definition of "transactional or relationship message," on the appropriateness of the 10-business-day opt-out period that had been set by the Act, on additional aggravated violations that might be appropriate, and on implementation of the Act's provisions generally.[18] The ANPR set a date of April 12, 2004, to submit comments. In response to petitions from several trade associations, the Commission announced on April 7 that it would extend the comment period to April 20, 2004.[19]

In response to the ANPR, the Commission received approximately 13,517 comments from representatives from a broad spectrum of the online commerce industry, trade associations, individual consumers, and consumer and privacy advocates.[20] Commenters generally applauded CAN–SPAM as an effort to stem the flood of unsolicited and deceptive commercial email that has threatened the convenience and efficiency of online commerce. Commenters also offered several suggestions for the Commission's consideration in drafting regulations to implement the Act. Suggestions with respect to the Commission's "primary purpose" rulemaking and CAN–SPAM's definition of "commercial electronic mail message" and the Commission's reasons for accepting or rejecting them are discussed in detail in Section II. Because the "primary purpose" proceeding must meet a tight statutory deadline, the Commission will address issues of discretionary rulemaking upon which comment was solicited in the ANPR in a future **Federal Register** notice that the Commission anticipates will be published shortly.

[18] 69 FR 11776 (Mar. 11, 2004). The ANPR also solicited comment on questions related to four reports that the Commission must submit to Congress within the next two years: a report on establishing a "Do Not Email" Registry that was submitted on June 15, 2004; a report on establishing a system for rewarding those who supply information about CAN–SPAM violations to be submitted by September 16, 2004; a report setting forth a plan for requiring commercial email to be identifiable from its subject line to be submitted by June 15, 2005; and a report on the effectiveness of CAN–SPAM to be submitted by December 16, 2005. The comments related to the "Do Not Email" registry are discussed in the Commission's June 15, 2004 report. The Commission will consider the relevant comments received in response to the ANPR in preparing the remaining reports.

[19] 69 FR 18851 (Apr. 9, 2004). The associations seeking additional time were the Direct Marketing Association, the American Association of Advertising Agencies, the Association of National Advertisers, the Consumer Bankers Association, and the Magazine Publishers of America. The associations indicated that an extension was necessary because of the religious holidays and the need to consult more fully with their memberships to prepare complete responses.

[20] This figure includes comments received on the "Do Not Email" Registry, which had a comment period that ended March 31, 2004. Appendix A is a list of commenters and the acronyms used to identify each commenter who submitted a comment in response to the ANPR, including comments on the "Do Not Email" Registry, the proposed reward program, the proposal for labeling commercial email, and the efficacy of the Act. A full list of commenters, as well as a complete record of this proceeding, may be found on the Commission's web site: *http://www.ftc.gov/os/comments/canspam/index.htm.*

*C. Notice of Proposed Rulemaking*

Based on the comments received in response to the ANPR, as well as the Commission's law enforcement experience, the Commission proposes in this NPRM regulations establishing criteria for determining "the primary purpose" of an email message. The Commission invites written comment on the questions in Section VII to assist the Commission in determining whether the proposed Rule provisions strike the appropriate balance, maximizing protections for email recipients while avoiding the imposition of unnecessary compliance burdens on legitimate industry.

## II. Analysis of Comments and Discussion of the Proposed Rule

*A. Section 316.1—Scope of the Regulations*

Section 316.1 of the proposed Rule states that this part implements the CAN–SPAM Act. The Commission received a number of comments in response to the ANPR asking that the Commission expressly exempt from CAN–SPAM those entities that are not subject to the FTC's jurisdiction under the FTC Act ("FTC Act"), 15 U.S.C. 41 *et seq.*[21]

Section 7706(d) of the CAN–SPAM Act makes clear that the Commission may not initiate an enforcement action under the Act against any person or entity over which the Commission lacks jurisdiction under the FTC Act.[22] The

[21] *See, e.g.*, ASAE; NSBA; Walters; ASTC; UNC; Independent.

[22] Under § 5(a)(2) of the FTC Act, the Commission does not have jurisdiction over "banks, savings and loan institutions described in section 18(f)(3) [of the FTC Act], Federal credit unions described in section 18(f)(4) [of the FTC Act], common carriers subject to the Acts to regulate commerce, air

Continued

CAN–SPAM Act does not expand or contract the Commission's jurisdiction or the scope of the proposed Rule's coverage. Limits on the FTC's jurisdiction, however, do not affect the ability of other federal agencies, the states, or providers of Internet access service to bring actions under the Act against any entity within their jurisdiction as authorized.[23] Thus, many persons and entities not within the FTC's jurisdiction may still be subject to an enforcement action for violating the CAN–SPAM Act.

*B. Section 316.2—Definitions*

Section 316.2 of the proposed Rule includes the definitions of a number of key terms of the Rule.[24] Thirteen of these terms are defined by references to the corresponding sections of the Act; the definition of the fourteenth term—"character"—is repeated verbatim from the Sexually Explicit Labeling Rule. Section 316.2 tracks § 316.1(c) of the Sexually Explicit Labeling Rule.[25]

The Commission believes that by referencing the definitions found in the Act, and any future modifications to those definitions, the Rule will accurately and effectively track any future changes made to the definitions in the Act. Thus, with the sole exception of the addition of the definition of "character," the Commission has defined key terms of the proposed Rule by reference to the Act without any substantive changes to any definition.

*C. Section 316.3—Primary Purpose*

Section 7702(2)(C) of the CAN–SPAM Act directs the Commission to "issue regulations pursuant to section 13 [of the Act] defining the relevant criteria to facilitate the determination of *the primary purpose* of an electronic mail message." (Emphasis supplied.) The term "primary purpose" comes into play in the Act's definition of "commercial electronic mail message," which is "any electronic mail message *the primary purpose* of which is the commercial advertisement or promotion of a commercial product or service (including content on an Internet web site operated for a commercial purpose)."[26] Section 7702(2)(B) expressly excludes from the Act's definition of "commercial electronic mail message" messages that meet the definition of "transactional or relationship message,"[27] which also incorporates the term "primary purpose." Generally, CAN–SPAM applies only to messages that fall within the Act's definition of "commercial electronic mail message."[28]

1. Proposed Primary Purpose Provision

Proposed § 316.3 sets forth criteria for determining the "primary purpose" of an email message.[29] Because the Commission does not believe that a single standard can adequately cover the various ways that senders present commercial content in email messages, this proposal includes three sets of criteria that apply in specified circumstances. All three sets of criteria are based on a single fundamental principle: determining "the primary purpose" of an email message must focus on what the message's recipient would reasonably interpret the primary purpose to be.

First, proposed § 316.3(a)(1) states that if an email message contains *only* content that advertises or promotes a product or service ("commercial content"), then the "primary purpose" of the message would be deemed to be commercial.

Second, proposed § 316.3(a)(2) covers email messages that contain both commercial content and content that falls within one of the categories listed in § 7702(17)(A) of the Act ("transactional or relationship content"). The "primary purpose" of such an email message would be deemed to be commercial if either: (1) a recipient reasonably interpreting the subject line of the message would likely conclude that the message advertises or promotes a product or service; *or* (2) the message's transactional or relationship content does *not* appear at or near the beginning of the message.

Third, proposed § 316.3(a)(3) covers email messages that contain both commercial content and content that is neither commercial nor "transactional or relationship." In such a case, the primary purpose of the message would be deemed to be commercial if either: (1) a recipient reasonably interpreting the subject line of the message would likely conclude that the message advertises or promotes a product or service; *or* (2) a recipient reasonably interpreting the body of the message would likely conclude that the primary purpose of the message is to advertise or promote a product or service. Proposed § 316.3(a)(3)(ii) sets out certain factors as illustrative of those relevant to this interpretation, including the placement of commercial content at or near the beginning of the body of the message; the proportion of the message dedicated to commercial content; and how color, graphics, type size, and style are used to highlight commercial content.

Proposed § 316.3(b) restates subparagraph (A) of the Act's definition

carriers and foreign air carriers subject to the Federal Aviation Act of 1958, and persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended, except as provided in Section 406(b) of said Act." 15 U.S.C. 45(a)(2) (footnotes omitted). In addition, the FTC does not have jurisdiction over any entity that is not "organized to carry on business for its own profit or that of its members." 15 U.S.C. 44. Finally, the FTC does not have jurisdiction over the business of insurance to the extent that such business is regulated by state law. *See* § 2 of the McCarran-Ferguson Act, 15 U.S.C. 1012(b).

[23] Sections 7706(b) and (c) of the CAN–SPAM Act authorize federal agencies other than the FTC to enforce the Act against various entities outside the FTC's jurisdiction.

[24] Most of the terms listed in § 316.2 occur in the text of the proposed Rule; several of them are not in the Rule text, but are defined in the proposed Rule because CAN–SPAM incorporates and defines them within the definition of another term. For example, the term "procure" is listed in the Rule's definitions [at § 316.2(h)] because the Act defines and includes it in the term "initiate."

[25] Section 316.2 contains definitions of fourteen (14) terms, renumbered from § 316.1(c) of the Sexually Explicit Labeling Rule. These fourteen (14) terms are: "affirmative consent;" "character;" "commercial electronic mail message;" "electronic mail address;" "electronic mail message;" "initiate;" "Internet;" "procure;" "protected computer;" "recipient;" "routine conveyance;" "sender;" "sexually oriented material;" and "transactional or relationship message."

[26] 15 U.S.C. 7702(2)(A) (Emphasis supplied).

[27] Section 7702(17)(A) of the Act defines a "transactional or relationship message" as "an electronic mail message the primary purpose of which is—

(i) to facilitate, complete, or confirm a commercial transaction that the recipient has previously agreed to enter into with the sender;

(ii) to provide warranty information, product recall information, or safety or security information with respect to a commercial product or service used or purchased by the recipient;

(iii) to provide—

(I) notification concerning a change in the terms and features of;

(II) notification of a change in the recipient's standing or status with respect to; or

(III) at regular periodic intervals, account balance information or other type of account statement with respect to, a subscription, membership, account, loan, or comparable ongoing commercial relationship involving the ongoing purchase or use by the recipient of products or services offered by the sender;

(iv) to provide information directly related to an employment relationship or related benefit plan in which the recipient is currently involved, participating, or enrolled; or

(v) to deliver goods or services, including product updates or upgrades, that the recipient is entitled to receive under the terms of a transaction that the recipient has previously agreed to enter into with the sender."

[28] One provision, § 7704(a)(1), which prohibits false or misleading transmission information, applies equally to "commercial electronic mail messages" and "transactional or relationship messages;" otherwise, CAN–SPAM's prohibitions and requirements cover only "commercial electronic mail messages."

[29] These criteria will amplify and inform CAN–SPAM's definition of "commercial electronic mail message," as contemplated by §§ 7702(2)(C) and 7711(a). The proposed Rule provision specifically addresses how CAN–SPAM applies to email messages that contain both "commercial" and "transactional or relationship" content. The latter term is defined in § 7702(17)(A).

of "transactional or relationship message" for clarity in applying the criteria that would be established in proposed § 316.3(a).

*a. The Function of the Subject Line in Determining the Primary Purpose of an Email Message*

The Commission believes that the subject line is important because consumers reasonably use the information it contains to decide whether to read a message or delete it without reading it. For this reason, *bona fide* email senders likely use the subject line to announce or provide a preview of their messages.[30] These email senders, when they are advertising or promoting a product or service, will likely highlight that fact in their subject lines so that recipients may decide whether to read the messages.

*i. Deception in Subject Lines*

The Commission is well aware that, in contrast, spammers frequently misrepresent or fail to disclose the commercial purpose of their messages in the subject line in order to induce recipients to open messages they otherwise would delete without opening.[31] Section 7704(a)(2) of CAN–SPAM, however, prohibits the use of "a subject heading * * * [that] would be likely to mislead a recipient, acting reasonably under the circumstances, about a material fact *regarding the contents or subject matter of the message* (consistent with the criteria used in enforcement of Section [5 of the FTC Act])." (Emphasis supplied.) Thus, CAN–SPAM specifically applies to the subject line of covered email messages the deception jurisprudence the Commission has developed under § 5(a) of the FTC Act.[32] Accordingly, actual deception need not be shown, only that a representation, omission, or practice is likely to mislead.[33] The "acting reasonably under the circumstances" aspect of the analysis considers the representation from the perspective of the ordinary consumer to whom it is directed.[34] A material fact "is one which is likely to affect a consumer's choice of or conduct regarding a product. In other words, it is information that is important to consumers."[35]

CAN–SPAM's focus on subject lines that misrepresent the content or subject matter of the message is in accord with case law developed under § 5 of the FTC Act with respect to deceptive "door-openers." The subject line of an email message serves as a door-opener—an initial contact between a sender and a recipient that typically makes an express or implied representation about the purpose of the contact. Before the recipient views the body of an email message, he typically may view the subject line that, as the designation "subject line" implies, announces what the email message concerns. Some senders may be tempted to use misrepresentations in the subject line to induce recipients to open their messages. These senders would be well advised that CAN–SPAM prohibits using the subject line as an initial contact with consumers to get their attention by misrepresenting the purpose of the contact.[36]

*ii. Subject Lines in Email Messages that Contain Only Content Advertising or Promoting a Product or Service*

In view of the legal obligation under both CAN–SPAM and § 5 of the FTC Act for senders to ensure that the subject lines of their email messages are not deceptive, the Commission believes that when the body of an email message contains only content that advertises or promotes a product or service, then the subject line of that message must be consistent with that content. A non-deceptive subject line of such a message is therefore not a separate signifier of the primary purpose of the email; it complements and is consistent with the body of the email message. Therefore, the proposed criterion covering such messages does not include a separate element addressing the subject line.

*iii. Subject Lines in Email Messages That Contain Both Commercial and Noncommercial Content ("Dual-Purpose Messages")*

In the case of a dual-purpose message with a subject line that a recipient would reasonably interpret as signaling a commercial message, under the proposed criteria, the message would be deemed to be commercial, regardless of whether the body of the message contained—in addition to commercial content—either: content that is "transactional or relationship;" or content that is neither commercial nor "transactional or relationship."[37] This criterion is supported by the Commission's belief, discussed above, that *bona fide* email senders, when they are advertising or promoting a product or service, likely highlight that fact in their subject lines so that recipients may decide whether to read the messages. Thus it is reasonable to deem an email message to have a commercial primary purpose if the sender highlights the message's commercial content in the subject line.

*b. Analysis of the Body of a Dual-Purpose Message To Determine the Message's Primary Purpose*

With respect to dual-purpose email messages, if a recipient reasonably interpreting the subject line of the message would *not* likely conclude that the message advertises or promotes a product or service, then the Commission proposes two additional criteria relevant to determining a message's "primary purpose."

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[30] Although some senders may use a "teaser" subject line from which advertising or promoting a good or service may not be apparent until the recipient views the body of the message, as explained below, § 7704(2) of CAN–SPAM places a limit on this practice. Unlike teasers in conventional advertising, where contextual features such as program breaks or layout likely alert consumers that the teaser has a commercial purpose, consumers viewing subject lines in an email browser have no other cues that they are about to view an advertisement.

[31] *See, e.g., FTC* v. *Brian Westby, et al.*, Case No. 03 C 2540 (N.D. Ill. Amended Complaint filed Sept. 16, 2003) (FTC alleged in part that Defendants used deceptive subject lines to expose unsuspecting consumers to sexually explicit material).

[32] 15 U.S.C. 45(a). The express language of § 7704(2)(a) of CAN–SPAM tracks the deception standard developed in the Commission's cases and enforcement statements, thereby prohibiting subject line content that is likely to mislead a consumer acting reasonably under the circumstances about a material fact regarding the content or subject matter of the message. *Cliffdale Associates, Inc.*, 103 F.T.C. 164–5. The framework for analyzing alleged deception is explicated in an Appendix to this decision, reprinting a letter dated Oct. 14, 1983, from the Commission to The Honorable John D. Dingell, Chairman, Committee on Energy and Commerce, U.S. House of Representatives (1984) ("Deception Statement"). Note, however, that § 7704(a)(6) of the Act establishes a definition of "materially" that is distinct from, but consistent with, the definition articulated in the Deception Statement. The § 7704(a)(6) definition applies only to § 7704(a)(1), which prohibits header information that is "materially false or materially misleading."

[33] *Id.* at 176. *Thiret* v. *FTC*, 512 F.2d 176, 180 (10th Cir. 1975); *Ger-Ro-Mar, Inc.* v. *FTC*, 518 F.2d 33, 36 (2d Cir. 1975); *Resort Car Rental System, Inc.* v. *FTC*, 518 F.2d 962, 964 (9th Cir. 1975).

[34] *Cliffdale* at 177–8.

[35] *Id.* at 182 (citations omitted).

[36] "[W]hen the first contact between a seller and a buyer occurs through a deceptive practice, the law may be violated even if the truth is subsequently made known to the purchaser." Deception Statement at 180. *See also Carter Products, Inc.* v. *FTC*, 186 F.2d 821, 824 (5th Cir. 1951); *Exposition Press, Inc.* v. *FTC*, 295 F.2d 869, 873 (2d Cir. 1961), *cert. denied* 370 U.S. 917 (1962); *National Housewares, Inc.*, 90 F.T.C. 512, 588 (1977); *Resort Car Rental* v. *FTC*, 518 F.2d 962, 964 (9th Cir. 1975); *Encyclopaedia Britannica, Inc.*, 87 F.T.C. 421, 497 (1976), *aff'd sub nom. Encyclopaedia Britannica, Inc.* v. *FTC*, 605 F.2d 964 (7th Cir. 1979), *cert. denied* 445 U.S. 934 (1980).

[37] This "subject line" discussion is not intended to require that every email message with any commercial content must use a subject line that refers to the message's commercial content. Depending on the facts of a given situation, a dual-purpose message may use a subject line that is not deceptive and does not refer to commercial content.

*i. Dual-Purpose Messages Containing Commercial and "Transactional or Relationship" Content*

The Commission proposes a criterion to apply to messages containing both commercial content and transactional or relationship content. That criterion states that the "primary purpose" of the message shall be deemed to be commercial if the message's content pertaining to one of the functions listed in subparagraph (b)(1)–(5) of the proposed Rule provision [38] (*i.e.*, the message's transactional or relationship content) does *not* appear at or near the beginning of the message.

Commenters argued that CAN–SPAM's "primary purpose" standard should distinguish between such dual-purpose messages—which arise from a business relationship between the sender and the recipient—and dual-purpose messages that are basically "cold-call" contacts where no relationship exists between the sender and recipient. These commenters claimed that senders of messages with transactional or relationship content will not abuse their ability to communicate with customers via email by sending unnecessary transactional or relationship messages larded with commercial content, or by continuing to send unwanted messages to customers who have expressed a desire not to receive the sender's commercial messages.[39]

One commenter noted that the Act's legislative history supports treating as "transactional or relationship" messages that contain both commercial and transactional or relationship content:

> Our goal here is not to discourage legitimate online communications between businesses and their customers. Senator Burns and I have no intention of interfering with a company's ability to use e-mail to inform customers of warranty information, provide account holders with monthly account statements, and so forth.[40]

The Act's use of the phrase "primary purpose" in the "commercial" and "transactional or relationship" definitions establishes that a message can contain both types of content and still be regulated as either commercial or transactional or relationship. The Act does not specify that a "transactional or relationship message" is one containing *only* transactional or relationship content.

Commenters' arguments regarding messages containing commercial and transactional or relationship content, as well as the legislative history quoted above, persuade the Commission that the proposed "primary purpose" criteria should distinguish between messages that contain transactional or relationship content and those that do not. The Commission's proposed criteria give clear guidance to senders of messages that contain both commercial and transactional or relationship content: if the subject line criterion is not determinative, such dual-purpose messages have a commercial primary purpose unless the transactional or relationship content appears at or near the beginning of the message.[41]

There is no evidence on the record establishing that senders of *bona fide* transactional or relationship content would suffer any detriment under a CAN–SPAM regime calling for transactional or relationship content to be placed before commercial content in an email message.[42] Moreover, the harm that CAN–SPAM is meant to address—primarily, the time and resources wasted in dealing with unwanted unsolicited commercial messages—probably does not result from messages that begin with transactional or relationship content, followed by commercial content, if any.[43] Congress's decision largely to exempt transactional or relationship messages from CAN–SPAM requirements supports this determination. CAN–SPAM's definition of "transactional or relationship message" includes specific categories of messages that Congress determined to be ones that consumers want to receive. These categories include vital information such as bank account statements, product recalls, transaction confirmations, and warranty information. For messages containing both commercial and transactional or relationship content to be considered "transactional" rather than commercial, the Commission's proposed "primary purpose" criteria would require only that senders of such messages place their transactional or relationship content "at or near the beginning of the message." This would allow recipients quickly to identify messages providing transactional or relationship content without first having to wade through commercial content. The Commission seeks comment and information regarding this approach to messages containing both commercial and transactional or relationship content.

*ii. Dual-Purpose Messages That Contain Both Commercial Content and Content That Is Neither Commercial Nor Transactional/Relationship*

In addition to the subject line criterion that would apply to all dual-purpose messages under the Commission's proposed "primary purpose" criteria, a separate criterion would apply to messages containing both commercial content and other content that is neither commercial nor transactional/relationship. Even if a recipient reasonably interpreting the subject line of the message would *not* likely conclude that the message advertises or promotes a product or service, the primary purpose of the message still would be deemed to be commercial if a recipient reasonably interpreting the body of the message would likely conclude that the primary purpose of the message is to advertise or promote a product or service. Factors relevant to this interpretation include, but are not necessarily limited to, the placement of commercial content at or near the beginning of the body of the message; the proportion of the message dedicated to commercial content; and how color, graphics, type size, and style are used to highlight commercial content.

The criterion for this type of dual-purpose message derives from the Commission's traditional analysis of advertising under § 5 of the FTC Act.[44] The Commission assesses claims made in advertising by, among other things, evaluating *the entire document*. "[I]n advertising, the Commission will examine 'the entire mosaic, rather than each tile separately.'" [45] "[T]he Commission looks to the impression made by the advertisement as a whole." [46] The Commission draws on this approach in its proposed criteria to

[38] Subparagraph (b) of proposed § 316.3 restates the five categories of "transactional or relationship messages" identified in § 7702(17)(A) of CAN–SPAM. *See* note 27.

[39] *See* Comerica; Venable; Wells Fargo.

[40] Verizon (citing Statement of Sen. Wyden, 149 Cong. Rec. S5208 (Apr. 10, 2003)).

[41] The Commission rejects an argument made by several commenters that CAN–SPAM establishes that messages with *any* transactional or relationship content are necessarily "transactional or relationship messages." *See, e.g.*, NFCU; Verizon; ACLI; SIIA. The view espoused by these commenters is not supported by CAN–SPAM's "transactional or relationship" definition, which indicates that a message is "transactional or relationship" only if *the primary purpose* of the message is "transactional or relationship." 15 U.S.C. 7702(17)(A) (Emphasis supplied).

[42] Without this requirement, some senders might be tempted to use dual-purpose messages that begin with commercial content and close with transactional or relationship content as a means of taking advantage of their business relationship with a recipient to send commercial messages that do not comply with CAN–SPAM.

[43] *See* 15 U.S.C. 7701 (Congressional findings and policy of the CAN–SPAM Act).

[44] *See* Deception Statement.

[45] Deception Statement at 181, citing and quoting *FTC* v. *Sterling Drug*, 317 F.2d 669, 674 (2nd Cir. 1963).

[46] Deception Statement at 181, citing and quoting *FTC* v. *American Home Products*, 695 F.2d 681, 688 (3rd Cir. 1982).

determine whether a dual-purpose email message is commercial when it contains both commercial content and content that is neither commercial nor transactional/relationship. The Commission believes this approach would provide guidance to email marketers while preventing spammers from evading CAN–SPAM by adding noncommercial content to an email sales pitch.

This proposed criterion is rooted firmly in traditional Commission legal analysis. Marketers have long been under an obligation to evaluate their advertising material from the reasonable consumer's perspective and determine what impression their material makes on consumers.[47]

In enforcing CAN–SPAM and the primary purpose criteria, the Commission will approach the issue of whether the body of an email message, taken as a whole, is primarily commercial in the same way it approaches the issue of whether certain claims are made in a challenged advertisement. "In cases of implied claims, the Commission will often be able to determine meaning through an examination of the representation itself, including an evaluation of such factors as the entire document, the juxtaposition of various phrases in the document, the nature of the claim, and the nature of the transactions." [48] In other situations, extrinsic evidence—such as expert opinion, consumer testimony, copy tests, surveys, or any other reliable evidence of consumer interpretation—may be necessary to make this determination.[49] In all instances, the Commission will carefully consider any extrinsic evidence that is introduced.[50]

2. Overview of "Primary Purpose" Comments

In response to the ANPR, the Commission received approximately 220 comments addressing "primary purpose" issues. Many individual consumers opined that a message has a commercial primary purpose if it contains *any* commercial content. Other consumers expressed the view that CAN–SPAM should regulate only unsolicited messages and should not apply to messages sent with the recipient's consent or where there is an established business relationship between the sender and the recipient.

Many commenters noted that criteria based upon the "importance" of a message's commercial content relative to any noncommercial content would not, on their own, provide adequate guidance.[51] According to these commenters, such criteria would need additional substance and structure to provide industry with the guidance it needs to comply with the Act's requirements. Many of these commenters—particularly email marketers—advocated criteria based on the sender's intent.

Other commenters supported criteria based on the "net impression" of a message, which was a possible approach suggested in the questions included in the ANPR. Under this approach, the primary purpose of an email message would be determined by assessing the message from the recipient's point of view, not the sender's. Many of these comments endorsed the "net impression" elements suggested in the ANPR—chiefly, placement and prominence of commercial content within the message. A number of comments also proposed that if a message's subject line refers to a promotion or advertisement, then the message likely has a commercial primary purpose. Each of these proposals is discussed below.

3. Commenters' Suggestions Not Adopted as Part of the Commission's Proposed Standard for Determining the "Primary Purpose" of an Email Message

In addition to suggesting several possible approaches to determine the "primary purpose" of an email message, the ANPR sought to elicit alternatives. The commenters responded with approximately 25 proposals. Some commenters were concerned primarily with advocating an objective standard for determining an email message's primary purpose. A second group advocated the sender's intent as the characteristic that determines an email's primary purpose. A third group focused on certain attributes that, in their view, rendered messages possessing them commercial. A fourth group discussed characteristics that, in their view, placed messages exhibiting those characteristics outside the commercial category.[52] The following sections discuss each of these groups.

*a. Comments Discussing Use of an "Objective Standard" as a "Primary Purpose" Criterion*

Many comments from industry members criticized some or all of the "primary purpose" standards suggested in the ANPR questions.[53] A common thread throughout these critiques was that any "subjective" standard would provide inadequate guidance to industry members who need to determine (1) whether CAN–SPAM applies to their messages, and, if so, (2) whether their messages comply with the law.[54] These commenters recommended that the Commission adopt some form of "objective" test for determining the primary purpose of a message.[55]

Many advocates of an objective standard supported a "proportion of content" standard. Under such a proposal, a message would have a commercial primary purpose if its commercial content comprised, for example, at least 25%,[56] 33⅓%,[57] or

[47] The "reasonable consumer" standard focuses on the ordinary or average consumer, not any particular consumer. Deception Statement at 178. If a particular act or practice is directed to a particular audience, then the Commission assesses the overall sophistication and understanding of that particular group in determining the reaction of the "reasonable consumer." *Id.* at 178, 180. For a more detailed explanation of the "reasonable consumer" standard, *see* Deception Statement at 176–87.

[48] *Cliffdale* at 176.

[49] *Id.*

[50] *Id.*

[51] The ANPR suggested three possible approaches, based respectively on whether the commercial purpose was (1) "more important than all of the email's other purposes combined;" (2) "more important than any other single purpose of the email, but not necessarily more important than all other purposes combined;" or (3) "more than incidental." The ANPR also identified three other approaches that might be used to determine "the primary purpose" of an email: (1) A "net impression" analysis; (2) a "financial support" analysis; and (3) a "sender" analysis. The ANPR also asked whether there were "other ways to determine whether a commercial advertisement or promotion in an email is the primary purpose of the email." 69 FR at 11779–80.

[52] A few commenters proposed standards for determining when an email is "spam," such as: sending a message in bulk; including a tracking device in a message; "spoofing" identifying information in a message; or committing an aggravated violation when sending a message. *See, e.g.*, Bighorse; Sewing; Gitzendanner; Emmers; Just. The Commission appreciates that some commenters respond negatively to messages with these characteristics, but the proposals they advanced are too narrow as criteria and probably unworkable to determine the primary purpose of an email message. Additionally, a few commenters argued that a message is commercial if it is not "transactional" or personal, or if the message begins with an opt-out mechanism. *See* RealTime; Practice; BestPrac; Hawkins. Other commenters suggested that a message should be considered "commercial" only if it refers to an offer for a specific product or service. *See* MCI. *Cf.* Reed. The Commission does not believe that these proposals adequately reflect Congressional intent or provide the most useful guidance in establishing criteria to determine a message's primary purpose. Finally, two consumers argued that the government should not regulate email marketing. *See* Quinn; Ewing. Nevertheless, in CAN–SPAM, Congress has determined that commercial email is subject to regulation.

[53] Several consumers also supported this view. *See* Lunde; Ord; Mead; Marzuola. These suggested standards and commenters' criticisms are discussed in more detail below.

[54] *See, e.g.*, MBNA; MasterCard; Nextel; SIA.

[55] *See, e.g.*, DMA.

[56] Mead; Goth.

[57] MPAA (proposing a safe harbor under which a message will not have a commercial primary purpose if its commercial content "constitutes no

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51% [58] of the message's total content. Supporters of these "percentage" proposals claimed that a quantitative standard had the advantage of providing a clear standard while preserving marketers' flexibility in message design.[59]

On the other hand, a number of commenters criticized such a "proportion" standard as unworkable. AeA wrote that "[d]etermining whether a message is a commercial promotion or not based on pre-set proportions is not a viable alternative, because setting a formula * * * would be arbitrary and unreliable." AeA noted that, with respect to messages with both commercial and transactional content—*e.g.*, "account balance information"—a "proportion" standard could yield different results depending on whether or not a recipient's account reflected a lot of activity.[60] Presumably, this is because the amount of space in a message occupied by transactional content would increase as account activity increased. If so, a message reflecting a lot of account activity could be considered transactional and a message reflecting little account activity could be considered commercial even if both messages contained the same amount of commercial content. IAC opposed a bright-line test which would "likely be easy for those intent on violating the statute to exploit and circumvent." [61]

The Commission declines to adopt a rigidly mechanical "proportion" standard for determining the primary purpose of a message. A standard that, for example, counts the lines of commercial versus noncommercial content is not responsive to the countless ways to market products and services via email. Such an approach would likely miss entirely the nuances that characterize any communication, including email. Moreover, as one commenter noted, a percentage-based standard is inadequate when non-commercial content is presented as text and commercial content is in the form of a Web site URL.[62] As IAC noted, such a standard could be easily sidestepped by email marketers seeking to evade CAN–SPAM. The Commission is particularly persuaded by this critique.

As was explained above, the Commission's proposed criteria distinguish between messages that package commercial content with transactional or relationship content and those that package commercial content with some other type of content. The Commission believes that senders of the former category of dual-purpose message are far less likely to attempt to evade CAN–SPAM. Moreover, messages in the former category provide content that Congress has legislatively determined to be particularly important to recipients.[63] The Commission's proposed "primary purpose" criteria for these messages would require them to provide transactional or relationship content at or near the beginning of the message in order to qualify as "transactional or relationship" rather than commercial.

IAC's cautionary comment, however, supports the Commission's view that messages that contain both commercial content and content that is neither commercial nor transactional/relationship merit a different standard. Such messages may or may not deliver content that is important to recipients; Congress has made no legislative determination on this issue. Therefore, the proposed criterion does not rely entirely on placement of the noncommercial content, although placement is one element to consider in determining the net impression. The Commission's proposed criteria with respect to these messages looks to the net impression created by the message.

*b. Comments Discussing a "Primary Purpose" Criterion Based on Sender's Intent, Such as a "But For" Standard*

As a whole, industry members expressed greatest support for a "primary purpose" standard based on the sender's intent. Most of these commenters framed this proposal as a "but for" test, under which a message would not be considered "commercial" if it would have been sent in any event because of its noncommercial content. These comments framed the "but for" test in several ways, such as asking whether a message would have been sent but for its commercial purpose [64] or its non-commercial purpose.[65] Other comments refined the standard and stated that the relevant question is whether a message would have been sent but for *particular* commercial content [66] or *any* commercial content.[67]

Several other commenters proposed that the sender's intent should be part of a "net impression" approach to determining a message's primary purpose.

Several commenters argued that Congress's use of the phrase "primary purpose" evidences its "clear intent to establish a standard which evaluates the status of the email based on the sender's objective and motivation." [68] The Commission is not persuaded by this argument. CAN–SPAM refers to the primary purpose of the *message*, not of the sender. While one way to determine a message's purpose could be to assess the sender's intent, a more appropriate way is to look at the message from the recipient's perspective.[69] Several commenters made this point. One urged the Commission "to refrain from adopting any 'primary purpose' test that seeks to prioritize the subjective motivations of email senders." [70]

Based largely on the analytical approach the Commission takes with respect to advertising—which looks at claims in marketing material from the consumer's perspective rather than the marketer's [71]—the Commission declines, at this time, to adopt an approach that instead considers the advertiser's intent. Nevertheless, as is discussed in more detail below, the Commission recognizes that some spammers could attempt to evade CAN–SPAM by deceptively portraying commercial content as noncommercial content.[72]

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more than 33⅓%" of the message's overall content, which MPAA claims is consistent with consumer expectations). *See also* Marzuola.

[58] Go Daddy; Nextel; MBNA.

[59] *See, e.g.*, MPAA, whose "percentage" proposal would measure the amount of email "space" or "volume" dedicated to commercial content.

[60] AeA instead favored a "net impression" test using the sender's intent as the perspective.

[61] IAC instead favored a standard that considered the sender's intent, a reasonable consumer's perception, and the subject line.

[62] Danko.

[63] *See* statement from Sen. Wyden cited above.

[64] *See, e.g.*, DMA; PMA; Visa.

[65] CBA; SIA; Wells Fargo.

[66] ERA; MBNA; USCC.

[67] NAR.

[68] PMA. *See also* Coalition; ERA; AT&T; ICC.

[69] It is well-settled that the Commission need not show intent to prove a violation of § 5 of the FTC Act. *See, e.g., FTC* v. *Publishing Clearing House, Inc.*, 104 F.3d 1168 (9th Cir. 1997); *In re National Credit Management Group, LLC*, 21 F. Supp. 2d 424 (D.N.J. 1998); *FTC* v. *Patriot Alcohol Testers, Inc.*, 795 F. Supp. 851 (D. Mass. 1992); *FTC* v. *Affordable Media, LLC*, 1999 U.S. App LEXIS 13130, 1999–1 Trade Cas. (CCH) ¶ 72,547 (11th Cir. Jun. 15, 1999). Consistent with that principle, the Commission does not believe that, generally, the sender's intent would serve as a workable indicator of an email message's primary purpose. Nevertheless, the Commission discusses below the possibility that spammers may be tempted to use a "deceptive format" to trick recipients into thinking that an email message does not have a commercial primary purpose. In that discussion, the Commission asks whether the sender's intent should be added to the proposed "primary purpose" criteria to establish clearly that spammers may not evade CAN–SPAM in this manner.

[70] Cox. *See also* Microsoft; NetCoalition.

[71] *See generally* Deception Statement.

[72] Spammers could claim that such messages do not have a commercial primary purpose under the Commission's proposed criteria if, due to a sender's use of a deceptive advertising format, a recipient reasonably interpreting the body of the message would not likely conclude that the primary purpose of the message is to advertise or promote a product or service. *See* the "net impression" discussion below, including note 99, for the Commission's conclusion that such messages may still be deemed to have a commercial primary purpose under the Commission's proposed criteria.

The Commission requests comment and information on whether it should consider the sender's intent to advertise or promote a product or service within the criteria for determining the primary purpose of email messages that contain both commercial content and content that is neither commercial nor transactional/relationship.

*c. Commenters' Proposals for Determining When a Message Has a Commercial Primary Purpose*

Several commenters supported a standard that treated any unsolicited message (not sent with the recipient's consent) as commercial.[73] The regulatory scheme incorporated into the CAN–SPAM Act, however, obviates such an approach. The Act defines "affirmative consent" and describes how "consent" affects CAN–SPAM compliance.[74] It is clear from the Act that Congress did not intend for the primary purpose of an e-mail message to be determined based on whether a message was unsolicited. The Commission's proposed Rule is consistent with the Act's treatment of "consent."

Another proposal widely supported by consumers was to treat the primary purpose of an e-mail message as commercial if the message contains *any* commercial content.[75] CAN–SPAM specifies, however, that a "commercial electronic mail message" is a message "*the primary purpose* of which is the commercial advertisement or promotion of a product or service. * * *"[76] (Emphasis supplied.) That language establishes that mere inclusion of any commercial content is not enough by itself to bring an e-mail message within the ambit of the Act's coverage. Therefore, the Commission declines to adopt this proposed standard.

At the opposite extreme, some commenters urged that a message can be deemed to have a commercial primary purpose only if it contains *nothing but* commercial content.[77] EFF argued that "when the ad or promotional aspects of the message are inextricably intertwined with noncommercial aspects, then the message is noncommercial for purposes of First Amendment analysis," and therefore likely beyond the reach of CAN–SPAM's requirements and prohibitions.[78] EFF criticized the standards posited in the ANPR that were based on the "importance" of commercial content and on the "net impression." Cox's extensive comment developed the analysis more fully. Cox discussed the potential First Amendment implications of the "primary purpose" rule on the company's web sites that offer consumers the opportunity to register online to receive a variety of free content and information services, such as electronic newsletters and weather alerts. Cox argued that:

> [t]o avoid encroaching on core constitutionally-protected expression, Cox urges the Commission to refrain from adopting any "primary purpose" test that seeks to prioritize the subjective motivations of e-mail senders. Instead, the FTC should clarify that the "primary purpose" of an e-mail message that contains *substantial* editorial content is to convey constitutionally-protected speech—regardless of whether the message is supported by advertising. As discussed below, such an objective test is consistent with the intent of Congress and would harmonize the CAN–SPAM Act with the requirements of the First Amendment. (Emphasis supplied.)

The Commission believes that the proposed "primary purpose" standard achieves the goal that Cox espouses, and avoids the constitutional problems that prompt Cox's cautionary comments. The Commission is mindful of First Amendment limitations, but believes that the law is clear that commercial content generally may be regulated without violating the First Amendment.[79]

Under the "primary purpose" standard, an electronic newsletter that combines editorial or informational content and advertising would be governed by the proposed criteria for dual-purpose messages. If the newsletter satisfies any element of the "transactional or relationship message definition—for example, if the newsletter constitutes "deliver[y of] goods or services * * * that the recipient is entitled to receive under the terms of a transaction that the recipient has previously agreed to enter into with the sender"[80]—then it would not be considered to have a commercial primary purpose unless (1) a recipient reasonably interpreting the subject line of the message would likely conclude that the message advertises or promotes a product or service, or (2) the transactional or relationship content does *not* appear at or near the beginning of the message.

If the newsletter does not satisfy any element of the "transactional or relationship message" definition—for example, a message combining unrequested informational and commercial content—then it would not be considered to have a commercial primary purpose unless (1) a recipient reasonably interpreting the subject line of the message would likely conclude that the message advertises or promotes a product or service, or (2) a recipient reasonably interpreting the body of the message would likely conclude that the primary purpose of the message is to advertise or promote a product or service.[81] In the case of a *bona fide* electronic newsletter, application of this analysis is likely to result in the conclusion that the message does not have a primary purpose that is commercial.

Articulating a concern noted by other commenters,[82] Cox opined that the Commission should adopt a standard "that retains enough flexibility to allow for 'common sense' judgments" necessary to ensure that unscrupulous 'spammers' cannot sidestep CAN–SPAM through the ruse of *faux* newsletters. As Cox put it, spammers should not be able to:

> immunize commercial messages from the requirements of the CAN–SPAM Act merely by including an incidental reference to a public issue or an editorial comment in a commercial sales solicitation. Thus, for example, spammers using commercial email messages to advertise discounts on generic Viagra tablets could not avoid the Act's requirements simply by larding their solicitations with an appeal for expanded Medicare prescription drug benefits.

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[73] *See* Teevan; Smith; Lane; ClickZ; Lenox.

[74] Under CAN–SPAM, commercial messages sent based on the recipient's "affirmative consent" need not provide the "clear and conspicuous identification that the message is an advertisement or solicitation" required by § 7704(a)(5)(A)(i); and a recipient's affirmative consent provided subsequent to an opt-out request overrides that previous request. 15 U.S.C. 7704(a)(5)(A)(i), 7704(a)(4)(B).

[75] *See, e.g.*, Dobo-Hoffman ("If ANYONE is going to potentially generate income in any way, the email is commercial."); DeHotman ("Any language which could be interpereted [sic] as an inducement to buy, sell, or support an action or position should be considered commercial.").

[76] *See* 15 U.S.C. 7702(2)(A).

[77] *See* EFF; Cox; Davis; Anderson; Lykins. *See also* M&F; SIA; Wells Fargo; CBA; Cox; MCI; MPAA; Hekimian-Williams (arguing that electronic newsletters should not be regulated by CAN–SPAM as commercial messages).

[78] *See also* MPAA; OPA; Courthouse (arguing that the First Amendment prohibits the Commission from treating messages with editorial content as commercial speech, even if such content is supported by advertising).

[79] *See, e.g., Central Hudson Gas & Electric Corp* v. *Public Service Comm'n. of N.Y.*, 447 U.S. 557 (1980).

[80] 15 U.S.C. 7702(17)(A)(v).

[81] As is explained above, factors illustrative of those relevant to this interpretation include the placement of content advertising or promoting a product or service at or near the beginning of the body of the message; the proportion of the message dedicated to such content; and how color, graphics, type size, and style are used to highlight commercial content.

[82] *See, e.g.*, ABM; CASRO.

Again, the Commission's proposed "primary purpose" criteria should provide the requisite flexibility that Cox advocates. The Commission seeks comment on how email messages with both commercial and noncommercial content should be treated.

*d. Commenters' Proposals for Determining When a Message Does NOT Have a Commercial Primary Purpose*

A significant number of comments, especially from industry members, proposed a number of criteria that would establish when a message is *not* commercial. Many of these comments urged that certain categories of messages should be exempted from the Act's "commercial electronic mail message" definition.

*Messages From Nonprofit Entities*—One category of messages that commenters recommended should *not* be treated as "commercial" under the Act are those sent by nonprofit entities. The nature and subject of email messages from nonprofit entities encompass a wide range, and the treatment of such messages under the Act elicited a variety of opinions. Some consumers argued for a broad interpretation of "commercial" that would extend the term to nonprofit entities.[83] NAA espoused a similar position: "[A] not-for-profit university advertising grandfather clocks to alumni probably is sending a commercial advertisement that should be covered by the regulations, regardless of the sender's not for profit status." [84]

Nonprofit commenters took the opposite position. Some argued for a broad exemption, asserting that messages from nonprofit entities either should not be regulated at all, or should be treated as "transactional or relationship messages." [85] Other nonprofit entities argued for a narrower exemption, which would be limited to messages "primarily related to one or more of the organization's duly authorized tax exempt nonprofit purposes." [86] A third set of nonprofit entities urged that messages between a nonprofit entity and its members should not be regulated as commercial,[87] arguing for a nonprofit-based exemption that would apply to messages sent to both current and former members.[88]

As a preliminary matter, the Commission notes that, under the FTC Act, the Commission does not have jurisdiction over entities that do not operate for their own profit or the profit of their members.[89] Nevertheless, this limit on the FTC's jurisdiction does not exclude these entities totally from the ambit of CAN–SPAM. States and providers of Internet access service have a right of action under the Act. Thus, if a nonprofit organization were to send messages that could be deemed to have a primary purpose that is commercial, conceivably the organization could face the necessity of defending against an action brought by a state or provider of Internet access service based on the failure to abide by the requirements and prohibitions of CAN–SPAM. While such a scenario may seem unlikely, it could possibly arise.

At least one nonprofit argued that § 7701 of the Act—setting out Congressional findings and policy—reveals an intent to leave nonprofit entities unregulated. These commenters, however, are unable to point to any statement in § 7701 of CAN–SPAM (or, indeed, in any other provision) expressly exempting nonprofit organizations from coverage.

Some nonprofit entities argued that the multiple references to the word "commercial" in the definition of "commercial electronic mail message" reflect an intent to distinguish between for-profit and nonprofit messages.[90] The Commission is not persuaded by this argument. CAN–SPAM does not set up a dichotomy between "commercial" and "nonprofit" messages. Rather, it focuses on messages whose primary purpose is to *sell* something, as distinguished from "transactional or relationship messages," informational and editorial messages, and (relevant to nonprofit entities) messages seeking a charitable contribution.

Under the Commission's proposed "primary purpose" criteria, it seems likely that only nonprofit entities' messages whose strongest, most prominent content advertises or promotes a product or service—*i.e.*, seeks to induce a purchase of goods or services—would be deemed to have a commercial primary purpose and therefore be covered by the Act. On the issue of messages between a nonprofit entity and its members, it is possible—or even likely—that such messages are "transactional or relationship messages" under § 7702(17)(A)(v), depending on the facts of a particular membership. Even if such messages also include commercial content, they will not have a commercial primary purpose unless (1) a recipient reasonably interpreting the subject line of the message would likely conclude that the message advertises or promotes a product or service, or (2) the transactional or relationship content does not appear at or near the beginning of the message. Consistent with CAN–SPAM, the proposed "primary purpose" criteria apply to all email messages with commercial content, regardless of whether sent by a nonprofit entity or a for-profit entity.

*Arguments Advanced to Treat Other Types of Messages As Not Having a Primary Purpose That Is Commercial*—Some businesses sought an exemption from CAN–SPAM for specialized messages sent in a narrow set of circumstances. For example, BMI argued that the primary purpose of its "commercial email message[s] to enforce bona fide copyright rights of its affiliates" is not commercial even if the messages also promote a music licensing service.[91] The Commission believes that specific criteria addressing narrow categories of messages like BMI's would create an unwieldy standard.[92] Moreover, such an approach is unnecessary in light of the criteria proposed by the Commission, which apply the same test to all email messages. A message containing commercial content as well as content that is neither commercial nor transactional/relationship has a commercial primary purpose if a recipient reasonably interpreting the subject line of the message would likely conclude that the message advertises or promotes a product or service, or a recipient reasonably interpreting the body of the message would likely conclude that the primary purpose of the message is to advertise or promote a product or service.[93] One main advantage of the Commission's proposed "primary purpose" criteria is that they work well with respect to all

[83] *See* K. Krueger; Sawyer.

[84] NAA.

[85] *See* NADA; KSU.

[86] ASAE. *See also* IAAMC; AWWA; ABA; PMA; ASTC; Bankers.

[87] *See* NSBA; AVHA; NTA; PAR.

[88] *See, e.g.*, NTA.

[89] 15 U.S.C. 44. For purposes of this discussion, the term "nonprofit entities" refers to entities that do not operate for their own profit or that of their members.

[90] *See* NSBA.

[91] BMI.

[92] Similarly, the Commission rejects the proposal that the Act exempt business-to-business messages. *See* MMS; DSA. The comments did not present a persuasive reason to treat messages to businesses differently from messages to consumers. The Congressional findings in § 7701(a) of the Act clearly evidence Congress's concern with the economic injury to businesses caused by unsolicited emails. *See, e.g.*, 15 U.S.C. 7701(a)(4) and (6).

[93] As is explained above, factors illustrative of those relevant to this interpretation include the placement of content advertising or promoting a product or service at or near the beginning of the body of the message; the proportion of the message dedicated to such content; and how color, graphics, type size, and style are used to highlight commercial content.

messages that may be subject to CAN–SPAM, regardless of the subject matter or the sender of the message.

*Standards Mentioned in the ANPR Questions but Not Included as Part of the Commission's Proposed Criteria—Standards Based on "Importance"*—Questions included in the ANPR to aid in eliciting comment made reference to three separate standards for determining an email's primary purpose based on the importance of the commercial content of an email message: whether the commercial content was, respectively, "more important than all of the email's other purposes combined," "more important than any other single purpose of the email, but not necessarily more important than all other purposes combined," or "more than incidental to the email."

Several commenters—mostly industry representatives—supported the first of these approaches.[94] The two other standards based on the importance of the commercial content received little support from commenters. The Commission received many more comments, especially from businesses, opposing as unhelpfully subjective all standards mentioned in the ANPR that were based on importance of the commercial content of an email message. These comments typically asserted that an objective standard would provide more useful and certain guidance for email marketers.[95]

The Commission is persuaded that an importance-based standard, without more, probably would not adequately "facilitate the determination of the primary purpose of an electronic mail message." Any such standard would likely fail to provide email marketers with specific criteria they could apply to their messages to determine with confidence whether a particular message is covered by CAN–SPAM's requirements and prohibitions. The Commission's proposed "primary purpose" standard, which consists of specific criteria, will provide the reliability marketers and other email senders need to operate under the Act.

*"Net Impression" as Determining the "Primary Purpose" of an Email Message*—Commenters from across the entire spectrum of interested parties supported the ANPR's suggestion that the primary purpose of an email message should be determined based on the "net impression" created by the message. Consumers, advertisers, email service providers, and industry associations all supported the placement, proportion, style, and subject line elements of this approach, as well as the proposed criteria's focus on the reasonable recipient.[96] The Commission's proposed criteria include a "net impression" criterion to determine whether the primary purpose of a message is commercial when the message contains both commercial content and content that is neither commercial nor transactional/relationship.[97]

As was discussed above, the Commission considers the "net impression" of an advertisement to determine if it is deceptive under § 5 of the FTC Act. Under this approach, " 'the Commission looks to the impression made by the advertisements as a whole. Without this mode of examination, the Commission would have limited recourse against crafty advertisers whose deceptive messages were conveyed by means other than, or in addition to, spoken words.' "[98] The Commission asked about the utility of the "net impression" approach as applied to CAN–SPAM because the primary purpose of an email message may not be stated expressly.

One of the Commission's concerns in the "primary purpose" rulemaking process is that spammers not be able to structure their messages to evade CAN–SPAM by placing them outside the technical definition of "commercial electronic mail message." A typical example is a hypothetical message, unrequested by the recipient, that begins with a Shakespearean sonnet (or paragraphs of random words) and concludes with a one-line link to a commercial website. The Commission believes that a recipient of such a message could reasonably conclude that the message's primary purpose is commercial.

Spammers may also try to evade CAN–SPAM by presenting the commercial content of their email messages in the guise of informational content, deliberately structuring their messages to create the mistaken impression in the minds of reasonable recipients that the messages do not have a commercial primary purpose. A spammer might try to argue that, applying the Commission's proposed criteria, CAN–SPAM does not cover such a message, because a recipient reasonably interpreting the message would not likely conclude that the primary purpose of the message is commercial. The Commission believes this strategy may tempt some spammers, although it is unclear whether email messages are as conducive to deceptive format ploys as are other media.[99] In any event, if a sender deliberately structures his message to create a false impression that the message does not have a commercial primary purpose, the message should be considered to have a commercial primary purpose under the proposed criteria. In the Commission's view, if a message's entire design is to disguise commercial content as noncommercial content, the message is commercial.[100] In this regard, the Commission seeks comment and information on whether the proposed "primary purpose" criteria should include an element expressly providing that a message may be deemed to have a commercial primary purpose if the message creates a false "net impression" that the message is noncommercial because it is deliberately structured to do so.

The Commission believes that the proposed "net impression" approach for messages that contain commercial

[94] *See* ACB; AT&T; Visa; ABM; MPAA; NEPA; NetCoalition; NADA. In addition, some consumers proposed their own standards for "primary purpose" that were akin to the FTC's importance-based standards, using phrases such as "chief emphasis" and "main focus" to describe when the commercial content of a message is its primary purpose. *See* McMichael; Narcum; Noll.

[95] *See* BMO; Grogan; Ford; MasterCard; NetCoalition; Nextel.

[96] *See, e.g.*, NCL; Cook; Swallow; Tietjens; NFCU; Microsoft; DoubleClick; Discover; Time Warner; IAC; ABM; DSA.

[97] As was explained above, the Commission's proposed criteria for messages that contain both commercial and transactional/relationship content does not employ a "net impression" approach.

[98] Deception Statement at 181, citing and quoting *American Home Products*, 695 F.2d 681, 688 (3rd Cir. 1982).

[99] In other contexts, such as direct mail marketing, the Commission has sued marketers for violating the FTC Act because they disguised their sales pitches as informational content. The Commission recently filed a complaint against A. Glenn Braswell and four of his corporations alleging, among other things, that the defendants used deceptive advertising formats (including advertising material portrayed as an independent health magazine) to market their products. *See FTC* v. *A. Glenn Braswell, et al.*, No. CV 03–3700 DT (PJWx) (C.D. Cal. filed May 27, 2004). For other deceptive format enforcement actions brought by the Commission, *see FTC* v. *Direct Mktg. Concepts, Inc.*, Civ. No. 04–11136–GAO (D. Mass. filed June 1, 2004); *Mega Sys., Int'l., Inc.*, 125 F.T.C. 973 (consent order) C–3811 (June 8, 1998); *Olsen Laboratories, Inc.*, 119 F.T.C 161 (consent order) C–3556 (Feb. 6, 1995); *Wyatt Mrktg.Corp.*, 118 F.T.C. 86 (consent order) C–3510 (July 27, 1994); *Synchronal Corp.*, 116 F.T.C. 989 (consent order) D–9251 (Oct. 1, 1993); *Nat'l. Media Corp.*, 116 F.T.C. 549 (consent order) C–3441 (June 24, 1993); *CC Pollen Co.*, 116 F.T.C. 206 (consent order) C–3418 (March 16, 1993) (consent order); *Nu-Day Enterprises, Inc.*, 115 F.T.C. 479 (consent order) C–3380 (Apr. 22, 1992); *Twin Star Productions*, 113 F.T.C. 847 (consent order) C–3307 (Oct. 2, 1990) (consent order); *JS&A Group, Inc.*, 111 F.T.C. 522 (consent order) C–3248 (Feb. 24, 1989).

[100] *See* proposed Rule § 316.3(a)(1): "If an electronic mail message contains only content that advertises or promotes a product or service, then the "primary purpose" of the message shall be deemed to be commercial."

content as well as content that is neither commercial nor transactional/relationship gives guidance to email marketers but also retains flexibility to allow the standard to reflect recipients' perceptions of the primary purpose of the messages they receive.[101]

*Standards Based on Whether Commercial Content Finances Other Aspects of an Email Message*—The ANPR also asked whether a message's commercial content financially supporting its other aspects might be useful to determine the primary purpose of the message. In requesting comment on this possible standard, the Commission noted that, in the case of an electronic newsletter funded by advertising within the newsletter, "[s]uch advertising arguably would not constitute the primary purpose of the newsletter." [102]

A small number of commenters argued that it may be proper to treat a message as commercial when commercial content funds noncommercial content.[103] Most commenters, however, were generally negative in responding to the ANPR's question regarding a standard for determining the primary purpose of an email message based upon whether noncommercial content was financially supported by commercial content.[104] Commenters criticized such a standard as, among other things, unworkable.[105] The Commission agrees that the mere fact that noncommercial content is financially supported by accompanying commercial content is not enough to decide the question of an email message's primary purpose.

Other commenters attacked this standard as contrary to legislative intent regarding CAN–SPAM's intended scope, citing comments from the floor debate that indicate intent to limit CAN–SPAM's reach to only commercial email.[106] The Commission does not dispute that CAN–SPAM, by its terms, encompasses only commercial and "transactional or relationship" email messages.[107] Nevertheless, the Commission appreciates the concern raised by Cox, ABM and CASRO that spammers could avoid regulation under the Act by adding informational content to their commercial messages. The Commission's proposed criteria with respect to messages containing commercial content as well as content that is neither commercial nor transactional/relationship provide needed flexibility to ensure that such marketers will not evade CAN–SPAM's compliance obligations.

*"Sender's Identity" as Determining the "Primary Purpose" of an Email Message*—The ANPR posed the question of whether an email sender's identity should be an element that affects the determination of the primary purpose of an email message. Relatively few commenters addressed this question. Only two consumers supported using the sender's identity to determine if an email had a commercial primary purpose.[108] Some industry commenters supported using the sender's identity, arguing that an identity test could be used to exempt nonprofit entities' messages from compliance with the Act.[109] The majority of comments opposed using the sender's identity as a way to determine "the primary purpose." [110] The Commission agrees with commenters who oppose using the sender's identity to help determine a message's primary purpose. The sender's identity is not a reliable indicator of whether the primary purpose of an email message is commercial. Any sender of email messages—regardless of its identity—may send messages that advertise or promote a product or service. The Commission believes that its proposed "primary purpose" criteria provide a more sensible approach because they focus on characteristics of the message rather than the sender.

*D. Section 316.5—Severability*

This provision, which is identical to the analogous provision included in the Sexually Explicit Labeling Rule, provides that if any portion of the Rule is found invalid, the remaining portions will survive. This provision would pertain to the entirety of the proposed Rule, not just the provisions containing the Sexually Explicit Labeling requirements.

## III. Invitation to Comment

All persons are hereby given notice of the opportunity to submit written data, views, facts, and arguments addressing the issues raised by this NPRM. Written comments must be submitted on or before Monday, September 13, 2004. Comments should refer to "CAN–SPAM Act Rulemaking, Project No. R411008" 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, CAN–SPAM Act, Post Office Box 1030, Merrifield, VA 22116–1030. Please note that courier and overnight deliveries cannot be accepted at this address. Courier and overnight deliveries should be delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

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[101] Several commenters argued that the "net impression" analysis is vague and arbitrary. *See, e.g.*, ACB; EFF; SIA; MBNA; MBA. The Commission disagrees. It is not vague because it directs marketers to clear-cut and fundamental signifiers of an email message's primary purpose: the subject line and the message's content. It is not arbitrary because it derives from the Commission's long-standing approach to the scrutiny of advertising under its deception authority. One commenter claimed that a "net impression" standard could be "potentially draconian." This commenter was concerned that a message could inadvertently have a commercial primary purpose when that was not the sender's intent. *See* Visa. Nevertheless, the Commission believes it unlikely that the proposed standard would apply in ways that would take an email marketer by surprise. The record thus far does not provide support for the argument that an email message could inadvertently be considered "commercial" in light of the fact that marketers retain control over the content of their messages' subject lines and their messages' presentation of content. A marketer who has concerns about the net impression of an email message with both commercial and noncommercial content could always copy test a planned email to determine whether the reasonable recipient would interpret it to have a primary purpose that is commercial.

[102] 69 FR at 11780.

[103] *See* ABM; CASRO. These commenters seemed most concerned with preventing a marketer from evading CAN–SPAM by adding minimal noncommercial content, or by masking commercial content as noncommercial information content. The Commission believes the proposed "primary purpose" criteria would prevent such illegitimate conduct from being successful.

[104] *See, e.g.*, DMA; Cox; MasterCard; Nextel; CFC.

[105] *See* Nextel; Experian; NetCoalition.

[106] NEPA; Cox. "Specifically, the [CAN–SPAM] legislation concerns only commercial and sexually explicit email and is not intended to intrude on the burgeoning use of email to communicate for political, news, personal and charitable purposes." Rep. Sensenbrenner's comments are available at *149 Cong. Rec. H12186, H12193* (Nov. 21, 2003). The text of the Act is in accord with this statement; the Act focuses on "commercial" email messages—messages the primary purpose of which is the advertisement or promotion of a product or service. The Act's limited regulation of "transactional or relationship" messages—see note 27 above for this definition—only prohibits use of false or misleading header information. Thus, emails that are not commercial, and are not sent pursuant to a designated transaction or a relationship between the sender and the recipient—*e.g.*, messages that do no more than solicit charitable contributions, or promulgate political or other non-commercial content—are not regulated under CAN–SPAM.

[107] SIIA's comment noted that the FTC stated at a Congressional hearing on spam that legislation should distinguish emails consisting of newspaper articles and advertising from messages that most consumers would consider "spam." SIIA. The comments of BCP Bureau Director, Howard J. Beales, III, are available at *http://energycommerce.house.gov/108/action/108–35.pdf* (July 9, 2003).

[108] *See* R. Fowler; Sachau.

[109] *See* IS; ABA. The Commission's views on how its proposed "primary purpose" standard would apply to email messages sent by or on behalf of nonprofit entities are discussed above.

[110] *See* Microsoft; NetCoalition; MasterCard. Nextel asserted that an identity test would violate the First Amendment. Other commenters argued that it would be an unreliable criterion because many for-profit businesses send email for noncommercial purposes. *See* NAA; SIIA.

Comments containing confidential material must be filed in paper form, and the first page of the document must be clearly labeled "Confidential."[111]

To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the *https://secure.commentworks.com/ftc-canspam/* weblink. You may also visit *http://www.regulations.gov* to read this proposed Rule, and may file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.

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

## IV. Communications by Outside Parties to Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record. *See* 16 CFR 1.26(b)(5).

## V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) ("PRA"), the Commission has reviewed the proposed Rule. The proposed Rule does not impose any recordkeeping, reporting, or disclosure requirements or otherwise constitute a "collection of information" as it is defined in the regulations implementing the PRA. *See* 5 CFR 1320.3(c).

[111] 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).

## VI. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–612, requires an agency to provide an Initial Regulatory Flexibility Analysis ("IRFA") with a proposed rule and a Final Regulatory Flexibility Analysis ("FRFA") with the final rule, if any, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603–605.

The Commission requested comment in the ANPR regarding whether CAN–SPAM regulations would have a significant economic impact on a substantial number of small entities. Although the Commission received very few responsive comments, the Commission has determined that it is appropriate to publish an IRFA in order to inquire into the impact of the proposed Rule on small entities. Therefore, the Commission has prepared the following analysis.

### *A. Reasons for the Proposed Rule*

The proposed Rule was created pursuant to the Commission's mandate under the CAN–SPAM Act, 15 U.S.C. 7701 *et seq*. The Act seeks to ensure that senders of commercial email not mislead recipients as to the source or content of such messages, and to ensure that recipients of commercial email have a right to decline to receive additional commercial email from a particular source. Specifically, Section 7702(c) of the Act requires the Commission to issue regulations defining the relevant criteria to facilitate the determination of the primary purpose of an electronic mail message.

### *B. Statement of Objectives and Legal Basis*

The objective of the proposed Rule is to implement the CAN–SPAM Act, 15 U.S.C. § 7701 *et seq*. Specifically, the proposed Rule sets forth the criteria by which the primary purpose of an email message can be ascertained. The legal basis for the proposed Rule is the CAN–SPAM Act, 15 U.S.C. § 7701 *et seq*.[112]

### *C. Description of Small Entities to Which the Proposed Rule Will Apply*

The proposed CAN–SPAM Rule, which incorporates by reference many of the CAN–SPAM Act's definitions, applies to "senders" of "commercial electronic mail messages" and, to a lesser extent, to "senders" of "transactional or relationship messages."[113] Under the Act, and the proposed Rule, a "sender" is "a person who initiates [a commercial electronic mail message] and whose product, service, or Internet web site is advertised or promoted by the message."[114] To "initiate" a message, one must "originate or transmit such message or * * * procure the origination or transmission of such message."[115] The Act does not consider "routine conveyance" (defined as "the transmission, routing, relaying, handling, or storing through an automatic technical process, of an electronic mail message for which another person has identified the recipients or provided the recipient addresses") to be initiation.[116]

Any company, regardless of industry or size, that sends commercial email messages or transactional or relationship messages would be subject to the proposed Rule. This would include entities that use email to advertise or promote their goods, services, or websites, as well as entities that originate or transmit such messages. Therefore, numerous small entities across almost every industry could potentially be subject to the proposed Rule. For the majority of entities subject to the proposed Rule, a small business is defined by the Small Business Administration as one whose average annual receipts do not exceed $6 million or which has fewer than 500 employees.[117]

Although it is impossible to identify every industry that sends commercial email messages or transactional or relationship messages, some surveys suggest that an ever-increasing number are using the Internet. A recent Harris Interactive poll, for example, found that about 70 percent of small businesses have an online presence or plan to have one by 2005.[118] A 2001 study by the National Federation of Independent Business found that, at that time, 57 percent of all small employers used the

[112] Specifically, the authority for the mandatory rulemaking "defining the relevant criteria to facilitate the determination of the primary purpose of an electronic mail message" is 15 U.S.C. 7702(2)(c).

[113] One provision, § 7704(a)(1), which prohibits false or misleading transmission information, applies equally to "commercial electronic mail messages" and "transactional or relationship messages;" otherwise, CAN–SPAM's prohibitions and requirements cover only "commercial electronic mail messages."

[114] 15 U.S.C. 7702(16)(A); Proposed Rule § 316.2(n).

[115] 15 U.S.C. 7702(9).

[116] 15 U.S.C. 7702(9) and (15).

[117] These numbers represent the size standards for most retail and service industries ($6 million total receipts) and manufacturing industries (500 employees). A list of the SBA's size standards for all industries can be found at <*http://www.sba.gov/size/summary-whatis.html*>.

[118] *See* <*http://www.ecommercetimes.com/story/35004.htm*>.

Internet for business-related activities.[119] While these statistics do not quantify the number of small businesses that send commercial email messages or transactional or relationship messages, they suggest that many small businesses are using the Internet in some capacity. The Commission is aware of at least one survey, conducted by a web hosting provider, Interland, that suggests that 85 percent of small businesses surveyed communicate with existing customers via email, and 67 percent of those small businesses communicate with potential buyers via email.[120]

Given the paucity of data concerning the number of small businesses that send commercial email messages or transactional or relationship messages, it is not possible to determine precisely how many small businesses would be subject to the proposed Rule. Accordingly, the Commission believes that a precise estimate of the number of small entities subject to the proposed Rule is not currently feasible, and specifically requests information or comment on this issue.

*D. Projected Reporting, Recordkeeping, and Other Compliance Requirements*

The proposed Rule would not impose any specific reporting, recordkeeping, or disclosure requirements within the meaning of the Paperwork Reduction Act. The CAN–SPAM Act establishes a comprehensive regulatory scheme for commercial and transactional or relationship email messages, and is enforceable by the FTC as though it were an FTC Rule. The proposed Rule sets forth the criteria by which the primary purpose of an email message would be ascertained. The proposed Rule does not impose substantive compliance obligations.

In any event, as explained further below, after considering various alternatives, the Commission has determined to propose criteria designed to enable regulated entities to determine as clearly and objectively as possible when "the primary purpose" of an email message is commercial and subject to CAN–SPAM. Such criteria, in the Commission's view, should help reduce any interpretive uncertainty that could potentially contribute to compliance costs, and ensure that the scope of the proposed Rule will not sweep any more broadly than reasonably necessary to carry out the purpose and intent of the CAN–SPAM Act. The Commission invites comment and information on the proposed "primary purpose" criteria, including ways, if any, that the Commission might further minimize their possible scope and impact while still satisfying the Act's mandate.

*E. Identification of Other Duplicative, Overlapping, or Conflicting Federal Rules*

The FTC has not identified any other federal statutes, rules, or policies that would conflict with the proposed Rule's provisions, which, as noted above, set forth the criteria by which the primary purpose of an email message can be ascertained. The FTC seeks comment and information about any statutes or rules that may conflict with the proposed requirements, as well as any other state, local, or industry rules or policies that may overlap or conflict with the requirements of the proposed Rule.

*F. Discussion of Significant Alternatives*

As discussed above, the CAN–SPAM Act primarily seeks to ensure that senders of commercial email not mislead recipients as to the source or content of such messages, and to ensure that recipients of commercial email have a right to decline to receive additional commercial email from a particular source. The Act, not the proposed Rule, imposes these obligations. The Commission nonetheless has considered and is proposing to adopt a provision setting out criteria to facilitate the determination of when an email message has a commercial primary purpose. Although the proposed criteria do not impose any compliance burden, they should help avoid legal or other costs that could otherwise result from uncertainty, if any, about what the proposed Rule covers or requires.

As noted in its ANPR, the Commission also considered other criteria for determining when the primary purpose of an email message is commercial, including, for example, the identity of the sender, the use of commercial content to fund noncommercial content, and various approaches based on the relative importance of the commercial content (*i.e.*, more important than all other purposes combined, more important than any other single purpose, or more than incidental). As noted earlier, the Commission has instead determined to propose criteria that it believes will be clearer, more objective, and easier to interpret and apply. This should help ease compliance burdens by avoiding interpretive uncertainty and by ensuring that the Rule extends no further than reasonably necessary to implement the purpose and intent of the CAN–SPAM Act. The Commission nonetheless seeks comment on any significant alternatives that should be further considered in order to minimize CAN–SPAM's impact on entities under the Rule, including small entities.

## VII. Questions for Comment on the Proposed Rule

The Commission seeks comment on various aspects of the proposed Rule. Without limiting the scope of issues on which it seeks comment, the Commission is particularly interested in receiving comments on the questions that follow. In responding to these questions, include detailed, factual supporting information whenever possible.

*A. General Questions for Comment*

Please provide comment, including relevant data, statistics, or any other evidence, on each proposed change to the Rule. Regarding each proposed provision commented on, please include answers to the following questions:

1. What is the effect (including any benefits and costs), if any, on consumers?

2. What is the impact (including any benefits and costs), if any, on individual firms that must comply with the Rule?

3. What is the impact (including any benefits and costs), if any, on industry?

4. What changes, if any, should be made to the proposed Rule to minimize any cost to industry or consumers?

5. How would each suggested change affect the benefits that might be provided by the proposed Rule to consumers or industry?

6. How would the proposed Rule affect small business entities with respect to costs, profitability, competitiveness, and employment?

*B. Questions on Proposed Specific Provisions*

In response to each of the following questions, please provide: (1) Detailed comment, including data, statistics, and other evidence, regarding the problem referred to in the question; (2) comment as to whether the proposed changes do or do not provide an adequate solution to the problems they were intended to address, and why; and (3) suggestions for additional changes that might better maximize consumer protections or minimize the burden on industry.

[119] *See <http://www.nfib.com/object/2937298.html>.*

[120] *See* Electronic Commerce News, Mar. 15, 2004, "Gearing Up for Next Front In the War on Spam." SBA also cited studies that show that 83 percent of small businesses use email."

1. Section 316.1—Scope

Does the proposed section appropriately describe the scope of the CAN–SPAM rules? If not, how should it be modified?

2. Section 316.3—Primary Purpose

a. Does the Commission's "primary purpose" standard provide sufficient guidance as to when a message will be considered "commercial" under the CAN–SPAM Act? When a message will be considered "transactional or relationship"? Why or why not? What "primary purpose" standard would provide better guidance?

b. Does the Commission's "primary purpose" standard fail to cover any types of messages that should be treated as commercial messages under the Act? If so, what types of messages are not covered? Does the standard cover any types of messages that should not be treated as commercial? If so, what types of messages are covered? Is there some other "primary purpose" standard that would provide more appropriate coverage, and if so, what is it?

c. The Commission's proposed criteria identify three categories of email messages that contain commercial content: those that contain only commercial content; those that contain both commercial content and transactional/relationship content; and those that contain both commercial content and content that is neither commercial nor transactional/relationship. The Commission's approach proposes different criteria for each category of email messages. Is this approach useful for determining the primary purpose of email messages? Why or why not? Should the Commission use a single set of criteria for all email messages? Why or why not?

d. Does the proposed approach to email messages containing only commercial content provide criteria to facilitate the determination of the primary purpose of an email message? Why or why not? Would a different approach better accomplish this goal? Why or why not?

e. Does the proposed approach to email messages containing both commercial and transactional/relationship content provide criteria to facilitate the determination of the primary purpose of an email message? Why or why not?

f. Would a different approach better facilitate the determination of the primary purpose of an email message that contains both commercial and transactional/relationship content? Why or why not? Are there any additional legal or factual issues that support an approach based on either (1) calculating whether a fixed percentage of the message is dedicated to transactional/relationship content, or (2) an exclusively "net impression" test? Are there any arguments supporting these approaches to which the Commission did not give adequate weight? Should the Commission consider additional factors to determine the primary purpose of an email message that contains both commercial and transactional/relationship content—such as whether the transactional/relationship content is clearly and prominently displayed, or whether the commercial content interferes with, detracts from, or otherwise undermines the presentation of the transactional/relationship content? Why or why not?

g. Does the proposed approach to email messages containing both commercial content and content that is neither commercial nor transactional/relationship provide criteria to facilitate the determination of the primary purpose of an email message? Why or why not? Would a different approach better accomplish this goal? Why or why not?

h. The Commission's proposed criteria for email messages containing both commercial content and content that is neither commercial nor transactional/relationship identify placement of commercial content, proportion of message dedicated to commercial content, and how color, graphics, type size, and style are used to highlight commercial content as factors to consider in assessing the net impression of an email message. Are these factors appropriate? Should additional factors be considered? Why or why not? Should the sender's identity be considered as a factor, and if so, how? Why or why not? Should the sender's intent be considered as a factor? Why or why not? If so, how? And if so, how should the sender's identity be measured?

i. The Commission suggests that a message with a noncommercial "net impression" may still be deemed to have a commercial primary purpose if the sender deliberately structures his message to create a mistaken impression in the mind of a reasonable recipient that the message has a noncommercial primary purpose. Should the sender's deliberate structuring of a message affect "primary purpose" analysis under CAN–SPAM, and if so, how? Why or why not?

j. The Commission's proposed criteria use the subject line in one criterion to determine the primary purpose of "dual-purpose messages." Is this an appropriate criterion for this determination? Why or why not?

k. The Commission's proposed criteria do not use the subject line as a criterion to determine the primary purpose of messages that contain only commercial content. Is this choice proper? Why or why not?

l. Do *bona fide* email marketers use a message's subject line to highlight the fact that the message is advertising or promoting a product or service when that is a purpose of the message? Why or why not?

m. Do *bona fide* e-mail marketers use a message's subject line to highlight the fact that their message is a transactional or relationship message when that is a purpose of the message? Why or why not?

n. Are there potential loopholes in the proposed "primary purpose" standard? If so, what are they, and how might they be eliminated?

o. The Commission suggests that spammers could add unrelated noncommercial content (or paragraphs of random words) to commercial e-mail messages if doing so might mean that CAN–SPAM would not apply to their messages. Is this likely? Why or why not?

p. Should the same three-category "primary purpose" criteria be applied to messages sent by for-profit entities and nonprofit entities alike? Why or why not?

q. Where a recipient has entered into a transaction with a sender that entitles the recipient to receive future newsletters or other electronically delivered content, should such e-mail messages be deemed to be transactional or relationship messages? Why or why not? Should the inclusion of commercial content affect this analysis? If so, how?

3. Renumbering of Provisions of the Sexually Explicit Labeling Rule and Integration of Those Provisions Into the Proposed CAN–SPAM Rule

a. Is the Commission's proposal to renumber and integrate into the Proposed CAN–SPAM Rule the provisions of the previously-adopted Sexually Explicit Labeling Rule a good solution? If not, why not? What other approach would be better? Why?

## IX. Proposed Rule

### List of Subjects in 16 CFR Part 316

Advertising, Computer technology, Electronic mail, Internet, Trade practices.

Accordingly, it is proposed that chapter 1 of title 16 of the Code of Federal Regulations, be amended by

adding a new part 316 to read as follows:

## PART 316—CAN–SPAM RULE

Sec.
316.1 Scope.
316.2 Definitions.
316.3 Primary purpose.
316.4 Requirement to place warning labels on commercial electronic mail that contains sexually oriented material.
316.5 Severability.

**Authority:** 15 U.S.C. 7701–7713.

### § 316.1 Scope.

This part implements the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 ("CAN–SPAM Act"), 15 U.S.C. 7701–7713.

### § 316.2 Definitions.

(a) The definition of the term "affirmative consent" is the same as the definition of that term in the CAN–SPAM Act, 15 U.S.C. 7702(1).

(b) "Character" means an element of the American Standard Code for Information Interchange ("ASCII") character set.

(c) The definition of the term "commercial electronic mail message" is the same as the definition of that term in the CAN–SPAM Act, 15 U.S.C. 7702(2).

(d) The definition of the term "electronic mail address" is the same as the definition of that term in the CAN–SPAM Act, 15 U.S.C. 7702(5).

(e) The definition of the term "electronic mail message" is the same as the definition of that term in the CAN–SPAM Act, 15 U.S.C. 7702(6).

(f) The definition of the term "initiate" is the same as the definition of that term in the CAN–SPAM Act, 15 U.S.C. 7702(9).

(g) The definition of the term "Internet" is the same as the definition of that term in the CAN–SPAM Act, 15 U.S.C. 7702(10).

(h) The definition of the term "procure" is the same as the definition of that term in the CAN–SPAM Act, 15 U.S.C. 7702(12).

(i) The definition of the term "protected computer" is the same as the definition of that term in the CAN–SPAM Act, 15 U.S.C. 7702(13).

(j) The definition of the term "recipient" is the same as the definition of that term in the CAN–SPAM Act, 15 U.S.C. 7702(14).

(k) The definition of the term "routine conveyance" is the same as the definition of that term in the CAN–SPAM Act, 15 U.S.C. 7702(15).

(l) The definition of the term "sender" is the same as the definition of that term in the CAN–SPAM Act, 15 U.S.C. 7702(16).

(m) The definition of the term "sexually oriented material" is the same as the definition of that term in the CAN–SPAM Act, 15 U.S.C. 7704(d)(4).

(n) The definition of the term "transactional or relationship messages" is the same as the definition of that term in the CAN–SPAM Act, 15 U.S.C. 7702(17).

### § 316.3 Primary purpose.

(a) In applying the term "commercial electronic mail message" defined in the CAN–SPAM Act, 15 U.S.C. § 7702(2), the "primary purpose" of an electronic mail message shall be deemed to be commercial based on the following criteria:

(1) If an electronic mail message contains only content that advertises or promotes a product or service, then the "primary purpose" of the message shall be deemed to be commercial;

(2) If an electronic mail message contains content that advertises or promotes a product or service as well as content that pertains to one of the functions listed in paragraph (b) of this section, then the "primary purpose" of the message shall be deemed to be commercial if:

(i) A recipient reasonably interpreting the subject line of the electronic mail message would likely conclude that the message advertises or promotes a product or service; or

(ii) The electronic mail message's content pertaining to one of the functions listed in paragraph (b) of this section does *not* appear at or near the beginning of the message;

(3) If an electronic mail message contains content that advertises or promotes a product or service as well as other content that does not pertain to one of the functions listed in paragraph (b) of this section, then the "primary purpose" of the message shall be deemed to be commercial if:

(i) A recipient reasonably interpreting the subject line of the electronic mail message would likely conclude that the message advertises or promotes a product or service; or

(ii) A recipient reasonably interpreting the body of the message would likely conclude that the primary purpose of the message is to advertise or promote a product or service. Factors illustrative of those relevant to this interpretation include the placement of content that advertises or promotes a product or service at or near the beginning of the body of the message; the proportion of the message dedicated to such content; and how color, graphics, type size, and style are used to highlight commercial content.

(b) Transactional or relationship functions of e-mail messages under the CAN–SPAM Act are:

(1) To facilitate, complete, or confirm a commercial transaction that the recipient has previously agreed to enter into with the sender;

(2) To provide warranty information, product recall information, or safety or security information with respect to a commercial product or service used or purchased by the recipient;

(3) To provide—

(i) Notification concerning a change in the terms or features of;

(ii) Notification of a change in the recipient's standing or status with respect to; or

(iii) At regular periodic intervals, account balance information or other type of account statement with respect to, a subscription, membership, account, loan, or comparable ongoing commercial relationship involving the ongoing purchase or use by the recipient of products or services offered by the sender;

(4) To provide information directly related to an employment relationship or related benefit plan in which the recipient is currently involved, participating, or enrolled; or

(5) To deliver goods or services, including product updates or upgrades, that the recipient is entitled to receive under the terms of a transaction that the recipient has previously agreed to enter into with the sender.

### § 316.4 Requirement to place warning labels on commercial electronic mail that contains sexually oriented material.

(a) Any person who initiates, to a protected computer, the transmission of a commercial electronic mail message that includes sexually oriented material must:

(1) Exclude sexually oriented materials from the subject heading for the electronic mail message and include in the subject heading the phrase "SEXUALLY–EXPLICIT:" in capital letters as the first nineteen (19) characters at the beginning of the subject line;[1]

(2) Provide that the content of the message that is initially viewable by the recipient, when the message is opened by any recipient and absent any further actions by the recipient, include only the following information:

[1] The phrase "SEXUALLY–EXPLICIT" comprises 17 characters, including the dash between the two words. The colon (:) and the space following the phrase are the 18th and 19th characters.

(i) The phrase "SEXUALLY–EXPLICIT:"in a clear and conspicuous manner;[2]

(ii) Clear and conspicuous identification that the message is an advertisement or solicitation;

(iii) Clear and conspicuous notice of the opportunity of a recipient to decline to receive further commercial electronic mail messages from the sender;

(iv) A functioning return electronic mail address or other Internet-based mechanism, clearly and conspicuously displayed, that—

(A) A recipient may use to submit, in a manner specified in the message, a reply electronic mail message or other form of Internet-based communication requesting not to receive future commercial electronic mail messages from that sender at the electronic mail address where the message was received; and

(B) Remains capable of receiving such messages or communications for no less than 30 days after the transmission of the original message;

(v) Clear and conspicuous display of a valid physical postal address of the sender; and

(vi) Any needed instructions on how to access, or activate a mechanism to access, the sexually oriented material, preceded by a clear and conspicuous statement that to avoid viewing the sexually oriented material, a recipient should delete the email message without following such instructions.

(b) *Prior affirmative consent.* Paragraph (a) of this section does not apply to the transmission of an electronic mail message if the recipient has given prior affirmative consent to receipt of the message.

**§ 316.5 Severability.**

The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

By Direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 04–18565 Filed 8–12–04; 8:45 am]

BILLING CODE 6750–01–P

[2] This phrase consists of nineteen (19) characters and is identical to the phrase required in § 316.4(a)(1).

## DEPARTMENT OF HOMELAND SECURITY

### Bureau of Customs and Border Protection

### 19 CFR part 101

### Extension of Port Limits of Rockford, IL

**AGENCY:** Customs and Border Protection; Department of Homeland Security.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to amend the Customs and Border Protection (CBP) Regulations pertaining to the field organization of CBP by extending the geographical limits of the port of Rockford, Illinois, to include the City of Rochelle, Illinois. The Union Pacific Railroad Company has a new intermodal facility in Rochelle. The proposed change is part of CBP's continuing program to more efficiently utilize its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public.

**DATES:** Comments must be received on or before October 12, 2004.

**ADDRESSES:** Comments must be submitted to Bureau of Customs and Border Protection, Office of Regulations and Rulings (Attention: Regulations Branch), 1300 Pennsylvania Avenue NW., (Mint Annex), Washington, DC 20229. Submitted comments may be inspected at 799 9th Street, NW., Washington, DC during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Dennis Dore, Office of Field Operations, 202–927–6871.

**SUPPLEMENTARY INFORMATION:**

#### Background

The Union Pacific Railroad Company has a new state-of-the-art intermodal rail facility that is located 25 miles south of Rockford in Rochelle, Illinois. This facility provides the capacity necessary to support the efficient interchange of shipments to and from rail connections, and expedite the operations of trains and containers. In order to accommodate this new facility and provide better service to carriers, importers, and the public, the Bureau of Customs and Border Protection (CBP) is proposing to extend the port limits of the port of Rockford, Illinois, to include the City of Rochelle, Illinois.

#### Current Port Limits of Rockford, Illinois

The current port limits of Rockford, Illinois, are described as follows in Treasury Decision (T.D.) 95–62 of August 14, 1995:

Bounded to the north by the Illinois/Wisconsin border; bounded to the west by Illinois State Route 26; bounded to the south by Illinois State Route 72; and bounded to the east by Illinois State Route 23 north to the Wisconsin/Illinois border.

#### Proposed Port Limits of Rockford, Illinois

The new port limits of Rockford, Illinois, are proposed as follows: Bounded to the north by the Illinois/Wisconsin border; bounded to the west by Illinois State Route 26; bounded to the south by Interstate Route 88; bounded to the east by Illinois State Route 23 to the Wisconsin/Illinois border.

#### Proposed Amendment to CBP Regulations

If the proposed port limits are adopted, CBP will amend § 101.3(b)(1), CBP Regulations (19 CFR 101.3(b)(1)) to reflect the new boundaries of the Rockford, Illinois port of entry.

#### Authority

This change is proposed under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66 and 1624.

#### Signing Authority

The signing authority for this document falls under § 0.2(a), CBP Regulations (19 CFR 0.2(a)) because this port extension is not within the bounds of those regulations for which the Secretary of the Treasury has retained sole authority. Accordingly, the notice of proposed rulemaking may be signed by the Secretary of Homeland Security (or his or her delegate).

#### Comments

Before adopting this proposal, consideration will be given to any written comments that are timely submitted to CBP. All such comments received from the public pursuant to this notice of proposed rulemaking will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 103.11(b), CBP Regulations (19 CFR 103.11(b)) during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, Customs and Border Protection, Department of Homeland Security, 799 9th Street, NW., Washington, DC. Arrangements to inspect submitted documents should be made in advance by calling Mr. Joseph Clark at 202–572–8768.

**The Regulatory Flexibility Act and Executive Order 12866**

CBP establishes, expands and consolidates CBP ports of entry throughout the United States to accommodate the volume of CBP-related activity in various parts of the country. Thus, although this document is being issued with notice for public comment, because it relates to agency management and organization, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Agency organization matters such as this proposed port extension are exempt from consideration under Executive Order 12866.

**Drafting Information**

The principal author of this document was Christopher W. Pappas, Regulations Branch, Office of Regulations and Rulings, CBP. However, personnel from other offices participated in its development.

**Robert C. Bonner,**

*Commissioner, Customs and Border Protection.*

**Tom Ridge,**

*Secretary, Department of Homeland Security.*

[FR Doc. 04–18514 Filed 8–12–04; 8:45 am]

BILLING CODE 4820–02–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[REG–116265–04]**

**RIN 1545–BD25**

## Additional Rules for Exchanges of Personal Property Under Section 1031(a)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing final and temporary regulations replacing the use of the Standard Industrial Classification (SIC) system with the North American Industry Classification System (NAICS) for determining what properties are of a like class for purposes of section 1031 of the Internal Revenue Code (Code). The text of those temporary regulations also serves as the text of these proposed regulations.

**DATES:** Written or electronic comments and requests for a public hearing must be received by November 12, 2004.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG–116265–04), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–116265–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS and REG–116265–04).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, J. Peter Baumgarten, 202–622–4920; concerning submissions of comments and/or requests for a public hearing, Guy Traynor, 202–622–7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**Background and Explanation of Provisions**

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend 26 CFR part 1 relating to section 1031(a)(1). The temporary regulations substitute NAICS classification codes for the SIC classification codes in the regulatory text and permit the use of NAICS codes for determining product classes, and therefore property of like kind, of depreciable tangible personal property exchanged under section 1031. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

**Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact.

**Comments and Requests for a Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of these proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

**Drafting Information**

The principal author of these regulations is J. Peter Baumgarten, Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

## PART 1—INCOME TAXES

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

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

**Par. 2.** In § 1.1031(a)–2, paragraphs (b)(3) through (b)(6), and *Example 3* and *Example 4* of paragraph (b)(7) are revised to read as follows:

**§ 1.1031(a)–2 Additional rules for exchanges of personal property.**

[The text of proposed § 1.1031(a)–2, paragraphs (b)(3) through (b)(6), and *Example 3* and *Example 4* of paragraph (b)(7) is the same as the text of § 1.1031(a)–2T, paragraphs (b)(3) through (b)(6), and *Example 3* and *Example 4* of paragraph (b)(7) published elsewhere in this issue of the **Federal Register**.]

**§ 1.1031(j)–1 [Amended]**

**Par. 3.** Section 1.1031(j)–1 is amended by removing the language "(SIC Code

3531)" in *Example 3*(ii)(C) and *Example 5*(i) of paragraph (d) and adding the language "(NAICS code 333120)" in its place.

Linda M. Kroening,

*Acting Deputy Commissioner for Services and Enforcement.*

[FR Doc. 04–18480 Filed 8–12–04; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[REG–149524–03]**

**RIN 1545–BC66**

## LIFO Recapture Under Section 1363(d)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations regarding LIFO recapture by corporations converting from C corporations to S corporations. The purpose of the proposed regulations is to provide guidance on the LIFO recapture requirement when the corporation holds inventory accounted for under the last-in, first-out ("LIFO") method (LIFO inventory) indirectly through a partnership. The proposed regulations affect C corporations that own interests in partnerships holding LIFO inventory and that elect to be taxed as S corporations or that transfer such partnership interests to S corporations in nonrecognition transactions. The proposed regulations also affect S corporations receiving such partnership interests from C corporations in nonrecognition transactions.

**DATES:** Written or electronic comments must be received by Novembre 12, 2004. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for Wednesday, December 8, 2004, must be received by Wednesday, November 17, 2004.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG–149524–03), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–149524–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or submitted electronically via the IRS Internet site at: *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *www.regulations.gov* (IRS and REG–149524–03).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Pietro Canestrelli, (202) 622–3060, or Martin Schäffer, (202) 622–3070; concerning submissions, Robin Jones, (202) 622–7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by October 12, 2004. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information can be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in § 1.1363–2(e)(3). This information is required to inform the IRS of partnerships electing to increase the basis of inventory to reflect any amount included in a partner's income under section 1363(d). Thus, the collection of information is required to obtain a benefit. The likely respondents are businesses or other for-profit institutions.

The burden for the collection of information in § 1.1363–2(e)(3) is reflected on Form 1065, "Partnership Return of Income".

The estimated burden for the collection of information in § 1.1363–2(e)(3) is as follows:

*Estimated total annual reporting burden:* 200 hours.

The estimated annual burden per respondent varies from 1 to 3 hours, depending on individual circumstances, with an estimated average of 2 hours.

*Estimated number of respondents:* 100.

*Estimated annual frequency of responses:* On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

### Background

This document contains proposed amendments to 26 CFR part 1 under section 1363(d) of the Internal Revenue Code (Code). Section 1363(d)(1) provides that a C corporation that owns LIFO inventory and that elects under section 1362(a) to be taxed as an S corporation must include in its gross income for its final tax year as a C corporation the LIFO recapture amount. Under section 1363(d)(3), the LIFO recapture amount is the excess of the inventory amount of the inventory using the first-in, first-out (FIFO) method (the FIFO value) over the inventory amount of the inventory using the LIFO method (the LIFO value) at the close of the corporation's final tax year as a C corporation (essentially, the amount of income the corporation has deferred by using the LIFO method rather than the FIFO method).

Final regulations (TD 8567) under section 1363(d) were published in the **Federal Register** on October 7, 1994 (59 FR 51105) to describe the recapture of LIFO benefits when a C corporation that owns LIFO inventory elects to become an S corporation or transfers LIFO inventory to an S corporation in a nonrecognition transaction. The final regulations do not explicitly address the indirect ownership of inventory through a partnership. These proposed regulations provide guidance for situations in which a C corporation that owns LIFO inventory through a

partnership (or through tiered partnerships) converts to an S corporation or transfers its partnership interest to an S corporation in a nonrecognition transaction.

Section 1374, modified as part of the repeal of the *General Utilities* doctrine, see *General Utilities & Operating Co.* v. *Helvering*, 296 U.S. 200 (1935), imposes a corporate level tax on certain income or gain recognized by an S corporation to the extent the income or gain is attributable to appreciation that occurred while the assets were held by a C corporation. Specifically, section 1374 imposes a corporate level tax on an S corporation's net recognized built-in gain attributable to assets that it held on the date it converted from a C corporation to an S corporation. The tax is imposed only during the 10-year period beginning on the first day the corporation is an S corporation. In addition, section 1374 imposes a corporate level tax on an S corporation's net recognized built-in gain attributable to assets that the S corporation acquires if the S corporation's bases in such assets are determined (in whole or in part) by reference to the bases of such assets (or any other property) in the hands of a C corporation. This tax is imposed only during the 10-year period beginning on the date that the S corporation acquires the assets.

In Announcement 86–128 (1986–51 I.R.B. 22), the IRS stated that, for purposes of section 1374(d)(2)(A), the inventory method used by a taxpayer for tax purposes (FIFO, LIFO, etc.) shall be used in determining whether goods disposed of following a conversion from C corporation to S corporation status were held by the corporation at the time of conversion. After the issuance of this announcement, Congress became concerned that taxpayers owning LIFO inventory might avoid the built-in gain rules of section 1374. Congress believed that taxpayers owning LIFO inventory, who have enjoyed the deferral benefits of the LIFO method during their status as a C corporation, should not be treated more favorably than their FIFO counterparts. To eliminate this potential disparity in treatment, Congress enacted section 1363(d) in 1987, requiring a taxpayer owning LIFO inventory to recapture the benefits of using the LIFO method. H.R. Rep. No. 100–391 (Parts 1 and 2), 1098 (1987).

In *Coggin Automotive Corp.* v. *Commissioner*, 292 F.3d 1326 (11th Cir. 2002), *rev'g* 115 T.C. 349 (2000), a holding company owned majority interests in several subsidiaries that operated automobile dealerships owning LIFO inventory. As part of a restructuring, each subsidiary contributed its assets (including its LIFO inventory) to a different partnership. The subsidiaries were then merged into the holding company, which elected to be taxed as an S corporation. The court of appeals held that the holding company's S corporation election did not trigger LIFO recapture under section 1363(d) because it was the partnerships in which the holding company held interests, and not the holding company itself, that used the LIFO method.

Section 337(d)(1) authorizes the Secretary to prescribe regulations to prevent the circumvention of the purposes of the repeal of the *General Utilities* doctrine through the use of any provision of law or regulations. The Treasury Department and the IRS believe that these proposed regulations are necessary to implement *General Utilities* repeal. Congress enacted section 1363(d) because the use of the LIFO method by a C corporation that converts to S corporation status creates the potential for the permanent avoidance of corporate level tax on the built-in gain reflected in the LIFO reserve. This avoidance possibility is present regardless of whether the converting corporation owns inventory directly or indirectly through a partnership or tiered partnerships. Accordingly, the Treasury Department and the IRS believe it is appropriate to require the recapture of a converting corporation's share of the LIFO reserves of partnerships in which it participates. Such an approach is consistent with the regulations under section 1374, which generally adopt a lookthrough approach to partnerships.

**Explanation of Provisions**

The proposed regulations provide that a C corporation that holds an interest in a partnership owning LIFO inventory must include the lookthrough LIFO recapture amount in its gross income where the corporation either elects to be an S corporation or transfers its interest in the partnership to an S corporation in a nonrecognition transaction. The proposed regulations define the lookthrough LIFO recapture amount as the amount of income that would be allocated to the corporation, taking into account section 704(c) and § 1.704–3, if the partnership sold all of its LIFO inventory for the FIFO value. A corporate partner's lookthrough LIFO recapture amount must be determined, in general, as of the day before the effective date of the S corporation election or, if the recapture event is a transfer of a partnership interest to an S corporation, the date of the transfer (the recapture date). The proposed regulations provide that, if a partnership is not otherwise required to determine inventory values on the recapture date, the lookthrough LIFO recapture amount may be determined based on inventory values of the partnership's opening inventory for the year that includes the recapture date.

The proposed regulations provide that a corporation owning LIFO inventory through a partnership must increase its basis in its partnership interest by the lookthrough LIFO recapture amount. The proposed regulations also allow the partnership through which the LIFO inventory is owned to adjust the basis of partnership inventory (or lookthrough partnership interests held by that partnership) to account for LIFO recapture. This adjustment to basis is to be patterned in manner and effect after the adjustment in section 743(b). Thus, the basis adjustment constitutes an adjustment to the basis of the LIFO inventory (or lookthrough partnership interests held by that partnership) with respect to the corporate partner only; no adjustment is made to the partnership's common basis. The IRS and the Treasury Department request comments on whether the partnership should be required, in some or all circumstances, to increase the basis of partnership assets by the lookthrough LIFO recapture amount attributable to those assets.

Under § 1.1374–4(i)(1), an S corporation's distributive share of partnership items is not taken into account in determining the S corporation's share of net recognized built-in gain or loss if the S corporation's partnership interest represents less than 10 percent of the partnership capital and profits and has a fair market value of less than $100,000. This exception reduces the burden on the S corporation and the partnership of tracking built-in gain assets that are relatively small in amount.

The burden of looking through a partnership interest under section 1374 is greater than the burden of looking through a partnership interest under section 1363(d). Under section 1374, partnership assets must be tracked for a 10-year period. No such tracking problem exists under section 1363 because recapture generally occurs on the date of the S election. Accordingly, the proposed regulations do not contain an exception for partnership interests that are smaller than a specified threshold.

**Proposed Effective Date**

These regulations are proposed to apply to S elections and transfers made

on or after August 13, 2004. No inference is intended as to the tax consequences of S elections and transfers made before the effective date of these regulations.

**Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866; therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that few corporations engage in the type of transactions that are subject to these regulations (the conversion from C corporation to S corporation status while holding an interest in a partnership that owns LIFO inventory or the transfer of an interest in such a partnership by a C corporation to an S corporation in a nonrecognition transaction). Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Wednesday, December 8, 2004 beginning at 10 a.m. in the auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by Wednesday, November 17, 2004. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

**Drafting Information**

The principal authors of these regulations are Martin Schäffer and Pietro Canestrelli, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

**List of Subjects 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

## PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

**Authority:** 26 U.S.C. 7805. * * * Section 1.1363–2 is issued also under 26 U.S.C. 337(d). * * *

**Par. 2.** Section 1.1363–2 is amended by:

1. Redesignating paragraphs (b), (c), and (d) as paragraphs (d), (e), and (g), respectively.
2. Adding paragraphs (b), (c), (f), and (g)(3).
3. Revising newly designated paragraphs (d) and (e).

The revisions and additions read as follows:

**§1.1363–2 Recapture of LIFO benefits.**

* * * * *

(b) *LIFO inventory held indirectly through partnership.* A C corporation must include the lookthrough LIFO recapture amount (as defined in paragraph (c)(2) of this section) in its gross income—

(1) In its last taxable year as a C corporation if, on the last day of the corporation's last taxable year before its S corporation election becomes effective, the corporation held a lookthrough partnership interest (as defined in paragraph (c)(1) of this section); or

(2) In the year of transfer by the C corporation to an S corporation of a lookthrough partnership interest if the corporation transferred its lookthrough partnership interest to the S corporation in a nonrecognition transaction (within the meaning of section 7701(a)(45)) in which the transferred interest constitutes transferred basis property (within the meaning of section 7701(a)(43)).

(c) *Definitions*—(1) *Lookthrough partnership interest.* A partnership interest is a lookthrough partnership interest if the partnership owns (directly or indirectly through one or more partnerships) assets accounted for under the last-in, first-out (LIFO) method (LIFO inventory).

(2) *Lookthrough LIFO recapture amount.* For purposes of this section, a corporation's lookthrough LIFO recapture amount is the amount of income that would be allocated to the corporation, taking into account section 704(c) and § 1.704–3, if the partnership sold all of its LIFO inventory for the inventory's FIFO value. For this purpose, the FIFO value of inventory is the inventory amount of the inventory assets under the first-in, first-out method of accounting authorized by section 471. The lookthrough LIFO recapture amount generally shall be determined as of the end of the recapture date. However, if the partnership is not otherwise required to determine the inventory amount of the inventory using the LIFO method (the LIFO value) on the recapture date, the partnership may determine the lookthrough LIFO recapture amount as though the FIFO and LIFO values of the inventory on the recapture date equaled the FIFO and LIFO values of the opening inventory for the partnership's taxable year that includes the recapture date. For this purpose, the opening inventory includes inventory contributed by a partner to the partnership on or before the recapture date and excludes inventory distributed by the partnership to a partner on or before the recapture date.

(3) *Recapture date.* In the case of a transaction described in paragraph (b)(1) of this section, the recapture date is the day before the effective date of the S corporation election. In the case of a transaction described in paragraph (b)(2) of this section, the recapture date is the date of the transfer of the partnership interest to the S corporation (but only the portion of that date that precedes the transfer).

(d) *Payment of tax.* Any increase in tax caused by including the LIFO recapture amount or the lookthrough LIFO recapture amount in the gross income of the C corporation is payable in four equal installments. The C corporation must pay the first installment of this payment by the due date of its return, determined without regard to extensions, for the last taxable year it operated as a C corporation if paragraph (a)(1) or (b)(1) of this section applies, or for the taxable year of the transfer if paragraph (a)(2) or (b)(2) of this section applies. The three succeeding installments must be paid—

(1) For a transaction described in paragraph (a)(1) or (b)(1) of this section, by the corporation that made the election under section 1362(a) to be an S corporation, on or before the due date for the corporation's returns (determined without regard to extensions) for the succeeding three taxable years; and

(2) For a transaction described in paragraph (a)(2) or (b)(2) of this section, by the transferee S corporation on or before the due date for the transferee corporation's returns (determined without regard to extensions) for the succeeding three taxable years.

(e) *Basis adjustments*—(1) *General rule.* Appropriate adjustments to the basis of inventory are to be made to reflect any amount included in income under paragraph (a) of this section.

(2) *LIFO inventory owned through a partnership*—(i) *Basis of corporation's partnership interest.* Appropriate adjustments to the basis of the corporation's lookthrough partnership interest are to be made to reflect any amount included in income under paragraph (b) of this section.

(ii) *Basis of partnership assets.* A partnership directly holding LIFO inventory that is taken into account under paragraph (b) may elect to adjust the basis of that LIFO inventory. In addition, a partnership that holds, through another partnership, LIFO inventory that is taken into account under paragraph (b) may elect to adjust the basis of that partnership interest. Any adjustment under this paragraph (e)(2) to the basis of inventory held by the partnership is equal to the amount of LIFO recapture attributable to the inventory. Likewise, any adjustment under this paragraph (e)(2) to the basis of a lookthrough partnership interest held by the partnership is equal to the amount of LIFO recapture attributable to the interest. A basis adjustment under this paragraph (e)(2) is treated in the same manner and has the same effect as an adjustment to the basis of partnership property under section 743(b). See § 1.743–1(j).

(3) *Election.* A partnership elects to adjust the basis of its inventory and any lookthrough partnership interest that it owns by attaching a statement to its original or amended income tax return for the first taxable year ending on or after the date of the S corporation election or transfer described in paragraph (b) of this section. This statement shall state that the partnership is electing under § 1.1363–2(e)(3) and must include the names, addresses, and taxpayer identification numbers of any corporate partner liable for tax under paragraph (d) of this section and of the partnership, as well as the amount of the adjustment and the portion of the adjustment that is attributable to each pool of inventory or lookthrough partnership interest that is held by the partnership.

(f) *Examples.* The following examples illustrate the rules of this section.

*Example 1.* (i) G is a C corporation with a taxable year ending on June 30. GH is a partnership with a calendar year taxable year. G has a 20 percent interest in GH. The remaining 80 percent interest is owned by an individual. On April 25, 2005, G contributed inventory that is LIFO inventory to GH, increasing G's interest in the partnership to 50 percent. GH holds no other LIFO inventory. G elects to be an S corporation effective July 1, 2005. The recapture date is June 30, 2005 under paragraph (c)(3) of this section. GH determines that the FIFO and LIFO values of the opening inventory for GH's 2005 taxable year, including the inventory contributed by G, are $200 and $120, respectively.

(ii) Under paragraph (c)(1) of this section, GH is not required to determine the FIFO and LIFO values of the inventory on the recapture date. Instead, GH may determine the lookthrough LIFO recapture amount as though the FIFO and LIFO values of the inventory on the recapture date equaled the FIFO and LIFO values of the opening inventory for the partnership's taxable year (2005) that includes the recapture date. For this purpose, under paragraph (c)(2) of this section, the opening inventory includes the inventory contributed by G. The amount by which the FIFO value ($200) exceeds the LIFO value ($120) in GH's opening inventory is $80. Thus, if GH sold all of its LIFO inventory for $200, it would recognize $80 of income. G's lookthrough LIFO recapture amount is $80, the amount of income that would be allocated to G, taking into account section 704(c) and § 1.704–3, if GH sold all of its LIFO inventory for the FIFO value. Under paragraph (b)(1) of this section, G must include $80 in income in its taxable year ending on June 30, 2005. Under paragraph (e)(2) of this section, G must increase its basis in its interest in GH by $80. Under paragraphs (e)(2) and (3) of this section, and in accordance with section 743(b) principles, GH may elect to increase the basis (with respect to G only) of its LIFO inventory by $80.

*Example 2.* (i) J is a C corporation with a calendar year taxable year. JK is a partnership with a calendar year taxable year. J has a 30 percent interest in the partnership. JK owns LIFO inventory that is not section 704(c) property. J elects to be an S corporation effective January 1, 2005. The recapture date is December 31, 2004 under paragraph (c)(3) of this section. JK determines that the FIFO and LIFO values of the inventory on December 31, 2004 are $240 and $140, respectively.

(ii) The amount by which the FIFO value ($240) exceeds the LIFO value ($140) on the recapture date is $100. Thus, if JK sold all of its LIFO inventory for $240, it would recognize $100 of income. J's lookthrough LIFO recapture amount is $30, the amount of income that would be allocated to J if JK sold all of its LIFO inventory for the FIFO value (30 percent of $100). Under paragraph (b)(1) of this section, J must include $30 in income in its taxable year ending on December 31, 2004. Under paragraph (e)(2) of this section, J must increase its basis in its interest in JK by $30. Under paragraphs (e)(2) and (3) of this section, and in accordance with section 743(b) principles, JK may elect to increase the basis (with respect to J only) of its inventory by $30.

(g) *Effective dates.* * * *

(3) The provisions of paragraphs (b), (c), (e)(2), (e)(3), and (f) of this section apply to S elections and transfers made on or after August 13, 2004.

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 04–18559 Filed 8–12–04; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

[REG–131264–04]

RIN 1545–BD55

## Consolidated Returns; Intercompany Transactions

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations that provide guidance regarding the treatment of manufacturer incentive payments between members of a consolidated group. The proposed regulations are necessary to provide additional guidance for a variety of transactions involving manufacturer incentive payments. The regulations will affect corporations filing consolidated returns.

**DATES:** Written or electronic comments and requests for a public hearing must be received by November 12, 2004.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG–131264–04), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–131264–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically, via the IRS Internet site at *www.irs.gov/regs* or via the Federal eRulemaking Portal at *www.regulations.gov* (IRS and REG–131264–04).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Frances Kelly, (202) 622–7770; concerning submissions of comments and/or requests for a public hearing, Treena Garrett, (202) 622–7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

## Background and Explanation of Provisions

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 1502 of the Internal Revenue Code. On July 18, 1995, final regulations (TD 8597) under § 1.1502–13, amending the intercompany transaction system of the consolidated return regulations, were published in the **Federal Register** (60 FR 36671). Those final regulations provide rules for taking into account items of income, gain, deduction, and loss of members from intercompany transactions. Their purpose is to clearly reflect the taxable income (and tax liability) of the group by preventing intercompany transactions from creating, accelerating, avoiding, or deferring consolidated taxable income or consolidated tax liability.

### *Accounting for Intercompany Transactions*

Under § 1.1502–13(b)(1), an intercompany transaction is a transaction between corporations that are members of the same consolidated group immediately after the transaction. For purposes of § 1.1502–13, S is the member transferring property or providing services, and B is the member receiving the property or services.

S's income, gain, deduction, and loss from an intercompany transaction, whether directly or indirectly, are its intercompany items, and may include amounts from an intercompany transaction that are not yet taken into account under its separate entity method of accounting. B's income, gain, deduction, and loss from an intercompany transaction, or from property acquired in an intercompany transaction, are its corresponding items. An item is a corresponding item whether it is directly or indirectly from an intercompany transaction (or from property acquired in an intercompany transaction). The recomputed corresponding item is the corresponding item that B would take into account if S and B were divisions of a single corporation and the intercompany transaction were between those divisions. Although neither S nor B actually takes the recomputed corresponding item into account, it is computed as if B did take it into account.

### *Matching Rule*

In general, under the matching rule of § 1.1502–13(c), B takes its corresponding item into account under its separate entity accounting method and S takes its intercompany item into account to reflect the difference for the year between B's corresponding item taken into account and the recomputed corresponding item. The matching rule determines when the intercompany transaction regulations override the members' timing of items under their otherwise applicable separate entity methods of accounting.

### *Manufacturer Incentive Payments*

Section 1.1502–13(c)(7)(ii), *Example 13*, illustrates how the matching rule of the intercompany transaction regulations treats manufacturer incentive payments made by one member of a group to another. In this example, B is a manufacturer that sells its products to dealers, and S is a credit company that offers financing, including financing to customers of the dealers. Under B's incentive program, in Year 1, S purchases the product from an independent dealer for $100 and leases it to a nonmember. S pays $90 to the dealer for the product, and assigns to the dealer its $10 incentive payment from B. Under their separate entity accounting methods, B would deduct the $10 incentive payment in Year 1 and S would take a $90 basis in the product. The example assumes that if S and B were divisions of a single corporation, the $10 payment would not be deductible and S's basis in the property would be $100. The example concludes that under the matching rule of § 1.1502–13(c), S takes its $10 intercompany item into account as income in Year 1 to reflect the difference between B's $10 corresponding item (the $10 deduction taken into account by B) and the $0 recomputed corresponding item. S's basis in the product is $100 (rather than the $90 it would be under S's separate entity method of accounting) and the additional $10 of basis in the product is recovered based on subsequent events (*e.g.*, S's cost recovery deductions or its sale of the product).

Since § 1.1502–13 was issued, it has become clear that the facts and the underlying assumptions in *Example 13* do not provide adequate guidance to address the variety of transactions involving manufacturer incentive payments. Accordingly, the IRS and Treasury Department believe that § 1.1502–13(c)(7)(ii), *Example 13*, should be amended to address certain of these transactions and to clarify the proper treatment of such payments under the intercompany transaction regulations. Therefore, these proposed regulations supplement the fact pattern of *Example 13* with two additional fact patterns involving manufacturer incentive payments.

## Proposed Effective Date

The regulations are proposed to apply to any consolidated return year for which the due date of the income tax return (without regard to extensions) is on or after the date that is sixty days after the date these regulations are filed as final regulations with the **Federal Register**.

## Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that these regulations will primarily affect affiliated groups of corporations that have elected to file consolidated returns, which tend to be larger businesses. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rule making will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

## Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are

submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

**Drafting Information**

The principal author of these proposed regulations is William F. Barry, Office of the Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

## PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * * Section 1.1502–13 also issued under 26 U.S.C. 1502. * * *

**Par. 2.** Section 1.1502–13 is amended by adding paragraph (c)(7)(ii), *Example 13*(c), (d), and (e), and paragraph (c)(7)(iii) to read as follows:

**§ 1.1502–13 Intercompany transactions.**

* * * * *

(c) * * *

(7) * * *

(ii) * * *

*Example 13.* * * *

(c) *Deduction for incentive payment on single entity basis.* B is a manufacturer that sells its products to independent dealers for resale. S is a credit company that offers financing, including financing to customers of the independent dealers. During Year 1, B initiates a program of incentive payments. Under B's program, an independent dealer sells product to a customer under a retail installment sales contract (RISC) in which the customer agrees to pay for the product over the term of the contract at a below market interest rate. The customer purchases the product from the independent dealer and enters into a RISC. The RISC has a face amount of $100 but a fair market value of $90. The independent dealer assigns the RISC to S in exchange for a $100 payment from S. B pays $10 to S to compensate S for the $10 overpayment to the independent dealer. Assume that under their respective separate entity accounting methods, B would deduct the $10 payment in Year 1, and S would take a $90 basis in the RISC and would take the $10 into account over the term of the RISC. Assume that, if S and B were divisions of a single corporation, the $10 overpayment to the independent dealer would be deductible in Year 1 and the basis of the RISC would be $90.

(d) *Timing and attributes.* Under paragraph (b)(1) of this section, the incentive payment transaction is an intercompany transaction. Under paragraph (b)(2)(iii) of this section, S has a $10 intercompany item not yet taken into account under its separate entity method of accounting. Under the matching rule, S takes its intercompany item into account to reflect the difference between B's corresponding item taken into account and the recomputed corresponding item. In Year 1, there is no difference between B's $10 deduction taken into account and the $10 recomputed deduction. Accordingly, under the matching rule, S does not take the $10 incentive payment into account as intercompany income in Year 1. Instead, S takes the $10 into income over the term of the RISC. S's basis in the RISC is $90.

(e) *No intercompany transaction.* B is a manufacturer that sells its products to independent dealers for resale. S is a credit company that offers financing to purchasers of goods and services, including the independent dealers. During Year 1, B initiates a program of incentive payments to the independent dealers. Under B's program, S loans $100 to an independent dealer at a below market interest rate to finance the independent dealer's purchase of product from B. The independent dealer issues a note to S at a below market interest rate. B pays $10 to S to compensate S for the below market interest rate on the note. Under § 1.1273–2(g)(4), the payment from B to S is treated as a payment from B to the independent dealer and then as a payment from the independent dealer to S. Because the incentive payment is treated as being made by a member of the group to a nonmember, the transaction is not an intercompany transaction under paragraph (b)(1) of this section. Therefore, § 1.1502–13 is not applicable.

* * * * *

(iii) *Effective date.* Paragraphs (c), (d), and (e) of this *Example 13* are proposed to apply to any consolidated return year for which the due date of the income tax return (without regard to extensions) is on or after the date that is sixty days after the date these regulations are filed as final regulations with the **Federal Register**.

* * * * *

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 04–18557 Filed 8–12–04; 8:45 am]

BILLING CODE 4830–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 156 and 165

[OPP–2004–0049; FRL–7674–4]

RIN 2070–AB95

### Standards for Pesticide Containers and Containment; Extension of Comment Period

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** EPA issued a notice in the **Federal Register** of June 30, 2004 to reopen the comment period for the 1994 proposed rule on pesticide containers and containment structures to solicit public input on issues or technology that would not have been available or could not have been addressed during previous public comment opportunities. This document is extending the comment period for 30 days beyond the current August 16, 2004 deadline.

**DATES:** Comments, identified by docket identification (ID) number OPP–2004–0049 must be received on or before September 15, 2004.

**ADDRESSES:** Follow the detailed instructions for submitting comments as provided in the **ADDRESSES** section of the **Federal Register** document of June 30, 2004 (OPP–2004–0049; 69 FR 39392). In addition, comments may be submitted through the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the online instructions for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Nancy Fitz, Field and External Affairs Division, (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7385; fax number: (703) 308–3259; e-mail address: *fitz.nancy@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does This Action Apply to Me?*

The Agency included in the proposed rule and the supplemental notice a list of those who may be potentially affected by this action. If you have 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 parts 156 and 165 is available at E–CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

**II. What Action is EPA Taking?**

This document extends the public comment period established in the **Federal Register** of June 30, 2004 (69 FR 39392). In that document, EPA reopened the comment period for the rulemaking titled "Standards for Pesticide Containers and Containment," which was proposed on February 11, 1994 (59 FR 6712). In that document, EPA sought comment on proposed regulations for pesticide container design and residue removal and for containment structures at pesticide storage and container refilling operations. Because significant time has passed since the proposed rule in 1994 and a supplemental notice in 1999 (64 FR 56918, Oct. 21, 1999), EPA reopened the comment period for an additional 45 days to solicit public input on issues or technology relating to the proposed requirements that would not have been available or could not have been addressed during previous public comment opportunities. EPA is hereby extending the comment period, which was set to end on August 16, 2004, to September 15, 2004.

**III. What is the Agency's Authority for Taking This Action?**

The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) sections 19(e) and (f) grant EPA broad authority to establish standards and procedures to assure the safe use, reuse, storage, and disposal of pesticide containers. FIFRA section 19(e) requires EPA to promulgate regulations for "the design of pesticide containers that will promote the safe storage and disposal of pesticides."

A request to extend the comment period in order to gather data for a response was received after the publication of the June 30, 2004 notice in the **Federal Register**. EPA is hereby extending the comment period by 30 days.

**IV. Do Any Statutory and Executive Order Reviews Apply to this Action?**

This notice neither proposes nor takes final action regarding any substantive requirements and is procedural in nature. This notice merely keeps the docket open for further comments on a rule that has already been proposed. Therefore, it is not subject to the statutory and executive order reviews generally applicable to proposed and final rules.

**List of Subjects in 40 CFR Parts 156 and 165**

Environmental protection, Packaging and containers, Pesticides and pests.

Dated: August 4, 2004.

**Susan B. Hazen,**

*Acting Assistant Administrator for Prevention, Pesticides, and Toxic Substances.*

[FR Doc. 04–18601 Filed 8–12–04; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 300

**[FRL–7796–6]**

## National Priorities List for Uncontrolled Hazardous Waste Site, Proposed Rule

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed Rule.

**SUMMARY:** The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA" or "the Act"), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency ("EPA" or "the Agency") in determining which sites warrant further investigation. These further investigations will allow EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule proposes two different options to add certain areas on and around the islands of Vieques and Culebra, Commonwealth of Puerto Rico, to the NPL. The Commonwealth has identified these areas collectively in its listing request as the Atlantic Fleet Weapons Training Area ("AFWTA").

**DATES:** Comments regarding this proposed listing must be submitted (postmarked) on or before October 12, 2004.

**ADDRESSES:** By electronic access: 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 Docket ID No. SFUND–2004–0011. 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.

*By Postal Mail:* Mail original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; (Mail Code 5305T); 1200 Pennsylvania Avenue NW.; Washington, DC 20460, Attention Docket ID No. SFUND–2004–0011.

*By Express Mail or Courier:* Send original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue; EPA West, Room B102, Washington, DC 20004, Attention Docket ID No. SFUND–2004–0011. Such deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday excluding Federal holidays).

*By E-Mail:* Comments in ASCII format only may be mailed directly to *superfund.docket@epa.gov*. Cite the Docket ID No. SFUND–2004–0011 in your electronic file. Please note that EPA's e-mail system automatically captures your e-mail address and is included as part of the comment that is placed in the public dockets, and made available in EPA's electronic public docket.

For additional Docket addresses and further details on their contents, see section II, "Public Review/Public Comment," of the **SUPPLEMENTARY INFORMATION** portion of this preamble.

**FOR FURTHER INFORMATION CONTACT:** Terry Jeng, phone (703) 603–8852, State, Tribal and Site Identification Branch; Assessment and Remediation Division; Office of Superfund Remediation and Technology Innovation (Mail Code 5204G); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue NW., Washington, DC 20460; or the Superfund Hotline, Phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

## I. Background

### *A. What Are CERCLA and SARA?*

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 ("CERCLA" or "the Act"), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances and releases or substantial threats of releases into the environment of any pollutant or contaminant which may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Pub. L. 99–499, 100 Stat. 1613 *et seq.* As part of SARA, Congress created the Defense Environmental Restoration Program (DERP), 10 U.S.C. 2701, *et seq.*, which authorized the Secretary of Defense to carry out restoration activities on current and former military facilities. Under Executive Order 12580, the Secretary of Defense exercises the President's authority under sections 104(a), (b) and (c)(4), 113(k), 117(a) and (c)), 119, and 121 of CERCLA with respect to releases or threatened releases where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction, custody, or control of the Department of Defense. The Secretary of Defense has delegated this authority to the Secretary of the Navy for sites the Department of the Navy controlled after 1986, which includes both the eastern and western portions of Vieques. The U.S. Army, through the U.S. Army Corps of Engineers (USACE), executes DERP's Formerly Used Defense Sites (FUDS) Program in accordance with CERCLA and the National Contingency Plan (NCP), and is authorized under this program to conduct investigation and response actions relating to areas on Culebra that were once under Defense jurisdiction.

### *B. What Is the NCP?*

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, or releases or substantial threats of releases into the environment of any pollutant or contaminant which may present an imminent or substantial danger to the public health or welfare. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action." ("Removal" actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

### *C. What Is the National Priorities List (NPL)?*

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section 105(a)(8)(B) defines the NPL as a list of "releases" and the highest priority "facilities" and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the "General Superfund Section"), and one of sites that are owned or operated by other Federal agencies (the "Federal Facilities Section"). With respect to sites in the Federal Facilities section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency at Federal Facilities Section sites, and its role at such sites

is accordingly less extensive than at other sites.

*D. How Are Sites Listed on the NPL?*

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System ("HRS"), which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL. This listing proposal is not based on scoring pursuant to the HRS. (2) Pursuant to 42 U.S.C. 9605(a)(8)(B), each State may designate a single site as its top priority to be listed on the NPL, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (see 42 U.S.C. 9605(a)(8)(B)). This is the option chosen by Puerto Rico for the Vieques and Culebra areas addressed in this listing proposal; (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on July 22, 2004 (69 FR 43755).

In addition, as a matter of policy, EPA may defer sites or portions of sites from the NPL. (See, *e.g.*, 56 FR 5601–5602, See also "Guidance on Deferral of NPL Listing Determinations While States Oversee Response Actions," OSWER Directive 9375.6–11.)

*E. What Happens to Sites on the NPL?*

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). ("Remedial actions" are those "consistent with permanent remedy, taken instead of or in addition to removal actions * * *." 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL "does not imply that monies will be expended." EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws. Response activities undertaken by DoD components pursuant to DERP receive their funding from specific environmental restoration accounts under 10 U.S.C. 2703, not from the Trust Fund.

*F. How Are Site Boundaries Defined?*

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA "facility" is broadly defined to include any area where a hazardous substance has "come to be located" (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis. Because Puerto Rico has proposed to add certain areas on and around Vieques and Culebra as the Commonwealth's "single highest priority facility" pursuant to 42 U.S.C. 9605(a)(8)(B), no specific HRS analysis is applicable to this listing proposal.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the "boundaries" of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which that contamination has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (*e.g.*, the "Jones Co. plant site") in terms of the property owned by a particular party, the site properly understood is not limited to that property (*e.g.*, it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (*e.g.*, where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the "site"). The "site" is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the name "Jones Co. plant site," does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the "nature and extent of the problem presented by the release" will be determined by a Remedial Investigation/Feasibility Study (RI/FS) as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination "has come to be located" before all necessary studies and remedial work are completed at a site. Indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals

more information about the location of the contamination or release.

*G. How Are Sites Removed From the NPL?*

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with States on proposed deletions and shall consider whether any of the following criteria have been met:

(vii) Responsible parties or other persons have implemented all appropriate response actions required;

(viii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(ix) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate. As of August 9, 2004, the Agency has deleted 285 sites from the NPL.

*H. May EPA Delete Portions of Sites From the NPL as They Are Cleaned Up?*

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use. As of August 9, 2004, EPA has deleted 45 portions of 37 sites.

*I. What Is the Construction Completion List (CCL)?*

EPA also has developed an NPL construction completion list ("CCL") to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (*e.g.*, institutional controls); or (3) the site qualifies for deletion from the NPL.

As of August 9, 2004, there are a total of 899 sites on the CCL. For the most up-to-date information on the CCL, see EPA's Internet site at *http://www.epa.gov/superfund*.

**II. Public Review/Public Comment**

*A. May I Review the Documents Relevant to This Proposed Rule?*

Yes, documents that form the basis for evaluations by Puerto Rico, EPA, and other agencies concerning the site in this rule are contained in public dockets located both at EPA Headquarters in Washington, DC and in the Region 2 office.

*B. How Do I Access the Documents?*

You may view the documents, by appointment only, in the Headquarters or the Regional docket after the publication of this proposed rule. The hours of operation for the Headquarters docket are from 9 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. Please contact the Region 2 docket for hours.

The following is the contact information for the EPA Headquarters docket: Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue; EPA West, Room B102, Washington, DC 20004, (202) 566–0276. (Please note this is a visiting address only. Mail comments to EPA Headquarters as detailed at the beginning of this preamble.)

The contact information for the Region 2 docket is as follows: Dennis Munhall, Region 2, U.S. EPA, 290 Broadway, New York, NY 10007–1866; (212) 637–4343.

You may also request copies from either the EPA Headquarters or the Region 2 docket. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents.

You may also access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr*. You may use EPA Dockets at *http://www.epa.gov/edocket* to access the index listing of the contents of the Headquarters docket, and to access those documents in the Headquarters docket. Once in the system, select "search", then key in the Docket ID No. SFUND–2004–0011. The documents contained in the Headquarters and Region 2 Dockets are outlined below.

*C. What Documents Are Available for Public Review at the Headquarters and Region 2 Dockets?*

The Headquarters and Region 2 dockets for this rule contain: The June 13, 2003 letter from Governor Sila M. Calderon of Puerto Rico designating certain areas on and around Vieques and Culebra, identified by the Governor as AFWTA, as her highest priority facility and requesting listing of AFWTA on the NPL; additional letters from Puerto Rico clarifying the June 13, 2003 letter; maps; ecological information for Vieques and Culebra; Corps of Engineers Archive search for Culebra; and Navy supporting material.

*D. How Do I Submit My Comments?*

Comments must be submitted to EPA Headquarters as detailed at the beginning of this preamble in the **ADDRESSES** section. Please note that the addresses differ according to method of delivery. There are two different addresses that depend on whether comments are sent by express mail or by postal mail.

*E. What Happens to My Comments?*

EPA considers all comments received during the comment period. Significant comments will be addressed in a support document that EPA will publish concurrently with the **Federal Register** document if, and when, the site is listed on the NPL.

*F. What Should I Consider When Preparing My Comments?*

EPA is soliciting comments on the listing of certain areas on and around Vieques and Culebra, identified by the Governor collectively as the AFWTA, and requested by the Governor of Puerto Rico pursuant to 42 U.S.C. 9605(a)(8)(b). EPA is also soliciting comments on an approach for final listing that would separate the final listing decision for the Culebra from Vieques (see a more detailed description of this approach below under Section III.A. "Contents of this Proposed Rule"). In addition EPA is seeking comment on treating the noncontiguous islands of Vieques and Culebra as one facility, considering court decisions such as *Mead Corp.* v. *Browner*, 100 F 3d 152 (D.C. Cir. 1996).

*G. May I Submit Comments After the Public Comment Period Is Over?*

Generally, EPA will not respond to late comments. EPA can only guarantee that it will consider those comments postmarked by the close of the formal comment period. EPA has a policy of not delaying a final listing decision solely to accommodate consideration of late comments.

*H. May I View Public Comments Submitted by Others?*

During the comment period, comments are placed in the Headquarters docket and are available to

the public on an "as received" basis. A complete set of comments will be available for viewing in the Regional dockets approximately one week after the formal comment period closes.

All 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, Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. For additional information about EPA's electronic public docket, visit EPA Dockets online at *http://www.epa.gov/edocket* or see the May 31, 2002 **Federal Register** (67 FR 38102).

*I. May I Submit Comments Regarding Sites Not Currently Proposed to the NPL?*

In certain instances, interested parties have written to EPA concerning sites which were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the docket.

## III. Contents of This Proposed Rule

*A. Proposed Addition to the NPL*

Pursuant to section 105 (a)(8)(B) of CERCLA, Puerto Rico has requested that EPA propose to list certain areas on and around Vieques and Culebra, identified by the Governor as the AFWTA, on the NPL. The AFWTA includes certain land areas, waters and keys in and around the islands of Vieques and Culebra where military exercises carried out primarily by the Department of Defense have potentially left CERCLA hazardous substances, pollutants or contaminants.

Section 105(a)(8)(B) of CERCLA provides that the NPL "to the extent practicable, shall include among the one hundred highest priority facilities one such facility from each State which shall be the facility designated by the State as presenting the greatest danger to public health or welfare or the environment among the known facilities in such State. A State shall be allowed to designate its highest priority facility only once." In a letter from Governor Sila M. Calderon to former EPA Administrator Christine Todd Whitman dated June 13, 2003, Puerto Rico designated the AFWTA, comprising certain areas of concern in and around Vieques and Culebra as the Commonwealth's single highest priority facility ("State pick") and requested that EPA list the AFWTA on the NPL. Puerto Rico clarified its designation in letters dated October 21, 2003 , and July 28, 2004 with respect to both Vieques and Culebra, and May 26, 2004 with respect to Vieques. Support for Puerto Rico's designation of the AFWTA as their highest priority facility and a detailed description of areas preliminarily identified as part of the facility or as requiring investigation can be found in the docket for this rulemaking. EPA seeks comment on treating the noncontiguous islands of Vieques and Culebra as one facility considering court decisions such as *Mead Corp.* v. *Browner*, 100 F.3d. 152 (D.C. Cir. 1996). The *Mead* court rejected EPA's attempt to treat non-contiguous sites as one NPL site in a case in which one of the sites qualified for listing on the basis of an ATSDR advisory. The only rationale presented for combining the two sites for the purposes of the listing was that there were joint operations carried out at the two sites. In the *Mead* case, EPA had relied on a 1984 aggregation policy (49 FR 37,070 (Sept. 21, 1984)) that was premised on language in section 104(d)(4) of CERCLA which authorizes EPA to treat non-contiguous facilities as one for purposes of section 104. EPA no longer relies on the 1984 aggregation policy in the listing context.

EPA would also like to solicit comment on an approach that would separate the final listing decision for Culebra from the final listing decision for Vieques. Under such an approach, EPA would go forward with a final rule listing Vieques and postpone the final listing decision of Culebra to allow the completion of a Memorandum of Agreement between Puerto Rico and Army. The Memorandum of Agreement would govern the response actions necessary to protect Culebra's human health and environment. The EPA, Puerto Rico and the Army have agreed to pursue this alternate arrangement. The terms or progress under such agreement may determine the point at which it may be appropriate to withdraw the proposal to list the Culebra areas. EPA's intent would be to allow the Culebra areas to be addressed by the two parties under their agreement.

The Culebra portions of the proposal consist of land and water areas identified by Puerto Rico that were owned by, leased to, or otherwise utilized by the United States and under the jurisdiction of the Secretary of Defense that potentially contain CERCLA hazardous substances, pollutants or contaminants left from past military activities. These land areas and associated water areas include, but are not limited to, the following: the Flamenco Peninsula (Northwest Peninsula), Alcarraza Cay (Fungy Bowl), Los Gemelos (Twin Rocks), Cayo del Agua, Culebrita, Cayos Geniqui (Palada Cays), Cayo Tiburon (Shark Cay), Cayo Botella (Ladrone Cay), and a former mortar range Area in Culebra's Cerro Balcon region. Vieques includes all areas agreed to by Puerto Rico and the Navy in May 26, 2004 letter to EPA. For more detailed information on the Vieques portions, please refer to the May 26, 2004 letter with attached maps in the Docket (Docket ID No. SFUND–2004–0011). The description of the site may change as more information is gathered on the nature and extent of contamination.

*B. Status of NPL*

With this proposal, there are now 57 sites proposed and awaiting final agency action, 50 in the General Superfund Section and 7 in the Federal Facilities Section. There are currently 1,242 final sites, 1,084 in the General Superfund Section and 158 in the Federal Facilities Section. Final and proposed sites now total 1,299. (These numbers reflect the status of sites as of August 9, 2004. Site deletions occurring after this date may affect these numbers at time of publication in the **Federal Register**.)

## IV. Statutory and Executive Order Reviews

*A. Executive Order 12866: Regulatory Planning and Review*

1. What Is Executive Order 12866?

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal

mandates, the President's priorities, or the principles set forth in the Executive Order.

2. Is This Proposed Rule Subject to Executive Order 12866 Review?

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

*B. Paperwork Reduction Act*

1. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574).

2. Does the Paperwork Reduction Act Apply to This Proposed Rule?

No. EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

*C. Regulatory Flexibility Act*

1. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

2. How Has EPA Complied With the Regulatory Flexibility Act?

This proposed rule listing sites on the NPL, if promulgated, would not impose any obligations on any group, including small entities. This proposed rule, if promulgated, also would establish no standards or requirements that any small entity must meet, and would impose no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release or threatened release of hazardous substances and releases or substantial threats of releases into the environment of any pollutant or contaminant which may present an imminent or substantial danger to the public health or welfare depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking. Thus, this proposed rule, if promulgated, would not impose any requirements on any small entities. For the foregoing reasons, I certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

*D. Unfunded Mandates Reform Act*

1. What Is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

2. Does UMRA Apply to This Proposed Rule?

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any Federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA or other Federal agencies or private parties will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

*E. Executive Order 13132: Federalism*

1. What Is Executive Order 13132 and Is It Applicable to This Proposed Rule?

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), 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."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States (including the Commonwealth of Puerto Rico), on the relationship between the Federal government and the States and the Commonwealth, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

1. What Is Executive Order 13175?

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), 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."

2. Does Executive Order 13175 Apply to This Proposed Rule?

This proposed rule does not have tribal implications. It 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.

*G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

1. What Is Executive Order 13045?

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

2. Does Executive Order 13045 Apply to This Proposed Rule?

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this proposed rule present a disproportionate risk to children.

*H. Executive Order 13211*

1. What Is Executive Order 13211?

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001), requires EPA to prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for certain actions identified as "significant energy actions." Section 4(b) of Executive Order 13211 defines "significant energy actions" as "any action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) that is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action."

2. Is This Rule Subject to Executive Order 13211?

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)) because it is not a significant regulatory action under Executive Order 12866 (*See* discussion of Executive Order 12866 above.)

*I. National Technology Transfer and Advancement Act*

1. What Is the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

2. Does the National Technology Transfer and Advancement Act Apply to This Proposed Rule?

No. This proposed rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

**List of Subjects in 40 CFR Part 300**

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

Dated: August 10, 2004.

**Thomas P. Dunne,**

*Acting Assistant Administrator, Office of Solid Waste and Emergency Response.*

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

[FR Doc. 04–18655 Filed 8–12–04; 8:45 am]

BILLING CODE 6560–50–P

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### 45 CFR Parts 2510, 2520, 2521, 2522, 2540 and 2550

**RIN 3045–AA41**

### AmeriCorps National Service Program

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Corporation for National and Community Service (hereinafter the "Corporation") proposes to amend several provisions relating to the AmeriCorps national service program, and to add rules to clarify the Corporation's requirements for program sustainability, performance measures and evaluation, capacity-building activities by AmeriCorps members, qualifications for tutors, and other requirements.

**DATES:** To be sure your comments are considered, they must reach the Corporation on or before October 12, 2004.

**ADDRESSES:** You may mail or deliver your comments to Kim Mansaray, Corporation for National and Community Service, 1201 New York Avenue NW., Washington, DC 20525. You may also send your comments by facsimile transmission to (202) 565–2767, or send them electronically to *proposedrule@cns.gov* or through the Federal government's one-stop rulemaking Web site at *http://www.regulations.gov*. Members of the public may review copies of all communications received on this rulemaking at the Corporation's Washington DC headquarters.

**FOR FURTHER INFORMATION CONTACT:** Kim Mansaray, Docket Manager, Corporation for National and Community Service, (202) 606–5000, ext. 236. TDD (202) 565–2799. Persons with visual impairments may request this proposed rule in an alternative format.

**SUPPLEMENTARY INFORMATION:**

## I. Invitation To Comment

We invite you to submit comments about these proposed regulations. To ensure that your comments have maximum value in helping us develop the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each comment addresses and to arrange your comments in the same order as the proposed regulations. During and after the comment period, you may inspect all public comments about these proposed regulations in room 8417, 1201 New York Avenue, NW., Washington, DC, between the hours of 9 a.m. and 4:30 p.m., eastern time, Monday through Friday of each week except Federal holidays.

In addition, the Corporation is planning five public meetings and three conference calls during August and September for purposes of soliciting input on this proposed rule. Please visit our Web site at *http://www.americorps.org/rulemaking* for information on the dates, places, and times of these meetings and calls.

### Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

## II. Background

Under the National and Community Service Act of 1990, as amended (hereinafter "NCSA, or the Act," 42 U.S.C. 12501 *et seq.*), the Corporation makes grants to support community service through the AmeriCorps program. In addition, the Corporation, through the National Service Trust, provides education awards to and certain interest payments on behalf of AmeriCorps participants who successfully complete a term of service in an approved national service position.

On February 27, 2004, President Bush issued Executive Order (E.O.) 13331 aimed at making national and community service programs better able to engage Americans in volunteering, more responsive to State and local needs, more accountable and effective, and more accessible to faith-based and grassroots organizations. The E.O. directed the Corporation to review and modify its policies as necessary to accomplish the goals of the E.O.

In the Consolidated Appropriations Act for 2004, Congress required the Corporation to reduce the Federal cost per participant in the AmeriCorps program and to increase the level of matching funds and in-kind contributions provided by the private sector. The Conference Report accompanying the 2004 Consolidated Appropriations Act directed the Corporation to engage in notice and comment rulemaking around the issue of "sustainability."

On September 23, 2003, the Corporation's Board of Directors (the Board) directed the Corporation to "undertake rulemaking to establish regulations on significant issues, such as sustainability and the limitation on the Federal share of program costs, consistent with any applicable directives from Congress." On June 21, 2004, the Board approved draft specifications for the proposed rule, and directed the Corporation to develop and submit a proposed rule based on those specifications.

The Corporation is initiating two separate rulemaking processes in 2004. This first one will address significant and time-sensitive issues with the goal of incorporating them, to the extent practicable, into the AmeriCorps 2005 program year. The second process grows out of a recommendation by the Board's Taskforce on Grant-making and is largely an effort to streamline and improve our current grant making processes. That streamlining effort is already underway, and we plan to issue a Notice of Proposed Rulemaking for that purpose later in the year. These two rulemakings address distinct and separate issues.

## III. Preliminary Public Input

On March 4, 2004, the Corporation published a notice in the **Federal Register** inviting informal preliminary public input in advance of rulemaking. The notice outlined the general topics the Corporation was interested in addressing through rulemaking and posed questions for the public to consider in providing input. Following the notice, the Corporation held four conference calls and five public meetings across the country in Columbus, Ohio, Seattle, Washington, Boston, Massachusetts, Washington, DC, and Fort Worth, Texas, to frame the issues and hear public input. Through the hearings, conference calls, and e-mail and paper submissions, the Corporation received responses from nearly 600 individuals, and has used

this input to inform the drafting of this proposed rule.

**IV. Proposed Rule**

This proposed rule includes a targeted series of reforms designed to strengthen the impact, efficiency, and reach of the AmeriCorps program, our AmeriCorps grantees, and the Corporation. Our primary objectives are to:

- Create a framework for long-term growth and sustainability of the AmeriCorps program as a public-private partnership;
- Provide consistency, reliability, and predictability for AmeriCorps grantees and State commissions;
- Enhance the demonstrable positive impact of the AmeriCorps program on:
  - Communities and beneficiaries that receive service;
  - Non-profit organizations and community infrastructures that host service; and
  - AmeriCorps members who serve;
- Resolve longstanding issues relating to Federal share, cost per full-time-equivalent member, and sustainability of AmeriCorps projects in a way that minimizes annual uncertainty about grantee funding levels and restrictions; and
- Assure fiscal and programmatic accountability and performance measurement for the Corporation, the AmeriCorps program, and grantees.

In addition, wherever possible, this rule reflects the Corporation's determination to:

- Decrease the bureaucratic and paperwork burdens on Corporation grantees;
- Strengthen the program's ability to respond to State and local needs;
- Engage more community volunteers;
- Include faith-based and grassroots community organizations in all Corporation programs; and
- Invigorate the competitive grant-making process.

Existing and potential AmeriCorps grantees constitute a rich and diverse group of talented and innovative forces for change, with different needs, circumstances, and abilities. Therefore, the Corporation has endeavored, throughout these regulations, to:

- Use competitive criteria to encourage, rather than require, desired actions or activities, wherever possible; and
- Calibrate implementation of the regulatory requirements based on the unique goals, circumstances, and limitations of grantees, including waivers where appropriate.

As announced in the March 4, 2004, **Federal Register** notice, the Corporation is focusing these reforms on five main areas: (1) Sustainability of AmeriCorps programs, including decreasing grantee reliance on Federal funds and decreasing Federal costs per full-time equivalent; (2) Selection criteria; (3) Performance measures and evaluation; (4) Tutor qualifications and requirements for tutoring programs; and (5) Streamlining continuation applications and grant cycles. The following discussion addresses the issues of sustainability and intermediaries generally, and then addresses the specifics of the proposed rule in more detail. Section V of this preamble addresses implementation of the proposed rule, and section VI addresses several policy issues we have considered in light of the public input we received.

*Sustainability*

The issues about which we received the most input were those relating to sustainability, Federal share, and cost per full-time-equivalent (FTE). Much of the input sought to define sustainability in broad terms, and included many elements, other than finances, as part of the definition. While the Corporation agrees that there are many measures and elements of sustainability, the most recent discussion has focused on the monetary aspects of sustainability—Federal share and cost per FTE.

The Corporation understands that other forms of sustainability are important; they are reflected in the proposed changes to the selection criteria so that an organization achieving sustainability through any or all of those measures will be more competitive when applying for an AmeriCorps grant. But ultimately, we believe that the focus of Congress in this discussion of sustainability is at the organizational or program level—specifically on the financial resources of the organization or program. In other words, how can organizations that the Corporation supports better leverage Federal dollars by expanding and diversifying their non-Federal funding? To the extent that this is a broader question, we would frame it as: how much more national service can AmeriCorps provide across the country with the Federal dollars available to it?

The Corporation's annual appropriations and its authorizing legislation, as well as E.O. 13331, support this approach. In our annual appropriations act each year dating back to fiscal year 1996, Congress directed the Corporation to "increase significantly the level of matching funds and in-kind contribution provided by the private sector," and "reduce the total Federal costs per participant in all programs." Section 130(b)(3) of the Act, as amended, authorizes the Corporation to ask an organization "re-competing" for funding after a three-year initial grant period to include a "description of the success of the programs in reducing their reliance on Federal funds." In addition, E.O. 13331 directs that "national and community service programs should leverage Federal resources to maximize support from the private sector and from State and local governments."

While the Corporation is committed to meeting these goals, they do not require imposing limitations on the number of years an organization may receive funds, particularly given the many organizations providing valuable infrastructure and experience that enable national and community service to continue to thrive across the country. At the national level, we do not think it necessary to disqualify an organization from receiving Federal funding based on the number of years that organization has received funding. To do so would result, in future years, in a loss of some of the strongest organizations with the capacity, infrastructure, and experience to provide high-quality service and deliver results that contribute to the strengthening and growth of national and community service. We do believe, however, that most, if not all, organizations that receive Corporation funds can and should contribute a higher share of program costs over time.

The Corporation's objectives in the proposed rule relating to sustainability are to make more resources available in order to increase national service activities and opportunities. In addition, we seek to strengthen existing national and community service programs by encouraging grantees to expand and diversify their non-Federal funding sources while strengthening the competitive framework. At the same time, we want to strengthen the independence, operating flexibility, and autonomy of grantees, and treat grantees fairly and equitably.

The Corporation's strategy to increase organizational sustainability and expand national and community service has six main elements:

1. Incorporates the broad spectrum of sustainability criteria throughout the Corporation's grant selection criteria.
2. Makes an applicant's budgeted Corporation cost per full-time-equivalent (FTE) a more meaningful factor in the selection process. All else being equal, the lower a program's cost per FTE, the better chance it will have to receive Corporation funding. At the

same time, the Corporation will explicitly take into account the goals, performance outcomes, and the individual circumstances of programs and the communities in which they operate, thereby considering both costs and benefits.

3. Increases, based on a predictable and incremental schedule, the grantee share of program costs to a 50 percent aggregate level by the 10th year in which an organization receives an AmeriCorps grant for the same program.

4. Expects State commissions to develop and implement a sustainability approach as part of their oversight function.

5. Reserves a percentage of non-continuation AmeriCorps State and national grant funds each year for applicants that have not received AmeriCorps competitive funding from the Corporation for at least five years.

6. Builds meaningful tools, including limited exceptions, for accommodating organizations that have demonstrated hardship in meeting the increasing match requirements.

With the exception of the fourth element—reserving a percentage of non-continuation funds each year for applicants new to the Corporation—we address each of the elements in more detail in the individual section discussions that follow. On the issue of reserving a percentage of funds for applicants new to the Corporation, we anticipate reserving annually a percentage of AmeriCorps funds for grants to new applicants—*i.e.*, applicants who have not received an AmeriCorps State or national competitive grant for at least five years. The Corporation will determine this percentage annually based on the availability of appropriations and the projected number of recompeting applications, and publish this information, including posting it on the Web site at *http://www.nationalservice.org,* in advance of the selection process.

The Corporation believes that its sustainability approach represents a fair, equitable, and authoritative resolution of the issue of organizational financial sustainability. The proposed rules are authorized by, and consistent with, our enabling legislation, and strike a reasonable balance between our objectives of supporting and strengthening high-quality programs while leveraging Federal resources to achieve the greatest benefit possible for our nation's communities. Predictability and consistency are crucial elements of this rulemaking. Thus, we seek to provide clear guidance to our grantees on our long-term expectations for sustainability, which we believe decisively resolves the ongoing discussion on the issue.

*Intermediaries*

The Corporation received a substantial amount of input regarding intermediaries and, in particular, the potential effect of efforts to promote sustainability on those entities. We believe that there is and should continue to be a prominent place for intermediaries in the national and community service portfolio, particularly given their important role in reaching faith-based and small community-based organizations. The Corporation understands that many intermediary models include a regular infusion of new sites, which, as with any start-up, may have higher costs initially. In designing the selection criteria, we have explicitly included that feature of intermediaries as a possible factor in considering several of the cost-effectiveness competitive factors.

We note, however, that we have set matching requirements at the grantee level, rather than at the placement or operating site level, and we have not adjusted the matching requirements based on the proportion of new sites in any given year. We believe that establishing the matching requirements at the grantee level gives greater flexibility to intermediaries to manage and achieve a mix of new and older sites.

*Specifics of the Proposed Rule*

As discussed in more detail below, the proposed rule:

1. Defines the term "target community" as the geographic community for which an AmeriCorps grant applicant identifies an unmet need to be addressed.

2. Clarifies the types of service activities in which AmeriCorps members may engage and explains the parameters for grantees and members to engage in capacity-building service activities, including volunteer recruitment and support.

3. Increases, in an incremental and predictable fashion, the grantee's share of program costs to a 50 percent aggregate plateau over 10 years.

4. Codifies that the amount of childcare payments the Corporation makes on behalf of an AmeriCorps member may not exceed the amount provided under the Child Care and Development Block Grant Act of 1990 (P.L. 101–508).

5. Codifies the grant selection process and criteria, and aligns the criteria with indicators of high-quality and sustainable programs.

6. Clarifies how grantees will calculate their budgeted Corporation cost per FTE.

7. Codifies the Corporation's requirements for grantees to establish performance measures and to evaluate program outcomes, and establishes grant size threshold for evaluations.

8. Establishes qualifications for members serving as tutors and requirements for tutoring programs.

9. Prohibits displacement of volunteers.

10. Removes obsolete references to "transitional entities" serving as State commissions on national and community service.

11. Broadens State commission flexibility to directly operate national service programs, except to the extent prohibited by statute.

12. Modifies State commission State plan requirements to include a description of their program sustainability approach.

Member Service Activities on Behalf of the Organization (§§ 2520.20 Through 2520.65)

Except for those member activities specifically prohibited in sections 132 and 174 of the Act, as amended, the Corporation has broad authority to determine appropriate service activities for AmeriCorps members. The proposed regulation largely codifies and clarifies the Corporation's current guidelines and grant provisions on this issue. Specifically, this regulation clarifies that AmeriCorps members may: (1) Perform direct service activities, and (2) engage in other activities that build the organizational and financial capacity of nonprofit organizations and communities, including volunteer recruitment and certain fundraising activities.

*Volunteer Recruitment*

One focus of Executive Order 13331 is leveraging of Federal resources "to enable the recruitment and effective management of a larger number of volunteers than is currently possible." The proposed regulations more clearly direct that some component of an AmeriCorps grant must help build the long-term capacity of nonprofit organizations and the community by recruiting and supporting volunteers. While this has implicitly been a requirement over the past two years, clarifying and reinforcing this requirement is expected to encourage more Americans to engage in service and volunteer activities, and advance President Bush's call to service.

The Corporation does not, however, intend for this requirement to distract from an organization's mission, nor is our goal to replace direct service with volunteer generation and other capacity-building activities. In most cases, direct service and volunteer leveraging can complement each other to strengthen programs and communities. When considering how an AmeriCorps program can promote the effective involvement of volunteers, applicants have the flexibility to determine the best way to enhance or build upon the direct service goals of the program in which the AmeriCorps members are serving and to propose capacity-building activities accordingly.

The Corporation recognizes, however, that some program models, such as certain professional corps, youth corps, and programs in some rural locations with a limited volunteer pool, may not be able to include volunteer recruitment and support in their program model, and the Corporation will take these factors into account in considering requests to waive the volunteer leveraging requirement.

*Fundraising*

The proposed regulation also clarifies that AmeriCorps members may help organizations raise funds directly in support of service activities that meet local environmental, educational, public safety, homeland security, or other human needs. Members may participate in a wide range of fundraising activities if these activities make up only a relatively small amount of any individual member's overall service hours. Members may write grant applications excepting those for AmeriCorps or any other Federal funding.

The rule's provisions governing fundraising are more flexible for AmeriCorps members than those for grantee staff, which are subject to Federal cost principles described in the Office of Management and Budget Circulars that generally disallow costs incurred in organized fundraising. The Corporation believes that these activities will enhance the use of AmeriCorps members to build the capacity of nonprofit organizations, as well as advance the professional development of the members themselves.

Finally, the rule codifies the Corporation's existing so-called "80/20" rule, which limits a program's aggregate number of hours for education and training activities to not more than 20 percent of its members' total service hours. The rule also clarifies that capacity-building activities count towards the 80 percent and not the 20 percent education and training hours.

Increase in Grantee Share of Program Costs (§§ 2521.40 Through 2521.60)

Sections 121 and 140 of the Act, as amended, establish a ceiling on the Corporation share for program operating costs and the Federal share for member support costs of 75 percent and 85 percent, respectively. In other words, at a minimum, the statute requires an AmeriCorps grantee to provide not less than 25 percent of operating costs, and 15 percent of member support costs. While the Act does not allow the Corporation to decrease the grantee share requirements below the statutory minimum, the Corporation has the discretion under the statute to increase the grantee share of costs, and did so in 1996, when we increased the grantee share of operating costs from 25 percent to 33 percent.

As discussed earlier, the Corporation believes that the essence of the current public discussions of sustainability relates to the financial resources of our grantee organizations. Section 130 of the Act, as amended, explicitly authorizes the Corporation to ask an organization applying for renewal of assistance ("recompete" funding) after an initial three-year grant period to describe how it has decreased its reliance on Federal funding. In addition, in our annual appropriations act each year dating back to fiscal year 1996, Congress has directed the Corporation to "increase significantly the level of matching funds and in-kind contribution provided by the private sector," and to "reduce the total Federal costs per participant in all programs." Finally, E.O. 13331 directs that "national and community service programs should leverage Federal resources to maximize support from the private sector and from State and local governments."

Consequently, this proposed rulemaking would increase, in a predictable and incremental fashion, the grantee share of program costs to a 50 percent aggregate level in the 10th year that an organization receives an AmeriCorps grant. Each grantee will be required to meet the current minimum requirements of 33 percent match (cash or in-kind) for operating costs and 15 percent match (non-Federal cash only) for member support costs. After meeting those minimum requirements, the grantee may meet the balance of its aggregate share of costs through any combination of operating or member support matching funds. The grantee aggregate share will apply beginning in the fourth year and increase in each year thereafter in which an organization receives a program grant as follows:

| | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Year 6 | Year 7 | Year 8 | Year 9 | Year 10 |
|---|---|---|---|---|---|---|---|---|---|---|
| Minimum Aggregate Share ..... | N/A | N/A | N/A | 26% | 30% | 34% | 38% | 42% | 46% | 50% |

The proposed rule establishes that a current grantee who has received an AmeriCorps grant for 4 years or more, must begin meeting the match requirements at the year three-level. For the first two years, that organization will be required to meet current, or marginally higher, match requirements, before its required share begins to increase more systematically.

The Corporation intends to provide training and technical assistance to grantees to assist them in achieving their matching goals. For example, we may provide training on documenting in-kind match to enable grantees to maximize their ability to use in-kind towards their overall matching requirements. We will consult with grantees to determine the most useful and appropriate training and technical assistance.

We believe, based on our research into current grantee match levels, that it is reasonable to expect all grantees, even those operating in remote or impoverished communities, to achieve this level of matching, and we expect State commissions to continue managing their portfolios to achieve even higher match levels. However, to the extent that an organization is unable to achieve or increase its share of costs, we intend to consider targeting the following assistance to organizations that are demonstrably at risk of not meeting the matching requirements:

1. Providing additional training and technical assistance: The Corporation plans to provide training and technical assistance to help grantees identify new strategies to raise matching funds and community support.

2. Redirecting Corporation assets: The Corporation will consider using, on a

short-term basis, other program assets to help an organization struggling to meet its match requirements. For example, we might temporarily allocate a VISTA member to help build the capacity and broaden the community support of a VISTA-eligible organization.

3. Conducting Corporation outreach to the regional and national philanthropic community: The Corporation will seek to broaden its outreach to the philanthropic community to promote those national and community service programs that are potentially at risk and explain the impact of the changes we are implementing.

4. Allowing State commission portfolio flexibility: If a subgrantee of a State commission is not meeting its minimum matching requirements, we are providing the State commissions the ability to make up for the short-fall in a low-matching grantee's matching funds by pairing that grantee up with one or more grantees that are meeting more than the required level of matching funds. This will provide some flexibility to State commissions to manage their formula and, to some extent, competitive portfolios, while effectively reducing Federal share.

5. Allowing a waiver: On a limited basis, the Corporation will use its current statutory waiver authority for those satisfactorily performing and otherwise compliant programs that demonstrate an inability, in spite of reasonable efforts, to achieve sufficient financial support to meet the increased matching requirements. This waiver would be granted on an annual basis and subject to revision or revocation based on grantee performance and resources.

The Corporation believes the increased match requirements, together with the measures described above that are designed to assist grantees in meeting the new requirements, represent a fair, equitable, and authoritative resolution of the issue of organizational financial sustainability, such that additional measures in annual appropriations bills, or through rulemaking, are not necessary. We intend to make public information on an annual basis reporting the progress that grantees are making in leveraging Federal resources.

Codifying the Cap on Child-Care Payments (§ 2522.250)

Section 140(e) of the Act, as amended, authorizes the Corporation to establish guidelines on the availability and value of child-care assistance. By current regulation, child-care payments for AmeriCorps State and National members are "based on" amounts authorized under the Child Care and Development Block Grant of 1990. The Corporation is proposing to eliminate any ambiguity in the current language by explicitly capping the amount of child-care benefits for any individual AmeriCorps member at the level established by each State under the Child Care and Development Block Grant.

AmeriCorps Grants Selection Process and Criteria (§§ 2522.400 Through 2522.470)

In addition to establishing specific AmeriCorps grant application requirements, section 130 of the Act, as amended, gives the Corporation broad authority to set additional application requirements and to establish the selection process. We are proposing adjustments to our grant selection criteria to meet three objectives: (1) To better align the selection criteria with elements that predict program success; (2) To incorporate into the selection criteria greater emphasis on sustainability; and (3) To provide transparency, predictability, and consistency for organizations applying for AmeriCorps funds.

The proposed rule describes the Corporation's processes and criteria for selecting grantees. In selecting AmeriCorps programs, the Corporation generally needs to know four things: (1) An organization's plan and its expected outcomes; (2) Whether the organization has the capability to manage Federal funds, and operate and support the proposed program; (3) The cost implications of the proposed program; and (4) For an existing program, whether the organization has implemented a sound program, including achieving strong outputs and outcomes, organizational capability, and cost-effectiveness.

To address these issues, the proposed rule modifies the current structure of three overall categories of criteria—Program Design, Organizational Capability (formerly Organization Capacity), and Cost-Effectiveness (formerly Budget/Cost-Effectiveness). We have adjusted the weights of the three categories to better balance program design against organizational strength, which is reflected through organizational capability, and cost-effectiveness. Consequently,

- Program Design is 50 percent of the score (as opposed to 60 percent currently),
- Organizational Capability remains at its current 25 percent weight, and
- Cost-Effectiveness is 25 percent (as opposed to 15 percent currently).

The Corporation's focus within Program Design is now on the relationship between an applicant's rationale and approach, and the outputs and outcomes to be achieved for members and the community. Most of the criteria from the Corporation's current AmeriCorps 2004 guidelines remain part of the revised selection criteria, although they may now appear under a different category. (Please visit our Web site at *http://www.nationalservice.org* to view the AmeriCorps 2004 guidelines). We have also added criteria across all three categories to better reflect our focus on outcomes and sustainability. With respect to financial sustainability, we have included a specific criterion on Corporation cost per FTE, so that, all things being equal, an applicant proposing a lower cost per FTE will be more advantaged in the selection process, in the context of fully weighing the benefits, contributions and circumstances of each program.

In applying the selection criteria, the Corporation intends to ensure, to the maximum extent possible, that similar program models are evaluated together. This will help to ensure equity and fairness. The proposed rule would allow the Corporation to also consider relevant information it has received or that is otherwise available during the grant review process—the proposed rule sets out in detail the type of information that the Corporation may choose to consider.

After the Corporation applies the basic selection criteria, we may then apply one or more of the Corporation's selection priorities, as described in this proposed rule. The Corporation may also announce additional priorities in the Notice of Funding Availability, or other notice to the public. Our intent, however, in codifying the selection priorities in these regulations is to provide transparency and baseline consistency for current and prospective grantees. This list of selection priorities reflects several long-standing Board priorities as well as new priorities that we believe are appropriate as a matter of policy—and for the Programs Supporting Distressed Communities, as a matter of law.

The proposed rule reaffirms that the Corporation will seek to ensure innovation and diversity across its portfolio of AmeriCorps programs. In addition, we are requiring State commissions to prioritize their State competitive proposals in rank order to help inform our selection process. While the Corporation will not be bound by the commissions' rankings, we may consider them when making

funding decisions. We may, in the future, choose to limit the number of proposals any one State may submit for State competitive funding to streamline the selection process and make optimal use of outside peer review panels. If so, we will announce the limitation in the appropriate Notice of Funding Availability.

The input we received raised some questions over State commission peer review requirements and why the Corporation conducts peer reviews of proposals that State commissions may have already peer reviewed. While the regulatory language does not specify this, we wish to clarify that the Corporation does not require State commissions to peer review AmeriCorps State competitive proposals. The Corporation conducts peer reviews of those proposals at the national level to ensure equitable consideration of all applications. However, a State commission may be required, under State law, to peer review proposals, or it may choose to do so on its own.

Cost Per Full-Time-Equivalent (FTE) (§ 2522.485)

As discussed earlier, the proposed rule strengthens the Corporation's basic selection criteria, and explicitly includes a program's proposed Corporation cost per FTE as an indicator of cost-effectiveness at § 2522.435. The proposed regulations also quantify an individual program's Corporation cost per FTE. For individual programs, the Corporation cost per FTE is the budgeted grant costs divided by the number of member FTEs awarded in the grant. The budgeted grant costs exclude: (1) Child-care for individual members, for which the Corporation pays directly; and (2) The education award a member may receive from the National Service Trust after fulfilling a term of service.

The Corporation will announce annually any changes in a program's Corporation cost per FTE. We anticipate that making cost per FTE a competitive factor and gradually decreasing the Federal share of grantee costs will cause the cost per FTE for most programs to decrease over time. Generally, however, the Corporation will consider granting continuation and recompete program requests to increase their Corporation cost per FTE up to the statutorily-required percentage increase in their previous year's AmeriCorps member living allowance. (42 U.S.C. § 12594(a)).

The Corporation will continue to hold State commissions and national direct grantees to a maximum average Corporation cost per FTE. State commissions and national direct grantees will calculate their portfolio's average Corporation cost per FTE by dividing the budgeted grant costs for all their AmeriCorps programs by the number of member FTEs awarded across their portfolio of AmeriCorps programs, including Education Award programs. The budgeted grant costs do not include child-care for individual members, the education award a member may receive from the National Service Trust for fulfilling a term of service, or non-program grant funds such as a State commission's administrative grant or Program Development and Training (PDAT) funds. We encourage State commissions and national direct grantees to use the Education Award Program as a way to lower their average Corporation cost per FTE, to the extent feasible while maintaining high quality programs.

Currently, the average cost per FTE for each commission includes the formula funds they use for planning grants. Some of the input suggested that the Corporation give States more leeway to use planning grants to foster new AmeriCorps programs by taking the cost of planning grants out of the average cost per FTE calculation for each commission. The Corporation is considering allowing commissions, in calculating their average Corporation cost per FTE, to exclude some amount of planning grants from their budgeted grant costs, in an amount to be determined by the Corporation each year. The Corporation plans to study the budgetary and National Service Trust implications of this approach in the coming months. However, we invite the public to suggest other ideas for expanding the use of planning grants.

The Corporation will announce in the **Federal Register** and on its Web site at *http://www.nationalservice.org* the annual maximum average Corporation cost per FTE for State commissions and national direct portfolios. For the 2004 and 2005 program years, the maximum average Corporation cost per FTE for both State commissions and national directs will remain at the current level of $12,400. The Corporation recognizes that the member living allowance may increase and we will review the maximum average cost per FTE annually with this and other changes to program costs in mind.

While we acknowledge that cost per FTE may be defined in several different ways, our proposed calculations of Corporation cost per FTE are primarily to enable grantees and subgrantees to manage Corporation costs at the program and State commission level, and to estimate costs for the grant selection process.

Performance Measures and Evaluation (§ 2522.500 Through 2522.740)

To ensure that the Corporation continues to demonstrate the true impact of national service, and that programs continue to improve, as well as to fulfill the expectations laid out in the Government Performance Results Act of 1993 and OMB's Program Assessment Rating Tool (or PART), we are continuing to build on the progress we have made in demonstrating results. The proposed rule codifies the Corporation's current requirements for performance measurement, focuses independent evaluation requirements on large grantees, and generally reflects current Corporation practice. In addition, the proposed rule clearly describes the relationship between performance measures, evaluations, and funding decisions. The Corporation believes that a stronger emphasis on performance measurement and evaluation will strengthen AmeriCorps programs and foster continuous improvement. In line with E.O. 13331, emphasizing performance measures and evaluation will also help us identify both best practices and models that merit replication, and programmatic weaknesses that can be corrected most effectively when identified early.

The proposed rule distinguishes performance measurement from program evaluation, while making explicit that grant funds used to pay for either activity are not considered "administrative costs" or subject to the 5 percent statutory cap. A grantee would be allowed to use grant funds to pay for performance measurement and evaluation up to the approved amounts for such activities in its grant.

While the proposed rule allows an applicant organization to propose and negotiate performance measures unique to the applicant's program, the rule provides that the Corporation will establish one or more national performance measures on which all grantees would have to report. The Corporation will establish a national performance measure on volunteer leveraging, and may establish performance indicators of member satisfaction. The Corporation will develop national standardized performance measures in consultation with AmeriCorps grantees.

Section 131(d)(1) of the Act specifies that an applicant must arrange for an independent evaluation of an AmeriCorps national service program receiving assistance under Subtitle C of Title I of the Act, unless the applicant obtains Corporation approval to conduct an internal evaluation. The statute also

authorizes the Corporation to make alternative evaluation requirements "based upon the amount of assistance" a grantee receives.

In light of these provisions, the Corporation is revising its current requirement that all grantees arrange for evaluations every 4 years. The proposed rule requires that only grantees receiving an average annual program grant of $500,000 or more conduct an evaluation that covers a period of at least 5 years, and submit the evaluation results with their application for recompete funding. The Corporation intends to strictly enforce this requirement. Our rationale for this approach is that it is burdensome to require evaluation for smaller grants, and, for larger grants, we want to give a grantee enough time to complete a rigorous evaluation, and ensure that the Corporation receives it in time to consider with a grantee's second recompete application for funding. The Corporation will not consider for funding any recompete application that does not include the required evaluation summary, or results, as applicable.

For grantees that do not meet the dollar threshold, the Corporation encourages (but does not require) them to perform evaluations and may consider the results of these evaluations when making decisions on an organization's application for funds. See our Web site (*http://www.nationalservice.org*), under the AmeriCorps application guidelines and AmeriCorps application instructions for the relevant program year for information on how to submit evaluation materials.

To continuously improve the results of programs for both participants and the people they serve, we encourage all grantees to provide for evaluations as part of their programs.

Qualifications for Members Serving as Reading Tutors and Requirements for Tutoring Programs (§§2522.900 Through 2522.950)

E.O. 13331 directs that school-based national and community service programs "should employ tutors who meet required paraprofessional qualifications, and use such practices and methodologies as are required for supplemental educational services." The Corporation believes strongly that it is important to maintain consistency with the No Child Left Behind Act (NCLBA) and ensure that children who need tutoring are receiving the best possible support.

At the same time, we recognize that thousands of AmeriCorps members are providing invaluable support to children through a wide range of activities. In setting qualifications, we have narrowly defined "tutor" in these regulations to include only individuals whose primary goal is to increase academic achievement in reading or other core subjects through planned, consistent, one-to-one or small-group reading, or other small-group sessions, that build on students' academic strengths and target students' academic needs. We do not intend to establish qualifications for national service participants who engage in other school-related support activities, such as homework help provided as part of a safe-place-after-school program.

The proposed rule also confirms that the qualification requirements for tutors and other paraprofessionals under the NCLBA apply to tutors who are employees of the Local Education Agency (LEA) or school, but do not apply to AmeriCorps members serving as tutors under the sponsorship of an organization other than the school district.

Under the NCLBA, paraprofessionals who provide instructional support in Title I schools must have a secondary school diploma or its equivalent and must have: (a) Completed two years of study at an institution of higher education; or (b) Obtained an associate's or higher degree; or (c) Met a rigorous standard of quality and be able to demonstrate the appropriate and relevant job skills through a formal State or local academic assessment. As stated above, these requirements apply only to tutors who are employees of the LEA or school, but do not apply to AmeriCorps members serving as tutors under the sponsorship of an organization other than the school.

For a member serving as a tutor, *other than one employed by the LEA or school*, the proposed rule requires either that the member has a high school diploma (or its equivalent), or that the member passes a proficiency test that the grantee has determined effective in ensuring that the member has the necessary skills to serve as a tutor. A member serving as a tutor would also have to successfully complete any pre- and in-service specialized training required by the program.

In addition, tutoring programs are required to show competency to provide tutoring service through their recruitment, specialized training, performance measures, and supervision. We believe that these requirements will help improve the overall quality of tutoring and literacy programs in which AmeriCorps members serve.

Non-Displacement of Volunteers (§ 2540.100)

The Corporation's focus has always been, pursuant to the Act, to fund programs meeting unmet needs in their communities. The non-displacement rules are one way to ensure that programs are meeting unmet needs, rather than needs that employees or volunteers are meeting already. Consequently, we are proposing to clarify, in the regulation, that the service of an AmeriCorps member must complement, and may not displace, the service of other volunteers in the community. This clarification is consistent with the directive in E.O. 13331 that national and community service programs avoid or eliminate any practice that displaces volunteers.

Transitional Entities (§§ 2550.10 Through 2550.80)

The National Service Trust Act of 1993 and the Corporation's regulations, originally issued in 1994, contemplated the existence of transitional entities, in addition to State commissions and alternative administrative entities, as State bodies that could be eligible to receive Corporation funding and administer national service programs on an interim basis. The provisions relating to transitional entities, however, sunsetted 27 months after the passage of the Act, or December 1995. The proposed rule amends the regulations to remove any obsolete references to transitional entities.

State Commission Sustainability Approaches (§ 2550.80(a)(3))

Part of the Corporation's sustainability strategy is to build upon what some States are already doing in the sustainability arena. Through the public input process and follow-up discussions, we learned that roughly one-quarter of the State commissions have written sustainability policies or approaches through which they promote sustainability and encourage new programs in their States. Some States, for example, gradually and predictably reduce their programs' Corporation cost per FTE over 12 years, to allow the commission to invest funds in new programs and encourage on-going programs to develop efficiencies and enhance community support. Other State commissions require, among other things, that their subgrantees develop their own sustainability plans, and increase the subgrantee share of program operating costs over a seven-year period to 75 percent. Some States, in addition to requiring a small increase in program share of member support

costs over a three-year period, actively solicit private donations to use, in part, to help AmeriCorps programs meet corporate donors and improve private support.

We expect these States to continue their sustainability efforts, and other States to begin planning how they can help make national and community service sustainable at the state level. For this reason, the proposed rule requires each State to describe its sustainability approach in its State plan. To address this requirement, States will need to consider how best to use the Corporation's sustainability approaches in conjunction with State needs to achieve sustainable national and community service programs, and the Corporation will have the opportunity to learn from what the States are doing and to share best practices.

State Commissions Directly Operating Programs (§ 2550.80(j))

The Corporation proposes to ease the restriction on State commissions directly carrying out national and community service programs. Under the Act, a State commission or alternative administrative entity may not directly carry out any national service program that receives assistance under subtitle C. 42 U.S.C. 12638(f). Currently, however, 45 CFR 2550.80 goes further than the statute by prohibiting State commissions from directly operating *any* national service program receiving assistance, in any form, from the Corporation. This means that, currently, a State commission is prohibited from operating not only a subtitle C AmeriCorps program, but also any subtitle H, Learn and Serve, or Senior Corps program. The Corporation is relaxing the restriction by amending the regulations to conform to the Act and to give commissions more flexibility to directly operate programs other than subtitle C AmeriCorps programs.

**V. Effective Dates**

The Corporation intends to make any final rule based on this proposal effective no sooner than 30 days after the final rule is published in the **Federal Register**. We will include an implementation schedule in the final rule, based on the final rule's date of publication.

**VI. Significant Non-Regulatory Issues**

The Corporation announced in its March 4, 2004 **Federal Register** notice that we would not respond to the input we received during the preliminary input process, but that we would use it to inform our drafting process. That said, we received sufficient input on certain issues that we feel we should address here, even in the absence of regulatory language.

*A. Streamlining Grantee Requirements and Aligning Them With Grantee Needs*

Much of the public input we received focused on suggestions for streamlining our grant application and grant-making processes, and streamlining and aligning with grantee needs our reporting and other requirements. The following are some of the issues we considered and our response.

Revising the Timing of the Grant Cycle

During the preliminary public input process, we heard that our current grant calendar is not optimal for many organizations with start dates in the fall. To the extent that appropriations are made available, we intend to move application deadlines and grant awards to earlier in the fiscal year. Our goal is to execute grant awards to allow grantees as much time as possible from the time they receive the grant to the date that they start their programs. Part of this process will also include revisiting our current application requirements to tailor them more closely to the information we reasonably need to make decisions.

The Corporation received several requests to authorize grantees to allow members to begin serving before we actually execute the grant award. By law, the Corporation cannot meet this request. The Strengthen AmeriCorps Act re-emphasizes the statutory requirement that the obligational event for an education award is the execution of the grant award. Thus, we cannot allow programs to enroll members before we have *awarded* both the grant and the member FTEs associated with the grant.

Streamlining Continuation Grants and Reporting Requirements

Section 130 of the National and Community Service Act of 1990, as amended, authorizes the Corporation to determine the timing and content of applications for AmeriCorps funding. The public input we received overwhelmingly indicated that we should streamline our current process for applying for continuation funding in years two and three of a three-year grant period. We agree and intend to change our continuation application requirements to minimize the burden on grantees, while ensuring that the Corporation receives the information it needs to make fiscally responsible continuation awards. Our intent is to streamline the application, reporting requirements, and the review process for continuations, as well as to give grantees more predictability over the three-year grant cycle.

We propose:

- Allowing grantees, generally, to request their continuation award on a rolling basis, according to their needs, rather than by a specific due date;
- Requiring grant applicants to submit a three-year budget and three-year plan for performance measures with their initial application for funding, and to update it annually when they request additional funds for years two and three of the grant;
- Requiring grantees to submit their progress report and, if applicable, a narrative describing any proposed changes in the scope of the program with their request for continuation funding;
- Eliminating the requirement that grantees submit a new SF 424 Face sheet, a complete program narrative, and other information that we determine to be unnecessary; and
- Eliminating the requirement that State commissions provide annual summaries, and other information we determine to be unnecessary for their State competitive programs.

Accordingly, the Corporation will be revising and streamlining many of the information collection requirements related to grant applications. The Corporation intends, to the maximum extent possible, to award continuation grants within one month of a grantee's request, or within one month of the Corporation's receipt of its annual appropriation, whichever is later. This means that, as a general rule, the Corporation intends to award continuation requests on a rolling basis, rather than requiring all applications to be submitted on a specific day and considering them at the same time. We intend to work with State commissions on a schedule that accommodates the different start dates of programs within a State's portfolio. Because of the uncertainties of annual appropriations, however, we are reviewing how this process would affect continuation requests that include an expansion request (including both requests for more program funds and requests for more member FTEs), and may establish an alternate timetable for considering those requests.

The Corporation intends to approve continuation requests based on:

1. The Grantee's satisfactory performance, as demonstrated in the progress report and other information the Corporation may have obtained;
2. Whether the grantee is in compliance with its grant provisions;
3. Any proposed changes to the grantee's program or budget; and

4. The availability of appropriations.

To make this new process work, the Corporation intends to tie reporting requirements, such as the progress report, to the start date of individual grants, rather than setting an arbitrary deadline for all grantees. We anticipate issuing a three-year schedule of reporting due dates with each initial grant award so that the grantee will know what is expected at the outset. This will also ensure that the Corporation receives the reports at the optimal point in time for making funding decisions. In addition, we are committed to focusing and streamlining our current reporting requirements to reduce grantee burden.

In sum, these anticipated changes are expected to decrease the burden on grantees, increase the efficiency of the grant-making process, and increase the utility of what grantees report. We will inform our grantees once we have finalized our continuation request processes.

Providing Three-Year Funding for Three-Year Grants

The input we received indicated a strong preference for providing three years of funding up front to a grantee. However, funding three-year grants up front would necessarily decrease the size of the national service field, at least initially, as we would only be able to award about a third of the annual grants we award now. We, therefore, decline to accept this suggestion and do not anticipate providing three years of funding up front for a three-year grant.

Clarifying and Streamlining Guidance

As mentioned earlier, the Corporation is initiating a second rulemaking process this year to rewrite and reorganize our current regulations, and streamline and incorporate the grant provisions and guidelines into regulation. We believe that this will result in much clearer, more focused, and transparent guidance for applicants and grantees and a decrease in grantee burden.

*B. Maximizing a Grantee's Ability To Meet Objectives and Achieve Strong Outcomes*

Re-Fill Rule

Since last year, the Corporation has prohibited programs from re-filling a slot when a member left without completing a term of service. We received a significant amount of input asking that we revisit this policy. We are still examining this possibility for the 2004 program year and will issue more specific guidance on this issue in the near future. We will address this issue outside of rulemaking.

Challenge Grants

Many individuals who provided input saw challenge grants as a way to increase the capacity of the national and community service field. The Corporation supports making challenge grants under certain circumstances. Under the VA/HUD appropriation, however, challenge grants are currently authorized and funded under subtitle H of the Act, as amended, and are not available for the purpose of supporting AmeriCorps programs. To date, we have not had authority in our appropriations statute to fund challenge grants with AmeriCorps State and National funds and are, therefore, unable to accept this suggestion.

Professional Corps

The Corporation received a substantial amount of input on behalf of professional corps grantees requesting separate application guidelines and requirements for professional corps programs. We have concluded that we do not need to establish separate guidelines in regulation. The Corporation believes, however, that professional corps programs, particularly those for which the cost is largely borne by sponsoring organizations, will continue to compete well in our AmeriCorps grant competitions. By using an "apples to apples" approach during our selection process, we will ensure, to the maximum extent possible, that we evaluate professional corps programs together. In addition, for a program able to demonstrate the requirement to leverage volunteers is a fundamental program structure alteration, we will consider a request to waive such leveraging requirement.

Finally, we recently issued a Notice of Funding Availability directed only at professional corps, and would consider doing so again in the future.

*C. Improving the AmeriCorps Member Experience*

We received input from current and former AmeriCorps members asking us to focus on their experience and the resources available to them. The Corporation has a strong interest in the AmeriCorps member experience and intends to further explore ways to improve it.

In particular, we intend to explore creating a member satisfaction survey through which AmeriCorps members would be able to evaluate their programs and their AmeriCorps experience.

*D. Issues That the Corporation Cannot Address Under Current Law*

The Corporation received many suggestions for reforms that it is unable to address without legislation. The following table lists examples of these proposed reforms and the associated statutory constraints.

| Public input proposal | Statutory constraint | Statutory citation |
|---|---|---|
| Increase amount of education award | Amount for a full-time term of service is fixed at $4,725 | 42 U.S.C. 12603(a). |
| Education award should be exempt from taxation | Internal Revenue Code | 26 U.S.C. 1 *et seq.* |
| Permit transfer of education award | Recipient must be AmeriCorps member | 42 U.S.C. 12602. |
| Permit education award to be used for additional purposes. | Limited to costs of attending Title IV institutions of higher education and repayment of qualified student loans. | 42 U.S.C. 12604. |
| Permit AmeriCorps members to receive more than two education awards as long as the total amount does not exceed the value of two full-time education awards. | Limit is two education awards for the first and second terms of service, regardless of length. | 42 U.S.C. 12602(c). |
| Make payment of education award directly to AmeriCorps member. | Disbursement must be to institution of higher education or loan holder. | 42 U.S.C. 12604. |
| Permit AmeriCorps members to enroll as soon as the grant selections are announced. | Approval of position does not occur until grant award is executed. | 42 U.S.C. 12581; 42 U.S.C. 12605. |
| Increase percentage of grant costs that may be spent on administrative functions. | Limit is five percent of grant amount | 42 U.S.C. 12571(d). |
| Grant period should be up to 5 years | Grant period may not exceed three years | 42 U.S.C. 12574. |

Executive Order 12866

The Corporation has determined that this rule, while a significant regulatory action, is not an "economically significant" rule within the meaning of E.O. 12866 because it is not likely to result in: (1) An annual effect on the economy of $100 million or more, or an adverse and material effect on a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities; (2) the creation of a serious inconsistency or interference with an action taken or planned by another agency; (3) a material alteration in the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) the raising of novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

The proposed rule requires all grantees and subgrantees of the Corporation to increase, based on a predictable and incremental schedule, the grantee share of program costs. After the initial three-year grant period, a Corporation program in its fourth year of operation must provide at least 26 percent of their overall program budget in matching money. During years five through ten of Corporation sponsorship, the program's required matching percentage increases gradually to 50 percent.

The initial impact of this change will be small. During the 2000–2002 grant period—the most recent three-year period where we have complete data on program budgets—about 20.6 percent of all AmeriCorps grantees and subgrantees had match percentages less than 26 percent. On average, about 146 programs per grant year would be affected. Among these programs, the average amount of matching money needed to reach the 26 percent level is about $20,250 per program, or about $2,950,000 per year across all AmeriCorps programs. However, the median program would require about $14,200 in additional matching money to reach the 26 percent level. All told, this analysis indicates that the programs that would be affected would require very little additional money to achieve a 26 percent match, and that the overall impact of the rule on Corporation programs falls well short of $100 million annually.

Regulatory Flexibility Act

The Corporation has determined that this regulatory action will not result in (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, the Corporation has not performed the initial regulatory flexibility analysis that is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) for major rules that are expected to have such results.

Other Impact Analyses

Under the Paperwork Reduction Act, information collection requirements which must be imposed as a result of this regulation have been reviewed by the Office of Management and Budget under OMB nos. 3045–0047 and 3045–0065 and these may be revised before this rule becomes effective.

For purposes of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, as well as Executive Order 12875, this regulatory action does not contain any Federal mandate that may result in increased expenditures in either Federal, State, local, or tribal governments in the aggregate, or impose an annual burden exceeding $100 million on the private sector.

**List of Subjects**

*45 CFR Part 2510*

Grant programs-social programs, Volunteers.

*45 CFR Part 2520*

Grant programs-social programs, Volunteers.

*45 CFR Part 2521*

Grant programs-social programs, Volunteers.

*45 CFR Part 2522*

Grant programs-social programs, Reporting and recordkeeping requirements, Volunteers.

*45 CFR Part 2540*

Administrative practice and procedure, Grant programs-social programs, Reporting and recordkeeping requirements, Volunteers.

*45 CFR Part 2550*

Administrative practice and procedure, Grant programs-social programs.

For the reasons stated in the preamble, the Corporation for National and Community Service proposes to amend chapter XXV, title 45 of the Code of Federal Regulations as follows:

## PART 2510—OVERALL PURPOSES AND DEFINITIONS

1. The authority citation for part 2510 continues to read as follows:

**Authority:** 42 U.S.C. 12501 *et seq.*

2. Amend § 2510.20 by adding the definition "target community" in alphabetical order to read as follows:

**§ 2510.20 Definitions**

* * * * *

*Target community.* The term *target community* means the geographic community for which an AmeriCorps grant applicant identifies an unmet human need to be addressed.

* * * * *

## PART 2520—GENERAL PROVISIONS: AMERICORPS SUBTITLE C PROGRAMS

1. The authority citation for part 2520 is revised to read as follows:

**Authority:** 42 U.S.C. 12571–12595.

2. Add a new § 2520.5 to read as follows:

**§ 2520.5 What definitions apply to this part?**

*You.* For this part, *you* refers to the grantee or an organization operating an AmeriCorps program.

3. Revise § 2520.20 to read as follows:

**§ 2520.20 What service activities may I support with my grant?**

(a) Your grant must initiate, improve, or expand the ability of an organization and community to provide services to address local environmental, educational, public safety, homeland security, or other human needs.

(b) You may use your grant to support AmeriCorps members:

(1) Performing direct service activities that meet local needs.

(2) Performing capacity building activities that improve the organizational and financial capability of nonprofit organizations and communities to meet local needs by achieving greater organizational efficiency and effectiveness, greater impact and quality of impact, stronger likelihood of successful replicability, or expanded scale.

**§ 2520.30 [Redesignated as § 2520.70]**

3. Redesignate § 2520.30 as § 2520.70, and add the following sections: §§ 2520.25, 2520.30, 2520.35, 2520.40,

2520.45, 2520.50, 2520.55, 2520.60, and 2520.65.

**§ 2520.25 What direct service activities may AmeriCorps members perform?**

(a) The AmeriCorps members you support under your grant may perform direct service activities that will advance the goals of your program, that will result in a specific identifiable service or improvement that otherwise would not be provided, and that are included in, or consistent with, your Corporation-approved grant application.

(b) Your members' direct service activities must meet local environmental, educational, public safety, homeland security, or other human needs.

(c) Direct service activities generally refer to activities that provide a direct, measurable benefit to an individual, a group, or a community.

(d) Examples of the types of direct service activities AmeriCorps members may perform include, but are not limited to, the following:

(1) Tutoring children in reading;

(2) Helping to run an after-school program;

(3) Removing garbage and debris from a park;

(4) Providing health information to a vulnerable population;

(5) Teaching as part of a professional corps;

(6) Providing relief services to a community affected by a disaster; and

(7) Conducting a neighborhood watch program as part of a homeland security or law enforcement effort.

**§ 2520.30 What capacity-building activities may AmeriCorps members perform?**

Capacity-building activities that AmeriCorps members perform should enhance the mission, strategy, skills, and culture, as well as systems, infrastructure, and human resources of an organization. Capacity-building activities help an organization gain greater independence and sustainability.

(a) The AmeriCorps members you support under your grant may perform capacity-building activities that advance your program's goals and that are included in, or consistent with, your Corporation-approved grant application.

(b) Examples of capacity-building activities your members may perform include, but are not limited to, the following:

(1) Strengthening volunteer management and recruitment, including:

(i) Enlisting, training, or coordinating volunteers;

(ii) Helping an organization develop an effective volunteer management system;

(iii) Organizing service days and other events in the community to increase citizen engagement;

(iv) Promoting retention of volunteers by planning recognition events or providing ongoing support and follow-up to ensure that volunteers have a high-quality experience;

(v) Assisting an organization in reaching out to individuals and communities of different backgrounds when encouraging volunteerism to ensure that a breadth of experiences and expertise is represented in service activities.

(2) Conducting outreach and securing resources in support of service activities that meet specific needs in the community;

(3) Helping build the infrastructure of the sponsoring organization, including:

(i) Conducting research, mapping community assets, or gathering other information that will strengthen the sponsoring organization's ability to meet community needs;

(ii) Developing new programs or services in a sponsoring organization seeking to expand;

(iii) Developing organizational systems to improve efficiency and effectiveness;

(iv) Automating organizational operations to improve efficiency and effectiveness;

(v) Initiating or expanding revenue-generating operations directly in support of service activities; and

(vi) Supporting staff and board development.

(4) Developing collaborative relationships with other organizations working to achieve similar goals in the community, such as:

(i) Faith-based and other community organizations;

(ii) Foundations;

(iii) Local government agencies; and

(iv) Institutions of higher education.

**§ 2520.35 Must my program recruit or support volunteers?**

(a) Unless we approve otherwise, some component of your program that is supported through the grant awarded by the Corporation must involve recruiting or supporting volunteers.

(b) If you demonstrate that requiring your program to recruit or support volunteers would constitute a fundamental alteration to your program structure, the Corporation may waive the requirement in response to your written request for such a waiver in the grant application.

**§ 2520.40 Under what circumstances may AmeriCorps members in my program raise funds?**

(a) AmeriCorps members may raise funds directly in support of your program's service activities.

(b) Examples of fundraising activities AmeriCorps members may perform include, but are not limited to, the following:

(1) Seeking donations of books from companies and individuals for a program in which volunteers teach children to read;

(2) Writing a grant proposal to a foundation to secure resources to support the training of volunteers;

(3) Securing supplies and equipment from the community to enable volunteers to help build houses for low-income individual;

(4) Securing financial resources from the community to assist a community-based organization in launching or expanding a program that provides social services to the members of the community and is delivered, in whole or in part, through the members of the community-based organization;

(5) Seeking donations from alumni of the program for specific service projects being performed by current members.

(c) AmeriCorps members may not:

(1) Raise funds for living allowances or for an organization's general (as opposed to program) operating expenses or endowment;

(2) Write a grant application for AmeriCorps funding or for any other Corporation or Federal funding.

**§ 2520.45 How much time may an AmeriCorps member spend fundraising?**

An AmeriCorps member may spend no more than ten percent of his or her term of service performing fundraising activities, as described in § 2520.40.

**§ 2520.50 How much time may AmeriCorps members in my program spend in education and training activities?**

(a) No more than 20 percent of the aggregate of all AmeriCorps member service hours in your program may be spent in education and training activities.

(b) Capacity-building activities and direct service activities do not count towards the 20 percent cap on education and training activities.

**§ 2520. 55 When may my organization collect fees for services provided by AmeriCorps members?**

We encourage you, where appropriate, to collect fees for direct services provided by AmeriCorps members if:

(a) The service activities conducted by the members are allowable, as defined

in this part, and do not violate the non-displacement provisions in § 2540.100 of these regulations; and

(b) You use any fees collected to finance your non-Corporation share, or as otherwise authorized by the Corporation.

**§ 2520.60 What government-wide requirements apply to staff fundraising under my AmeriCorps grant?**

You must follow all applicable OMB circulars on allowable costs (OMB Circular A–87 for State, Local, and Indian Tribal Governments, OMB Circular A–122 for Nonprofit Organizations, and OMB Circular A–21 for Educational Institutions). In general, the OMB circulars do not allow the following as direct costs under the grant: costs of organized fundraising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions.

**§ 2520.65 What other member activities are not permissible?**

In addition to the activities prohibited under § 2520.70 of this subpart, you may not assign members to permanent duties that are solely clerical. However, you may have members perform administrative duties associated with the projects financed by the grant temporarily at your discretion as long as:

(a) Any one member does not spend more than 10 percent of his or her term of service on these duties; and

(b) Allowing a member to perform these duties does not keep you from meeting the performance goals in your approved grant application.

## PART 2521—ELIGIBLE AMERICORPS SUBTITLE C PROGRAM APPLICANTS AND TYPES OF GRANTS AVAILABLE FOR AWARD

1. The authority citation for part 2521 is revised to read as follows:

**Authority:** 42 U.S.C. 12571–12595.

2. Add a new § 2521.5 to read as follows:

**§ 2521.5 What definitions apply to this part?**

*You.* For this part, *you* refers to the grantee, unless otherwise noted.

3. Establish a new § 2521.95 with the heading as set forth below.

**§ 2521.95 To what extent may I use grant funds for administrative costs?**

* * * * *

**§ 2521.30 [Amended]**

4. Transfer the text of paragraph (h) of § 2521.30 to new § 2521.95, and

a. Redesignate paragraphs (h)(1), (h)(2) and (h)(3) introductory text as (a), (b), and (c), respectively;

b. Redesignate (h)(3)(i), (h)(3)(i)(A), and (h)(3)(i)(B) as (c)(1), (c)(1)(i), (c)(1)(ii), respectively; and

c. Redesignate (h)(3)(ii) and (h)(3)(iii) as (c)(2), and (c)(3), respectively.

5. Amend § 2521.30 by removing paragraph (g).

6. Add the following sections: §§ 2521.40, 2521.50, 2521.60, 2521.65, 2521.70, 2521.80, and 2521.90.

**§ 2521.40 What are the statutory limitations on the Federal government's share of program costs?**

The statutory limitations on the Federal government's share are different—in kind and amount—for member support costs and program operating costs.

(a) *Member support:* The Federal share, including Corporation and other Federal funds, of member support costs, which includes the living allowance required under § 2522.240(b)(1), FICA, unemployment insurance (if required under State law), worker's compensation (if required under State law), and health care, is limited as follows:

(1) The Federal share may not exceed 85 percent of the minimum living allowance required under § 2522.240(b)(1), and 85 percent of other member support costs.

(2) If you are a professional corps described in § 2522.240(b)(2)(i), you may not use Corporation or any other Federal funds for the living allowance.

(3) Your share of member support costs must be non-Federal cash.

(b) *Program operating costs:* The Corporation share of program operating costs may not exceed 67 percent. These costs include costs other than member support costs, staff, operating costs, and internal evaluation and administration costs.

(1) You may provide your share of program operating costs with cash, including other Federal funds, or third party in-kind contributions.

(2) Contributions, including third party in-kind must:

(i) Be verifiable from your records;

(ii) Not be included as contributions for any other federally assisted program;

(iii) Be necessary and reasonable for the proper and efficient accomplishment of your program's objectives; and

(iv) Be allowable under applicable OMB cost principles.

(3) You may not include the value of direct community service performed by volunteers, but you may include the value of services contributed by volunteers to your organizations for organizational functions such as accounting, audit, and training of staff and AmeriCorps programs.

**§ 2521.50 If I am an Indian Tribe, to what extent may I use tribal funds towards my share of costs?**

If you are an Indian Tribe that receives tribal funds through Public Law 93–638 (the Indian Self-Determination and Education Assistance Act), those funds are considered non-Federal and you may use them towards your share of costs, including member support costs.

**§ 2521.60 To what extent must my share of program costs increase over time?**

If your program continues to receive funding after an initial three-year grant period and continues to meet the minimum requirements in § 2541.40 of this part, your required share of program costs, including member support and operating costs, will increase to a 50 percent aggregate for the tenth year that you receive a grant, and any subsequent year without a break in funding of two years or more. In other words, by your tenth year as a grantee without a break in funding of two years or more, you will be required to match $1 for every $1 you receive from the Corporation.

(a) *Minimum Organization Share:* Subject to the requirements of § 2521.40 of this part, and except as provided in paragraph (d) of this section, the aggregate amount of your share of program costs will increase as of the fourth consecutive year that you receive a grant without a break in funding of two years or more, according to the following timetable:

| | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Year 6 | Year 7 | Year 8 | Year 9 | Year 10 |
|---|---|---|---|---|---|---|---|---|---|---|
| Minimum member support | 15% | 15% | 15% | 15% | 15% | 15% | 15% | 15% | 15% | 15% |
| Minimum operating costs | 33% | 33% | 33% | 33% | 33% | 33% | 33% | 33% | 33% | 33% |
| Minimum aggregate share | NA | NA | NA | 26% | 30% | 34% | 38% | 42% | 46% | 50% |

(b) *Schedule for current program grants:* If you have completed one or more three-year grant cycles on the date this regulation takes effect, you will be required to provide your share of costs beginning at the year three level, according to the table in paragraph (a) of this section, in the first program year in your grant following the regulation's effective date, and increasing each year thereafter as reflected in the table.

(c) *Flexibility in how you provide your share:* As long as you meet the minimum match requirements in § 2521.40, you may use cash or in-kind contributions to reach the aggregate share level. For example, if your organization finds it easier to raise member support match, you may choose to meet the required aggregate match by raising only more member support match, and leave operational match at the minimum level, as long as you provide the required aggregate match.

(d) *Reporting excess resources.*

(1) The Corporation encourages you to obtain support over-and-above the matching fund requirements. Reporting these resources may make your application more likely to be selected for funding, based on the selection criteria in §§ 2522.430 and 2522.435 of these regulations.

(2) You must comply with § 2543.23 of this title in documenting cash and in-kind contributions and excess resources.

**§ 2521.65 What flexibility does a state commission have for a grantee that is unable to meet the required matching levels?**

If a State commission determines that a particular grantee is unable to meet its required matching levels because it operates in a resource-poor community, the State commission may deem grantee's matching requirements to have been satisfied if one or more grantees in the State commission's portfolio are over-matching and therefore able to make up the difference in the lower grantee's matching requirements.

**§ 2521.70 To what extent may the Corporation waive the matching requirements in §§ 2521.40 and 2521.60 of this part?**

(a) The Corporation may waive, in whole or in part, the requirements of §§ 2521.40 and 2521.60 of this part if the Corporation determines that a waiver would be equitable because of a lack of available financial resources at the local level.

(b) If you are requesting a waiver, you must demonstrate:

(1) The lack of resources at the local level;

(2) The efforts you have made to raise matching funding; and

(3) How much of the matching funds you have raised or reasonably expect to raise.

(c) You must provide with your waiver:

(1) A request for the specific amount of matching funds you are requesting that the Corporation waive; and

(2) A budget and budget narrative that reflects the requested change in matching funds.

**§ 2521.80 What matching level applies if my program was funded in the past but has not recently received an AmeriCorps grant?**

If your program has not received an AmeriCorps grant for five years or more, you may begin matching at the year one level, as reflected in the timetable in § 2521.60(a) of this part, upon receiving your new grant award.

**§ 2521.90 If I am a new or replacement legal applicant for an existing program, what will my matching requirements be?**

If your organization is a new or replacement legal applicant for an existing program, you must provide matching funds at the level that the previous legal applicant was at the time you took over the program.

## PART 2522—AMERICORPS PARTICIPANTS, PROGRAMS, AND APPLICANTS

1. The authority citation for part 2522 is revised to read as follows:

**Authority:** 42 U.S.C. 12571–12595

2. Add a new § 2522.10 to subpart A to read as follows:

**§ 2522.10 What definitions apply to this part?**

*You.* For this part, *you* refers to the grantee, unless otherwise noted.

3. Amend § 2522.250 as follows:

a. In paragraph (a)(3) revise the text to read as follows; and

b. In paragraph (b)(3) revise the paragraph heading, and paragraph (b)(3)(i), to read as follows:

**§ 2522.250 What other benefits do AmeriCorps participants serving in approved AmeriCorps positions receive?**

(a) * * *

(3) * * * The amount of the child-care allowance may not exceed the applicable payment rate established by the State for child care funded under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858c(4)(A)).

* * * * *

(b) * * *

(3) *Federal share.* (i) Except as provided in paragraph (b)(3)(ii) of this section, the Federal share of the cost of health coverage may not exceed 85 percent.

* * * * *

4. Revise § 2522.400 and § 2522.410 to read as follows:

**§ 2522.400 What process does the Corporation use to select new grantees?**

The Corporation uses a multi-stage process including peer reviewers, Corporation staff review, and approval by the Chief Executive Officer or the Board of Directors, or their designee.

**§ 2522.410 What is the role of the Corporation's Board of Directors in the selection process?**

The Board of Directors has general authority to determine the selection process, including priorities and selection criteria, and has authority to make grant decisions. The Board may delegate these functions to the Chief Executive Officer.

**§ 2522.480 [Redesignated from § 2522.420]**

5. Redesignate § 2522.420 as § 2522.480 and add the following sections: §§ 2522.415, 2522.420, 2522.425, 2522.430, 2522.435, 2522.440, 2522.445, 2522.450, 2522.455, 2522.460, 2522.465, 2522.470, and 2522.475.

**§ 2522.415 How does the grant selection process work?**

The selection process includes:

(a) Determining whether your proposal complies with the application requirements, such as deadlines and eligibility requirements;

(b) Applying the basic selection criteria to assess the quality of your proposal;

(c) Applying any applicable priorities or preferences, as stated in these regulations and in the applicable Notice of Funding Availability; and

(d) Ensuring innovation and geographic, demographic, and programmatic diversity across the Corporation's national AmeriCorps portfolio.

**§ 2522.420 What basic criteria does the Corporation use in making funding decisions?**

In evaluating your application for funding, the Corporation will assess:

(a) Your program design;

(b) Your organizational capability; and

(c) Your program cost-effectiveness.

**§ 2522. 425 What does the Corporation consider in assessing Program Design?**

In determining the quality of your proposal's program design, the Corporation considers your rationale and approach for the proposed program, member outputs and outcomes, and community outputs and outcomes.

(a) *Rationale and approach.* In evaluating your rationale and approach, the Corporation considers the following criteria:

(1) Whether your proposal describes and adequately documents a compelling need within the target community, including a description of how you identified the need;

(2) Whether your proposal includes well-designed activities that address the compelling need, with ambitious performance measures, and a plan or system for continuous program self-assessment and improvement;

(3) Whether your proposal describes well-defined roles for participants that are aligned with the identified needs and that lead to measurable outputs and outcomes; and

(4) The extent to which your proposed program or project:

(i) Effectively involves the target community in planning and implementation;

(ii) Builds on (without duplicating), or reflects collaboration with, other national and community service programs supported by the Corporation; and

(iii) Is designed to be replicated.

(b) *Member outputs and outcomes.* In evaluating how your proposal addresses member outputs and outcomes, the Corporation considers the extent to which your proposal or program:

(1) Includes effective and feasible plans for, or evidence of, recruiting, managing, and rewarding diverse participants, including participants from the target community, and demonstrating member satisfaction;

(2) Includes effective and feasible plans for, or evidence of, development, training, and supervision of participants;

(3) Demonstrates well-designed training or service activities that promote and sustain post-service, an ethic of service and civic responsibility, including structured opportunities for participants to reflect on and learn from their service; and

(4) Has met well-defined, member-based performance measures, including outputs and outcomes, if applicable.

(c) *Community outputs and outcomes.* In evaluating whether your proposal adequately addresses member outputs and outcomes, the Corporation considers the extent to which your proposal or program:

(1) Is successful in meeting targeted, compelling community needs, or if you are a current grantee, the extent to which your program has met its well-defined, community-based performance measures, including outcomes, in previous grant cycles, and is continually expanding and increasing its reach and impact in the community;

(2) Has an impact in the community that is sustainable beyond the presence of Federal support (For example, if one of your projects is to revitalize a local park, you would meet this criterion by showing that after you have completed your revitalization project, the community will continue its upkeep on its own);

(3) Generates and supports volunteers to expand the reach of your program in the community; and

(4) Enhances capacity-building of other organizations and institutions important to the community, such as schools, homeland security organizations, neighborhood watch organizations, civic associations, and faith-based and other community organizations.

**§ 2522.430 How does the Corporation assess my organizational capability?**

(a) In evaluating your organizational capability, the Corporation considers the following:

(1) The extent to which your organization has a sound structure including:

(i) The ability to provide sound programmatic and fiscal oversight;

(ii) Well-defined roles for your board of directors, administrators, and staff;

(iii) A well-designed plan or systems for organizational (as opposed to program) self-assessment and continuous improvement; and

(iv) The ability to provide or secure effective technical assistance.

(2) Whether your organization has a sound record of accomplishment as an organization, including the extent to which you:

(i) Generate and support diverse volunteers who increase your organization's capacity; and

(ii) Demonstrate leadership within the organization and the community served.

(3) The extent to which you are securing community support that becomes stronger and more diverse, as evidenced by—

(i) Collaborations that increase the quality and reach of service and include well-defined roles for faith-based or other community organizations;

(ii) Local financial and in-kind contributions; and

(iii) Supporters who represent a wide range of community stakeholders.

(b) In applying the criteria in paragraph (a) of this section to each proposal, the Corporation may take into account the following circumstances of individual organizations:

(1) The age of your organization and its rate of growth; and

(2) Whether your organization serves a resource-poor community, such as a rural or remote community, a community with a high poverty rate, or a community with a scarcity of corporate resources.

(c) When reviewing a proposal submitted by a state commission, the Corporation may consider the State commission's financial management and monitoring capabilities, and may turn down a program application if the Corporation determines that the State commission's capabilities are materially weak.

**§ 2522.435 How does the Corporation evaluate the cost-effectiveness of my program?**

(a) In evaluating the cost-effectiveness of your proposed program, the Corporation considers the following:

(1) Whether your budget is adequate to support your program design, and

(2) Cost-effectiveness indicators that include, at a minimum:

(i) Your program's proposed Corporation cost per FTE, as defined in § 2522.485;

(ii) The extent to which your program demonstrates diverse non-Federal resources for program implementation and sustainability;

(iii) The extent to which you are increasing your share of costs to meet or exceed program goals; and

(iv) The extent to which you are proposing deeper impact or broader reach without a commensurate increase in Federal costs.

(b) In applying the cost-effectiveness criteria in paragraph (a) of this section, the Corporation will take into account the following circumstances of individual programs:

(1) Program age, or the extent to which your program brings on new sites;

(2) Whether your program or project is located in a resource-poor community, such as a rural or remote community, a community with a high poverty rate, or a community with a scarcity of corporate or philanthropic resources;

(3) Whether your program or project is located in a high-cost, economically disadvantaged community, measured by applying appropriate Federal and State data; and

(4) Whether the reasonable and necessary costs of your program or project are higher because they are associated with engaging or serving difficult-to-reach populations, or achieving greater program impact as evidenced through performance measures and program evaluation.

**§ 2522.440 What weight does the Corporation give to each category of the basic criteria?**

In evaluating applications, the Corporation assigns the following weights for each category:

| Category | Percentage |
|---|---|
| Program Design | 50 |
| Organizational Capability | 25 |
| Cost-Effectiveness | 25 |

**§ 2522. 445 What weights does the Corporation give to the subcategories under Program Design?**

The Corporation gives the following weights to the subcategories under Program Design:

| Program design sub-category | Percentage |
|---|---|
| Rationale and Approach | 10 |
| Member Outputs and Outcomes | 20 |
| Community Outputs and Outcomes | 20 |

**§ 2522.450 What types of programs or program models may receive special consideration in the selection process?**

Following the scoring of proposals under §§ 2522.440 of this part, the Corporation may give special consideration to the following categories of programs to ensure a balanced portfolio:

(a) *Program models*:

(1) Programs operated by faith-based and small community-based organizations, or programs that support the efforts of faith-based and small community-based organizations, to solve local problems;

(2) Lower-cost professional corps programs, as defined in paragraph (a)(3) of § 2522.110 of this chapter.

(b) *Program activities*:

(1) Programs that serve or involve children and youth, including mentoring of children of prisoners;

(2) Programs that address educational needs, including those that carry out literacy and tutoring activities generally, and those that focus on reading for children in the third grade or younger;

(3) Programs that focus on homeland security activities that support and promote public safety, public health, and preparedness for any emergency, natural or man-made (this includes programs that help to plan, equip, train, and practice the response capabilities of many different response units ready to mobilize without warning for any emergency);

(4) Programs that address issues relating to the environment;

(5) Programs that support independent living for seniors or individuals with disabilities; and

(6) Programs that involve community-development.

(c) *Programs supporting distressed communities*: Programs or projects that will be conducted in:

(1) A community designated as an empowerment zone or redevelopment area, targeted for special economic incentives, or otherwise identifiable as having high concentrations of low-income people;

(2) An area that is environmentally distressed, as demonstrated by Federal and State data;

(3) An area adversely affected by Federal actions related to managing Federal lands that result in significant regional job losses and economic dislocation;

(4) An area adversely affected by reductions in defense spending or the closure or realignment of military installation; or

(5) An area that has an unemployment rate greater than the national average unemployment for the most recent 12 months for which State or Federal data are available.

(d) *Other programs*: Programs that meet any additional priorities as the Corporation determines and disseminates in advance of the selection process.

**§ 2522.455 How do i find out about additional priorities governing the selection process?**

The Corporation publishes a Notice of Funding Availability (NOFA) in advance of a grant competition, addressing the Corporation's priorities and additional requirements, including those directed by annual appropriations. We also post the NOFA on our Web site at *http://www.nationalservice.org* and at *http://www.grants.gov*.

**§ 2522. 460 To what extent does the Corporation consider priorities other than those stated in these regulations or the Notice of Funding Availability?**

The Corporation may give priority consideration to a national service program submitted by a State commission that does not meet one of the Corporation's priorities if the State commission adequately explains why the State is not able to carry out a program that meets one of the Corporation's priorities.

**§ 2522.465 What information must a State commission submit on the relative strengths of applicants for State competitive funding?**

(a) If you are a State commission applying for State competitive funding, you must prioritize the proposals you submit in rank order according to the following table:

| If you submit this number of State competitive proposals to the corporation: | Then you must rank this number of proposals: |
|---|---|
| 1 to 12 | At least top 5. |
| 13 to 24 | At least top 10. |
| 25 or more | At least top 15. |

(b) While the Corporation will not be bound by the rankings you submit, we may consider them in our selection process.

**§ 2522.470 What other factors or information may the Corporation consider in making final funding decisions?**

(a) The Corporation will seek to ensure that our portfolio of AmeriCorps programs is programmatically, demographically, and geographically diverse and includes innovative programs and projects in areas with the highest rates of poverty.

(b) In applying the selection criteria under §§ 2522.420 through 2522.435, the Corporation may, with respect to a particular proposal, also consider one or more of the following:

(1) Progress reports;

(2) Corporation site visit reports, including grantee responses;

(3) Member satisfaction indicators;

(4) Program evaluations;

(5) Member-related information from the Corporation's systems;

(6) Other evaluation material, including IG reports, and administrative standards for State commissions, reports on program training and technical assistance;

(7) Grantee communications with the Corporation;

(8) Financial Status Reports (FSR);

(9) Audits;

(10) Information for an applicant organization's Web site;

(11) IRS Tax Form 990;

(12) HHS Account Payment Data Report of the HHS Payment Management System;

(13) Federal Cash Transaction Report (SF–272);

(14) An applicant organization's annual report;

(15) An applicant organization's Financial Management Survey;

(16) Financial Management Training and Technical Assistance Report;

(17) Publicly available socio-economic and demographic data, such as poverty rate, unemployment rate, labor force participation, and median household income;

(18) Publicly available information on where an applicant and its activities fall

on the U.S. Department of Agriculture's urban-rural continuum (Beale codes);

(19) Publicly available information on the nonprofit and philanthropic community, such as charitable giving per capita;

(20) U.S. Department of Education data on Federal Work Study and Community Service; and

(21) Other information, following notice in the relevant Notice of Funding Availability, of the specific information and the Corporation's intention to be able to consider that information in the review process.

**§ 2522. 475 If I am a state commission or a national direct grantee, to what extent must I use the Corporation's selection criteria and priorities when selecting formula programs or operating sites?**

While the Corporation does not require you to use the Corporation's selection criteria and priorities in selecting your state formula grant programs or operating site, we encourage you to do so.

6. Add new § 2522.485 to read as follows:

**§ 2522.485 If I am an AmeriCorps national and community service program, how do I calculate my budgeted Corporation cost per full-time-equivalent (FTE)?**

If you are an AmeriCorps national and community service program, you calculate your Corporation cost per FTE by dividing your budgeted grant costs by the number of member full time equivalents you are awarded in your grant. You do not include child-care or the cost of the education award a member may earn through serving with your program.

**§§ 2522.800, 2522.810, 2522.820 [Redesignated from §§ 2522.540, 2252.550, 2522.560]**

7. Amend subpart E of part 2522 as follows:

a. By redesignating § 2522.540, § 2522.550, and § 2522.560 as § 2522.800, § 2522.810, and § 2522.820 respectively;

b. By revising §§ 2522.500, 2522.510, 2522.520, and 2522.530;

c. By adding §§ 2522.540, 2522.550, 2522.560, 2522.570, 2522.580, 2522.590, 2522.600, 2522.610, 2522.620, 2522.630, 2522.640, 2522.650, 2522.650, 2522.700, 2522.710, 2522.720, 2522.730, and 2522.740; and

d. By adding undesignated center headings preceding §§ 2522.650 and 2522.700.

The added and revised text reads as follows:

**§ 2522.500 What is the purpose of this subpart?**

(a) This subpart sets forth the minimum performance measures and evaluation requirements that you as a Corporation applicant or grantee must follow.

(b) The performance measures that you, as an applicant, propose when you apply will be considered in the review process and may affect whether the Corporation selects you to receive a grant. Your performance related to your approved measures will influence whether you continue to receive funding.

(c) Performance measures and evaluations are designed to strengthen your AmeriCorps program and foster continuous improvement, and help us identify best practices and models that merit replication, as well as programmatic weaknesses that need attention.

**§ 2522.510 To whom does this subpart apply?**

This subpart applies to you if you are a Corporation grantee administering an AmeriCorps grant, or if you are applying to receive funding from the Corporation.

**§ 2522.520 What special terms are used in this subpart?**

The following definitions apply to terms used in this subpart of the regulations:

(a) *Approved application* means the application approved by the Corporation or, for formula programs, by a State commission.

(b) *Community beneficiaries* refers to persons who receive services or benefits from a program, but not to AmeriCorps members or to staff of the organization operating the program.

(c) *Output indicators* are the amount or units of service that members or volunteers have completed, or the number of community beneficiaries the program has served. Output indicators do not provide information on benefits or other changes in the lives of members or community beneficiaries. Examples of output indicators might include the number of people a program tutors, counsels, houses, or feeds.

(d) *Intermediate-outcome indicators* specify a change that has occurred in the lives of community beneficiaries or members, but is not necessarily a lasting benefit for them. They are observable and measurable indications of whether or not a program is making progress. An example would be the number and percentage of students who report reading more books as a result of their participation in a tutoring program.

(e) *End-outcome indicators* specify a change that has occurred in the lives of community beneficiaries or members that is significant and lasting. These are actual benefits or changes for participants during or after a program. For example, in a tutoring program, the end outcome might be the percent and number of students who have improved their reading scores to grade-level, or other specific measures of academic achievement.

(f) *Grantee* includes *subgrantees* and *projects*.

(g) *You* refers to the reader, either as a grantee or applicant organization.

**§ 2522.530 What basic requirements must I follow in measuring performance under my grant?**

All grantees must establish, track, and assess performance measures for their programs. As a grantee, you must ensure that any program under your oversight fulfills performance measures and evaluation requirements, and ensure that you take appropriate steps to correct any problems that develop. You must:

(a) Establish ambitious performance measures in consultation with the Corporation, or the State commission, as appropriate, following §§ 2422.560 through 2422.660 of this subpart;

(b) Ensure that any program under your oversight collects and organizes performance data on an ongoing basis, at least annually;

(c) Ensure that any program under your oversight tracks progress toward meeting your performance measures;

(d) Ensure that any program under your oversight corrects performance deficiencies promptly; and

(e) Accurately and fairly present the results in reports to the Corporation.

**§ 2522.540 May I use the Corporation's program grant funds for performance measurement and evaluation?**

If performance measurement and evaluation costs were approved as part of your grant, you may use your program grant funds to support them, consistent with the level of approved costs for such activities in your grant award.

**§ 2522.550 Do the costs of performance measurement or evaluation count towards the statutory cap on administrative costs?**

No, the costs of performance measurement and evaluation do not count towards the statutory five percent cap on administrative costs in the grant, as provided in § 2540.110 of this chapter.

**Performance Measures: Requirements and Procedures**

**§ 2522.560 What information on performance measures must my grant application include?**

You must submit all of the following as part of your application for each program:

(a) Proposed performance measures, as described in § 2522.570 through § 2522.590 of this part.

(b) Estimated performance data for the program years for which you submit your application; and

(c) Actual performance data, where available, for the preceding completed program year.

**§ 2522.570 What are performance measures and performance measurement?**

(a) Performance measures are measurable indicators of a program's performance as it relates to member service activities.

(b) Performance measurement is the process of regularly measuring the services provided by your program and the effect your program has on the intended beneficiaries' lives.

(c) The main purpose of performance measurement is to strengthen your AmeriCorps program and foster continuous improvement and to identify best practices and models that merit replication. Performance measurement will also help identify programmatic weaknesses that need attention.

**§ 2522.580 What performance measures am I required to submit to the Corporation?**

(a) When applying for funds, you must submit at least one of each of the following types of performance measures:

(1) Output measures;

(2) Intermediate-outcomes; and

(3) End-outcome measures.

(b) Your measures need not cover the scope of your entire program, but they should give a clear indication of your program's primary purpose and objectives.

(c) You must include at least one end-outcome measure that captures the results of your program's primary activity.

(d) The measures you choose must be aligned with one another. For example, a tutoring program might use the following aligned performance measures:

(1) Output: Number of students tutored;

(2) Intermediate Outcome: Percent of students reading more books; and

(3) End Outcome: Percent of students reading at or above grade level.

(e) The Corporation may include additional requirements for performance measures on a periodic basis through program guidance and related materials. This information will be available at the Corporation's Web site at *http://www.nationalservice.org.*

(f) The Corporation encourages you to exceed the minimum requirements expressed in this section and expects, in second and subsequent grant cycles, that you will more fully develop your performance measures, including establishing multiple performance indicators, and improving and refining those you used in the past.

**§ 2522.590 Who develops my performance measures?**

(a) You are responsible for developing your program-specific performance measures through your own internal process.

(b) In addition, the Corporation may, in consultation with grantees, establish performance measures that will apply to all Corporation-sponsored programs, which you will be responsible for collecting and meeting.

**§ 2522.600 Who approves my performance measures?**

(a) The Corporation will review and approve performance measures, as part of the grant application review process, for all programs submitting applications for funding directly to the Corporation. If the Corporation selects your application for funding, the Corporation will approve your performance measures as part of the negotiation process before we award the grant.

(b) If you are a program submitting an application under the State formula category, the applicable State commission is responsible for reviewing and approving your performance measures. The Corporation will not separately approve these measures.

**§ 2522.610 What is the difference in performance measurements requirements for competitive and formula programs?**

(a) Except as provided in paragraph (b) of this section, State commissions are responsible for making the final determination of performance measures for State formula programs, while the Corporation makes the final determination for all other programs.

(b) The Corporation may, through the State commission, require that formula programs meet certain performance measures above and beyond what the State commission has negotiated with its formula grantees.

(c) While State commissions must hold their sub-grantees responsible for their performance measures, a State commission, as a grantee, is responsible to the Corporation for its formula programs' performance measures.

**§ 2522.620 How do I report my performance measures to the Corporation?**

The Corporation sets specific reporting requirements, including frequency and deadlines, for performance measures in the grant award.

(a) In general, you are required to report on the actual results that occurred when implementing the grant and to regularly measure your program's performance.

(b) Your report must include the results on the performance measures approved as part of your grant award.

(c) At a minimum, you are required to report on outputs at the end of year one; outputs and intermediate-outcomes at the end of year two; and outputs, intermediate-outcomes and end-outcomes at the end of year three. We encourage you to exceed these minimum requirements and report results earlier.

**§ 2522.630 What must I do if I am not able to meet my performance measures?**

If you realize that you are not on track to meet your performance measures, you must develop a plan to get back on track, or submit a request to the Corporation to amend your requirements.

The request must include all of the following:

(a) Why you are not on track to meet your performance requirements;

(b) How you have been tracking performance measures;

(c) Evidence of the corrective steps you have taken;

(d) Any new proposed performance measures or targets; and

(e) Your plan to ensure that you meet any new measures.

**§ 2522.640 Under what circumstances may I change my performance measures?**

(a) You may change your performance measures only if the Corporation or, for formula programs, the State commission, approves your request to do so based on your need to:

(1) Adjust your performance measure or target based on experience so that your program's goals are more realistic and manageable;

(2) Replace a measure related to one issue area with one related to a different issue area that is more aligned with your program service activity. For example, you may need to replace an objective related to health with one related to the environment;

(3) Redefine the service that individuals perform under the grant. For example, you may need to define your service as tutoring adults in English, as opposed to operating an after-school program for third-graders;

(4) Eliminate an activity because you have been unable to secure necessary matching funding; or

(5) Replace one measure with another. For example, you may decide that you wish to replace one measure of literacy tutoring (increased attendance at school) with another (percentage of students who are promoted to the next grade level).

**§ 2522.650 What happens if I fail to meet the performance measures included in my grant?**

(a) If you are significantly under-performing based on the performance measures approved in your grant, or fail to collect appropriate data to allow performance measurement, the Corporation may specify a period of correction, after consulting with you. As a grantee, you must report results at the end of the period of correction. At that point, if you continue to under-perform, or fail to collect appropriate data to allow performance measurement, the Corporation may take one or more of the following actions:

(1) Reduce the amount of your grant;

(2) Suspend or terminate your grant;

(3) Use this information to assess any application from your organization for a new AmeriCorps grant or a new grant under another program administered by the Corporation;

(4) Amend the terms of any Corporation grants to your organization; or

(5) Take other actions that the Corporation deems appropriate.

(b) If you are a State commission whose formula program(s) is significantly under-performing or failing to collect appropriate data to allow performance measurement, we encourage you to take action as delineated in paragraph (a) of this section.

**Evaluating Programs: Requirements and Procedures**

**§ 2522.700 How does evaluation differ from performance measurement?**

(a) Evaluation is a more in-depth, rigorous effort to measure the impact of programs. While performance measurement and evaluation both include systematic data collection and measurement of progress, evaluation uses scientifically-based research methods (*i.e.*, random assignment) to assess the effectiveness of programs by comparing the observed program outcomes with what would have happened in the absence of the program. Unlike performance measures, evaluations estimate the impacts of programs by comparing the outcomes for individuals receiving a service or participating in a program to the outcomes for similar individuals not receiving a service or not participating in a program. For example, an evaluation of a literacy program may compare the reading ability of students in a program over time to a similar group of students not participating in a program.

(b) Performance measurement describes the effects of the program on the population being served through the systematic collection of data on a continual basis. Performance measures may include counts of activities and people served, and changes in the level of knowledge or behavior of people being served. For example, a performance measure for a literacy program may include the percentage of students who increase their reading ability from "below grade level" to "at or above grade level". In contrast to an evaluation, performance measurement does not generally compare the impact of the program on community beneficiaries or participants with those who are not part of AmeriCorps.

**§ 2522.710 What are my evaluation requirements?**

(a) If you are a State commission, you must establish and enforce evaluation requirements for your State formula subgrantees, as you deem appropriate.

(b) If you are a State competitive or direct Corporation grantee, and your average annual program grant is $500,000 or more, you must arrange for an independent evaluation of your program covering a period of at least 5 years, and you must submit the evaluation with any application to the Corporation for competitive funds as required in § 2522.730 of this subpart.

(c) If you are a State competitive or direct Corporation grantee whose average annual program grant is less than $500,000, or an Education Award Program grantee, the Corporation does not require that you conduct an evaluation of your program. However, the Corporation encourages you to conduct or arrange for an evaluation and may consider any such evaluation in assessing the quality of your program in any future grant competitions.

(d) The Corporation may, in its discretion, supercede these requirements with an alternative evaluation approach, including one conducted by the Corporation at the national level.

**§ 2522.720 How often must I conduct an evaluation?**

(a) If you are a State formula grantee, you must conduct an evaluation, as your State commission requires.

(b) If you are a State competitive or direct Corporation grantee, and are required to arrange for an independent evaluation under § 2522.710(c) of this subpart, you must arrange for such an evaluation at least every 5 years.

**§ 2522.730 If I am required to arrange for an independent evaluation, how and when do I submit my evaluation to the Corporation?**

(a) If you compete for AmeriCorps funds after an initial three-year grant cycle, you must submit a summary of your evaluation efforts to date, and a copy of any evaluation that has been completed, as part of your application for funding.

(b) If you again compete for AmeriCorps funding after a second three-year grant cycle, you must submit the completed evaluation with your application for funding.

**§ 2522.740 How will the Corporation use my evaluation?**

(a) If you are required to arrange for an independent evaluation under § 2522.710(c) of this subpart, the Corporation will consider the evaluation you submit with your application as follows:

(1) If you do not include with your application for AmeriCorps funding a summary of the evaluation, or the evaluation itself, as applicable, under § 2522.730, the Corporation will not consider your application.

(2) If you do submit an evaluation with your application, the Corporation will consider the results of your evaluation in assessing the quality and outcomes of your program.

(b) If you are not required to arrange for an independent evaluation under § 2522.710(c) but have nonetheless completed one, the Corporation may consider the results of your evaluation in assessing the quality of your program. Your inclusion of an evaluation with your application may make your application more likely to be selected.

8. Add subpart F to part 2522 consisting of § 2522.900 through § 2522.950, to read as follows:

**Subpart F—Program Management Requirements for Grantees**

Sec.

### Subpart F—Program Management Requirements for Grantees

**§ 2522.900 What definitions apply to this subpart?**

*Tutor* is defined as someone whose primary goal is to increase academic achievement in reading or other core subjects through planned, consistent, one-to-one or small-group reading or other small-group sessions that build on students' academic strengths and target students' academic needs. A tutor does not include someone engaged in supplemental academic support activities whose primary goal is something other than increasing academic achievement. For example, providing a safe place for children is not tutoring, even if some of the program activities focus on homework help.

**§ 2522.910 What basic qualifications must an AmeriCorps member have to serve as a tutor?**

| If the tutor is: | Then the tutor must meet the following qualifications: |
|---|---|
| (a) Hired by Local Education Agency or school<br>(b) Not hired by Local Education Agency or school. | Paraprofessional qualifications under No Child Left Behind Act, as required in 34 CFR 200.58.<br>(1)(i) High School diploma or its equivalent, or a higher degree OR<br>(ii) Proficiency test, as described in § 2522.930 of this subpart; and<br>(2) Successful completion of pre- and in-service specialized training, as required in § 2522.940 of this subpart. |

**§ 2522.920 Are there any exceptions to the qualifications requirements?**

The qualifications requirements in § 2522.910 of this subpart do not apply to a member who is a student tutoring younger children in the school as part of a structured, school-managed cross-grade tutoring program.

**§ 2522.930 What is an appropriate proficiency test?**

(a) If a member serving as a tutor does not have a high-school diploma or its equivalent, or a higher degree, the member must pass a proficiency test that the program has determined effective in ensuring that members serving as tutors have the necessary skills to achieve program goals.

(b) The program must maintain in the member file of each member who takes the test documentation on the proficiency test selected and the results.

**§ 2522.940 What are the requirements for a program in which AmeriCorps members serve as tutors?**

A program in which members engage in tutoring for children must:

(a) Articulate appropriate criteria for selecting and qualifying tutors;

(b) Identify the strategies or tools it will use to assess student progress and measure student outcomes;

(c) Certify that the curriculum and pre-service and in-service training content are high-quality and research-based, consistent with the instructional program of the local educational agency or with state academic content standards;

(d) Include appropriate member supervision by individuals with expertise in tutoring; and

(e) Provide specialized high-quality and research-based, member pre-service and in-service training consistent with the activities the member will perform.

**§ 2522.950 What requirements and qualifications apply if my program focuses on supplemental academic support activities other than tutoring?**

(a) If your program does not involve tutoring as defined in § 2522.900 of this subpart, the Corporation will not impose the requirements in § 2522.910 through § 2522.940 of this subpart on your program.

(b) At a minimum, you must articulate in your application how you will recruit, train, and supervise members to ensure that they have the qualifications and skills necessary to provide the service activities in which they will be engaged.

## PART 2540—GENERAL ADMINISTRATIVE PROVISIONS

1. The authority citation for part 2540 is revised to read as follows:

**Authority:** E.O. 13331, 69 FR 9911; 42 U.S.C. 12571, 12631–12637, 12651d.

2. Amend § 2540.100 by redesignating paragraphs (f)(2) through (f)(5) as f(3) through (f)(6) respectively, and adding a new paragraph (f)(2) to read as follows:

**§ 2540.100 What restrictions govern the use of Corporation assistance?**

* * * * *

(f) * * *

(2) An organization may not displace a volunteer, including partial displacement such as reducing a volunteer's hours, by using a participant in a program receiving Corporation assistance.

* * * * *

## PART 2550—REQUIREMENTS AND GENERAL PROVISIONS FOR STATE COMMISSIONS AND ALTERNATIVE ADMINISTRATIVE ENTITIES

1. Revise the heading of part 2550 to read as set forth above.

2. The authority citation for part 2550 is revised to read as follows:

**Authority:** 42 U.S.C. 12638.

3. Amend § 2550.10 as follows:

a. By revising paragraph (b);

b. By revising paragraph (c);

c. By revising the last sentence of paragraph (d).

The revisions read as follows:

**§ 2550.10 What is the purpose of this part?**

* * * * *

(b) To be eligible to apply for program funding, or approved national service positions, each State must establish a State commission on national and community service to administer the State program grant making process and to develop a State plan. The Corporation may, in some instances, approve an alternative administrative entity (AAE).

(c) The Corporation will distribute grants of between $125,000 and $750,000 to States to cover the Federal share of operating the State commissions or AAEs.

(d) * * * This part also offers guidance on which of the two State entities States should seek to establish, and it explains the composition requirements, duties, responsibilities, restrictions, and other relevant information for State commissions and AAEs.

**§ 2550.20 [Amended]**

4. Amend § 2550.20 by removing paragraph (o).

5. Amend § 2550.30 by revising the section heading to read as set forth

below, removing paragraphs (c) and (d), and redesignating paragraph (e) as paragraph (c).

**§ 2550.30 How does a State decide whether to establish a state commission or an alternative administrative entity?**

* * * * *

**§ 2550.40 [Amended]**

6. Amend § 2550.40 by removing paragraph (c).

**§ 2550.70 [Removed and reserved]**

7. Remove and reserve § 2550.70.

8. Amend § 2550.80 as follows:

a. Revise the first two sentences of the introductory text;

b. Redesignate paragraph (a)(3) as paragraph (a)(4);

c. Add new paragraph (a)(3); and

d. Revise paragraph (j) to read as follows:

**§ 2550.80 What are the duties of the State entities?**

Both State commissions and AAEs have the same duties. This section lists the duties that apply to both State commissions and AAEs—collectively referred to as State entities. * * *

(a) * * *

(3) The plan must include a summary of the State commission's program sustainability approach.

* * * * *

(j) *Activity ineligible for assistance.* A State commission or AAE may not directly carry out any national service program that receives financial assistance under section 121 of the NCSA.

* * * * *

Dated: August 10, 2004.

**Frank R. Trinity,**

*General Counsel.*

[FR Doc. 04–18594 Filed 8–12–04; 8:45 am]

BILLING CODE 6050–28–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 69

**[WC Docket No. 04–259; RM–10603; FCC 04–174]**

### National Exchange Carrier Association Petition

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** By this document, the Federal Communications Commission (Commission) initiates a rulemaking proceeding to examine the proper number of end user common line charges (commonly referred to as subscriber line charges or SLCs) that carriers may assess upon customers that obtain derived channel T–1 service where the customer provides the terminating channelization equipment and upon customers that obtain Primary Rate Interface (PRI) Integrated Service Digital Network (ISDN) service.

**DATES:** Comments due on or before October 12, 2004, and reply comments due on or before November 12, 2004.

**ADDRESSES:** All filings must be sent to the Commission's Secretary, Marlene H. Dortch, 445 12th Street, SW., TW–B204, Washington, DC 20554. Parties should also send a copy of their paper filings to Jeremy D. Marcus, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5–A230, 445 12th Street, SW., Washington, DC 20554. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Jeremy D. Marcus, Wireline Competition Bureau, Pricing Policy Division, (202) 418–0059.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in WC Docket No. 04–259, RM–10603, FCC 04–174, adopted on July 14, 2004, and released on July 19, 2004. The full text of this document is available on the Commission's Web site Electronic Comment Filing System and for public inspection Monday through Thursday from 8 a.m. to 4:30 p.m. and Friday from 8 a.m. to 11:30 a.m. in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365. The full text of the NPRM may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Washington, DC 20554, telephone (202) 488–5300, facsimile (202) 488–5563, or e-mail *fcc@bcpiweb.com*, or via its Web site at *http://www.bcpiweb.com*.

### Initial Paperwork Reduction Act of 1995 Analysis

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

### Introduction

2. This NPRM, adopted July 14, 2004, and released July 19, 2004, in WC Docket No. 04–259, RM–10603, FCC 04–174, initiates a proceeding to examine the proper number of SLCs that rate-of-return and price cap carriers may assess upon customers that obtain derived channel T–1 service where the customer provides the terminating channelization equipment and upon customers that obtain PRI ISDN service.

3. The Commission's rules specify that carriers must assess one SLC "per line," which is defined to mean per channel. For derived channel T–1 services, therefore, one SLC currently is assessed for each derived channel (*i.e.*, up to 24 channels per T–1) provided to the customer.

4. In 1997 in the *Access Charge Reform First Report and Order*, 62 FR 31868, June 11, 1997, the Commission modified the SLC rules for loops used to provide Basic Rate Interface (BRI) ISDN and PRI ISDN services for price cap carriers. Specifically, the Commission created exceptions to the general rule that one SLC be assessed for each channel of service provided, finding that a single SLC may be assessed for a loop used to provide BRI ISDN service, and that up to five SLCs may be assessed for a loop used to provide PRI ISDN service. In 2001, in the *MAG Order*, 66 FR 57919, November 30, 2001, the Commission adopted identical rule changes for rate-of-return carriers.

### Background

5. On September 26, 2002, the National Exchange Carrier Association, Inc. (NECA) filed a petition for rulemaking requesting that the Commission initiate a rulemaking proceeding to modify the rules governing the assessment of the SLC for derived channel T–1 services where the customer provides the terminating channelization equipment. Specifically, NECA proposed modifying section 69.104(p) of the Commission's rules, 47 CFR 69.104(p), to permit rate-of-return carrier to assess no more than five SLCs on customers of derived channel T–1 services. Verizon has requested that any rule change be applied as well to price cap carriers for new T–1 service offerings.

6. NECA and other local exchange carriers and carrier associations claim that the proposed rule changes are necessary to bring SLC assessments

more in line with costs because treating derived channel T–1 services differently from PRI ISDN services creates artificial price incentives that favor PRI ISDN services over derived channel T–1 services.

7. NECA proposed recovering revenue lost due to the reduction in the number of SLCs assessed through the development of a port charge and through an increase in the interstate common line support universal service fund (ICLS).

**Discussion**

8. The Commission initiates this NPRM to examine the assessment of SLCs on derived channel T–1 services where the customer provides the terminating channelization equipment. We find that our current rules, which require the assessment of 24 SLCs for these derived channel T–1 services, may be inconsistent with the Commission's long-standing efforts to align rates with costs. We also find it appropriate to re-examine our earlier finding, based on Bell Operating Companies' cost studies from the mid-1990s, that up to five SLCs may be assessed on customers of PRI ISDN service. Our examination of these issues will encompass both rate-of-return and price cap carriers.

9. We request that any party that proposes the Commission change the SLC rules include in its comments the specific language of its requested rule change(s).

10. *Cost of provisioning and Cost Studies.* We tentatively conclude that the number of SLCs that may be assessed on customers of derived channel T–1 service where the customer provides the terminating channelization equipment should be based on the actual common line cost relationship between these services. We seek comment on this tentative conclusion.

11. We seek comment on the actual common line cost relationship between derived channel T–1 service and basic analog service, and ask parties asserting a particular cost relationship to support their claims with a cost study showing the common line costs for derived channel T–1 service and basic, analog service, respectively. The cost studies should be sufficiently detailed to enable us to discern the common line cost relationship between these services with reasonable accuracy.

12. We also seek comment on the current relationship between PRI ISDN common line costs and basic, analog common line costs. We ask parties asserting a particular cost relationship to support their claims with a cost study showing the common line costs for PRI ISDN service and basic, analog service, respectively. The cost studies should be sufficiently detailed to enable us to discern the common line cost relationship between these services with reasonable accuracy.

13. We ask that all cost studies include all of the underlying data used in the study, as well as the source(s) of the data, and clearly identify all of the assumptions made and formulas used. In particular, we ask parties to identify clearly all of the demand and growth assumptions reflected in their cost studies. In order to facilitate review by other parties and Commission staff, all cost studies should be fully transparent and verifiable. To the extent that a party expects to include confidential or proprietary data in a cost study, it may seek a protective order.

14. *Impact of Network Architecture.* We seek comment on the network architectures that carriers use to provide derived channel T–1 and PRI ISDN services. For example, in addition to using short copper loops, are carriers using fiber-based digital loop carrier systems to provide these services? Are carriers providing these services using all fiber loops, fiber to the premises, or other fiber-based loop architectures? Commenters should identify clearly the loop network architectures that they use to provide derived channel T–1 service, PRI ISDN service, and basic, analog service, including the relative frequency with which they deploy different architectures to provide these services. Commenters should also identify whether and, if so, why the loop architectures and their relative deployment frequencies are different from those used in their cost studies. We further request that commenters identify the key factors they consider to determine which loop network architecture(s) to deploy to provide derived channel T–1, PRI ISDN, and basic, analog services.

15. We seek comment on whether we should establish different rules for different loop architectures. Do variations in cost relationships resulting from the use of different architectures support different SLC assessment rules reflecting these cost relationships? For example, what incentives might different SLC assessment rules create regarding the deployment of efficient loop technologies? If we conclude that cost disparities among different network architectures counsel against adoption of SLC assessment rules based on relative cost relationships, are there alternative means of aligning common line costs with SLC cost recovery rules?

16. We also seek comment on whether carriers might incur different costs in providing derived channel T–1, PRI ISDN, and basic, analog services, even if those services use the same loop architectures. For example, are copper loops used to provide T–1 or PRI ISDN services shorter or longer, on average, than copper loops used to provide basic, analog services? Do derived channel T–1 or PRI ISDN loops cause interference when they share cables with loops providing other services? Should factors like these affect our analysis? If so, we seek comment on the effect of any such factors on the costs and relative costs of loops used to provide these different services.

17. We also seek comment on the relationship between loop costs for derived channel T–1 loops and the loop costs of T–1 special access services. To the extent that these costs differ, we ask parties to explain in detail the causes of such variances.

18. *Line Port Charges.* Carriers assess a separate line port charge for ISDN line ports, and for other line ports, to the extent that the costs of these line ports exceed the costs of line ports used for basic, analog service. *See* 47 CFR 69.130, 69.157. We ask parties to identify with specificity the amount of (as well as the methodology used to calculate) the port charge that they would expect to assess for the port associated with derived channel T–1 service, as well as the amount (and calculation methodology) of the PRI ISDN port charge they currently assess upon end user customers. Carriers should include in their comments the amount of the port charge that they may have developed prior to the comment date. More generally, we ask parties to comment on the principles that should be used to determine whether a cost should be included in the basic common line costs recovered through the SLC or in the line port costs recovered through the separate line port charge.

19. *Impact on ICLS and Other Universal Service Issues.* ICLS seeks to ensure that each rate-of-return carrier continues to provide affordable, quality telecommunications services to its customers while also recovering its common line revenue requirement. We recognize that assessing fewer than 24 SLCs for derived channel T–1 services will tend to decrease each carrier's revenues from SLCs and increase its ICLS. We seek comment on whether this is consistent with the goals of universal service.

20. We seek comment from on the effect that changes in the SLC assessment rules for PRI ISDN and for derived channel T–1 services (including the development of any new port charges for derived channel T–1 service)

will have on ICLS. We ask parties to quantify the changes in the size of ICLS that they would expect as a result of possible rule changes that would alter the number of SLCs assessed for PRI ISDN service or for derived channel T–1 service. Parties should clearly identify the methodology used to perform such a calculation. In particular, parties should identify any changes in the demand for these services that would result from changing the SLC assessment rules and should identify how demand assumptions are used in their cost study calculations. With regard to changes to ICLS resulting from any SLC assessment rule change, we expect that the parties' demand assumptions will differ from current demand figures and we ask parties to identify clearly the current demand figures, the anticipated demand figures associated with the proposed rule changes, and the basis for changes in demand assumptions resulting from any rule changes.

21. We also seek comment on the implications of rule changes for other universal service issues. Commenters should address the effect of rule changes on competitive eligible telecommunications carriers (ETCs) and the portability of universal service under our current ETC and portability rules. *See* 47 CFR 54.307. In particular, we seek comment on whether, pursuant to any rule change, competitive ETCs should report 24 lines for derived channel T–1 services or should report the same number of lines for these services that the incumbent LECs are required to report. Commenters should also address whether changing the method of developing line counts will affect universal service support mechanisms.

22. *Impact on PICC, CCLC, and Retail Rates.* We seek comment on the effect that changes in the SLC assessment rules for PRI ISDN and for derived channel T–1 services (including the development of any new port charges for derived channel T–1 service) will have on the multi-line business (MLB) primary interexchange carrier charge (PICC) and carrier common line charge (CCLC). To the extent that we modify the SLC assessment rule for derived channel T–1 service so that the number of SLCs assessed for this service is no longer based on the number of lines (*i.e.*, channels), should we also modify the PICC rule to make the same change?. Should SLC or PICC rules for price cap carriers distinguish between new and existing T–1 services? If we change the SLC and PICC assessment rules, should we also modify the maximum CMT revenues per line permitted under section 61.3(d) of the Commission's rules, 47 CFR 61.3(d)?

23. Commenting price cap carriers should also identify the new SLC (both residential and single line business (RES/SLB) and MLB), MLB PICC, and CCLC rates that would result from their proposals. Parties should identify clearly the methodology used to perform such calculations. We ask parties to quantify, based on their individual proposals, the amount of foregone SLC revenues (on an annualized basis) that they expect to recover from the MLB PICC and CCLC.

24. Commenting carriers that currently assess the SLC at rates below the SLC cap(s) should identify the increase in the level of the SLCs they assess (both RES/SLB and MLB) that would result from their desired rule change(s).

25. We seek comment on whether setting the number of SLCs that may be assessed equal to the common line cost ratio between derived channel T–1 or PRI ISDN and basic, analog service may result in MLB customers paying less than the full common line costs, with carriers having to recoup the shortfall from ICLS (for rate of return carriers) or from the MLB PICC and CCLC (for price cap carriers). We seek comment on whether such a result is consistent with our policy goals and, if not, we ask parties to propose an alternative that would result in all of the common line costs, but no more, for these services being recovered from MLB customers.

26. We also seek comment on the effect of any proposed rule changes on all classes (*i.e.*, residential, SLB, MLB) of end user customers. We ask parties that propose changes to the SLC assessment rules for customers of derived channel T–1 service to identify with specificity the rate change(s), both interstate and intrastate, that would result for customers of this service. Parties should identify the aggregate rate change(s) for these customers, and should further identify the changes that would result from Commission rule changes, and any changes in intrastate rates that the commenter anticipates would result. In light of the waiver we grant herein, we ask that rate-of-return carriers identify with specificity the changes that they may have made by the comment date to the rates for their derived channel T–1 service.

27. *Other Matters.* Finally, for good cause shown, we grant an interim, partial waiver of rule 69.104(q), 47 CFR 69.104(q), permitting rate-of-return carriers to assess SLCs for only five channels upon customers subscribing to derived channel T–1 service where the customer provides the terminating channelization equipment without foregoing recovery of the associated SLC revenues from ICLS. The waiver is interim and will remain in place only until we resolve the issues raised in the NPRM, at which time the waiver will expire. Carriers subject to this waiver order, when filing line count data pursuant to the Commission's rules, shall calculate their line counts in a manner consistent with this order. Competitive ETCs, which are not subject to this order, shall continue to file line count data using the existing assessment of 24 loops per derived channel T–1 service.

**Procedural Matters**

*Initial Regulatory Flexibility Act Analysis*

28. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), 5 U.S.C. 603, the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this NPRM. The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. 104–121, Title II, 190 Stat. 867 (1996). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided below. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). *See* 5 U.S.C. 603(a). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

*Need for, and Objectives of, the Proposed Rules*

29. In this NPRM, the Commission continues to explore means of better aligning cost recovery (*i.e.*, rates) with the manner in which costs are incurred. SLCs are generally assessed by carriers on customers on a per channel basis. In 1997 in the *Access Charge Reform First Report and Order*, 62 FR 31868, June 11, 1997, the Commission created an exception to the SLC assessment rules for price cap carriers for PRI ISDN and BRI ISDN services, determining that five SLCs could be assessed for PRI ISDN service and one SLC could be assessed for BRI ISDN service. In 2001 in the *MAG Order*, 66 FR 57919, November 30, 2001, the Commission made the equivalent rule changes for rate-of-return carriers.

30. NECA requests that we amend the Commission's SLC assessment rules to reduce the number of SLCs from twenty-four to five that carriers may assess upon customers of derived channel T–1 services (where the customer provides the terminating channelization equipment), with carriers recovering the foregone SLC revenues from a line port charge and from ICLS. This NPRM tentatively concludes that the number of SLCs that carriers may assess on customers of derived channel T–1 service (where the customer provides the terminating channelization equipment) should be based on the actual common line cost relationship between loops used to provide these services and loops used to provide basic, analog services, rather than on a per channel basis. We seek comment on this conclusion. The Commission also seeks comment on whether the PRI ISDN exception to the general ISLC assessment rules should be modified. The Commission also requests that parties detail the affects their proposals will have on line port charges, ICLS and other universal service mechanisms, other access charges (*i.e.*, the PICC and the CCLC), and retail rates. The Commission requests that commenting parties provide detailed, transparent cost studies to support their proposals.

*Legal Basis*

31. This rulemaking action is supported by sections 1, 2, 4(i), 4(j), 201–205, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), (j), 201–205, and 303.

*Description and Estimate of the Number of Small Entities To Which the Notice Will Apply*

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

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

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

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

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

37. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), and "Other Local Exchange Carriers."* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive exchange services or to competitive access providers or to "Other Local Exchange Carriers," all of which are discrete categories under which TRS data are collected. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 609 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 609 companies, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees. In addition, 35 carriers reported that they were "Other Local Service Providers." Of the 35 "Other Local Service Providers," an estimated 34 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and "Other Local Exchange Carriers" are small entities that may be affected by the rules and policies adopted herein.

*Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

38. The NPRM explores options for further aligning SLC rates with loop costs in the Commission's access charge regime and examines the universal service implications of any such SLC rule changes. The NPRM considers the varying operating circumstances of rate-of-return and price cap carriers, the implications of competitive and intrastate regulatory conditions on the options available, and the need to facilitate and ensure the deployment of advanced services in rural America. If adopted, changes to the Commission's SLC assessment rules may require additional or modified recordkeeping.

*Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

39. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

40. We will consider any proposals made to minimize significant economic impact on small entities. The overall objective of this proceeding is to consider the NECA proposal, as well as other proposals, that may better align rates with costs by amending the Commission's SLC assessment rules for PRI ISDN service and for derived channel T–1 services (where the customer provides the terminating channelization equipment). The NPRM seeks comment on the merits of changes in the SLC assessment rules. Comments should be supported by specific economic analysis and cost studies. The adoption of rule changes may require LECs to amend their end user tariffs. To the extent that the Commission may adopt rule changes that better enable small rate-of-return carriers to compete in offering advanced services, such carriers may stand to benefit from this proceeding.

*Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

41. None.

*Ex Parte Presentations*

42. This proceeding will continue to be governed by "permit-but-disclose" *ex parte* procedures that are applicable to non-restricted proceedings. *See* 47 CFR 1.1206. Parties making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one-or two-sentence description of the views and arguments presented generally is required. Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) as well. *See* 47 CFR 1.1206(b). Interested parties are to file any written *ex parte* presentations in this proceeding with the Commission's Secretary, Marlene H. Dortch, 445 12th Street, SW., TW–B204, Washington, DC 20554, and serve with one copy: Pricing Policy Division, Wireline Competition Bureau, 445 12th Street, SW., Room 5–A452, Washington, DC 20554, Attn: Jeremy D. Marcus. Parties shall also serve with one copy: Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room, CY–B402, Washington, DC 20554, telephone (202) 488–5300, facsimile (202) 488–5563, e-mail *fcc@bcpiweb.com,* or via its Web site *http://www.bcpiweb.com.*

*Comment Filing Procedures*

43. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before 60 days and reply comments on or before 90 days after publication of this NPRM in the **Federal Register**. All pleadings must reference WC Docket No. 04–259 and RM–10603. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/cgb/ecfs.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message: "get form <your e-mail address>." A sample form and directions will be sent in reply. Commenters also may obtain a copy of the ASCII Electronic Transmittal Form (FORM–ET) at *http://www.fcc.gov/e-file/email.html.*

44. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

45. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

46. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Washington, DC 20554, telephone (202) 488–5300, facsimile (202) 488–5563, e-mail *fcc@bcpiweb.com,* or via its Web site at *http://www.bcpiweb.com.* In addition, one copy of each submission must be filed with the Chief, Pricing Policy Division, 445 12th Street, SW., Washington, DC 20554. Documents filed in this proceeding will be available for public inspection during regular business hours in the Commission's Reference Information Center, 445 12th Street, SW., Washington, DC 20554, and will be placed on the Commission's Internet site. For further information, contact Jeremy D. Marcus at (202) 418–0059.

47. Accessible formats (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting the Consumer & Governmental Affairs Bureau, at (202) 418–0531, TTY (202) 418–7365, or at *fcc504@fcc.gov.*

**Ordering Clauses**

48. Accordingly, *it is ordered* that, pursuant to the authority contained in section 1.407 of the commission's rules, 47 CFR 1.407, the National Exchange Carrier Association, Inc. Petition for Rulemaking *is granted.*

49. *It is further ordered* that, pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 201–205, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 201–205, and 303, *notice is hereby given* of the rulemaking

described above and *comment is sought* on those issues.

50. *It is further ordered* that the Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of the Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

51. *It is further ordered* that, pursuant to the authority contained in sections 1, 2, 4(i), 4(j), and 201–205 of the Communications Act of 1934, as amended, and section 1.3 of the Commission's rules, 47 U.S.C. 151, 152, 154(i), 154(j), 201–205 and 47 CFR 1.3, the joint petition for expedited waiver *is granted* to the extent stated herein.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

[FR Doc. 04–18550 Filed 8–12–04; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 04–2396, MB Docket No. 04–289, RM–19802]**

### Television Broadcast Service and Digital Television Broadcast Service; Columbia and Edenton, NC

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by the University of North Carolina proposing the reallottment of TV channel *2 and DTV channel *20 from Columbia to Edenton, North Carolina, as the community's first local TV service. TV channel *2 and DTV channel *20 can be allotted to Edenton in compliance with the Commission's minimum distance separation requirements at Station WUND's current licensed transmitter site. The coordinates for TV channel *2 and DTV channel *20 at Edenton are 35–54–00 N. and 76–20–45 W. In compliance with section 1.420(i), we will not accept competing expressions of interest in the use of TV channel *2 and DTV channel *20 at Edenton.

**DATES:** Comments must be filed on or before September 27, 2004, and reply comments on or before October 12, 2004.

**ADDRESSES:** The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rulemaking (except in broadcast allotment proceedings). *See Electronic Filing of Documents in Rulemaking Proceedings,* GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Marcus W. Trathen, Brooks, Pierce, McLendon, Humphrey & Leonard, LLP, P.O. Box 1800, Raleigh, North Carolina, 27602 (Counsel for the University of North Carolina).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rulemaking, MB Docket No. 04–289, adopted July 30, 2004, and released August 6, 2004. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (301) 816–2820, facsimile (301) 816–0169, or via-e-mail *joshir@erols.com.*

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

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

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**

Digital television broadcasting, Television.

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.

**§ 73.606 [Amended]**

2. Section 73.606(b), the Table of Television Allotments under North Carolina is amended by removing channel *2 at Columbia; and adding Edenton, channel *2.

**§ 73.622 [Amended]**

3. Section 73.622(b), the Table of Digital Television Allotments under North Carolina is amended by removing DTV channel *20 at Columbia; and adding Edenton, DTV channel *20.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Division, Media Bureau.*

[FR Doc. 04–18463 Filed 8–12–04; 8:45 am]

BILLING CODE 6712–01–P

## 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; notice of public hearings.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service or we) announces that we will hold nine public hearings on our proposed rule to remove the Eastern Distinct Population Segment of the gray wolf (*Canis lupus*) from the List of Endangered and Threatened Wildlife established under the Endangered Species Act of 1973, as amended. This action carries out our stated intent in the proposed rule to hold public hearings.

**DATES:** See **SUPPLEMENTARY INFORMATION** for hearing dates.

**ADDRESSES:** See **SUPPLEMENTARY INFORMATION** for hearing addresses.

**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

On July 21, 2004, we published a proposed rule (69 FR 43664) to remove the Eastern Distinct Population Segment (DPS) of the gray wolf (*Canis lupus*) from the List of Endangered and Threatened Wildlife established under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). We proposed 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 Eastern DPS. The proposed rule 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 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*).

In our July 21, 2004, proposed rule, we stated that we would hold public hearings. Consistent with that document, we are now announcing the dates and locations of those hearings.

#### Hearings

All hearings will consist of an informational open house from 6:30 p.m. to 7 p.m., a presentation on the proposal and question and answer session from 7 p.m. to 7:30 p.m., and the official public hearings from 7:30 p.m. to 9 p.m. We will hold nine public hearings on the following dates and at the following locations:

1. Bemidji, MN, on August 31, 2004, at Bemidji State University, Beaux Arts Ballroom—Hobson Memorial Union, 1500 Birchmont Drive NE.

2. Virginia, MN, on September 1, 2004, at the Mesabi Range Community College, F100—Fine Arts Theater, 1001 Chestnut Street West.

3. Bloomington, MN, on October 6, 2004, at the Minnesota Valley National Wildlife Refuge Visitors Center, 3815 American Blvd. East.

4. Marquette, MI, on September 13, 2004, at Northern Michigan University, Explorer Room, Don Bottum Conference Center, 540 West Kaye Avenue (park in lot #8).

5. Sault Ste. Marie, MI, on September 14, 2004, at Lake Superior State University, Cisler Center, Ontario Room, 650 West Easterday Avenue (park in lots A, B, E, J, or X after 5 p.m.).

6. East Lansing, MI, on September 15, 2004, at Michigan State University, BioMedical and Physical Science Building-Auditorium, corner of Wilson and Farm Lane (parking allowed in staff or faculty spaces after 6 p.m.).

7. Madison, WI, on September 27, 2004, at the University of Wisconsin Union South, 227 North Randall Avenue.

8. Wausau, WI, on September 28, 2004, at the Westwood Conference Center, Westwood Conference Room, 1800 West Bridge Street.

9. Ashland, WI, on September 29, 2004, at the Northern Great Lakes Center, 29270 County Highway G.

Dated: August 6, 2004.

**Elizabeth H. Stevens,**

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 04–18617 Filed 8–11–04; 9:23 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

### Endangered and Threatened Wildlife and Plants: Notice of Receipt of an Application for an Incidental Take Permit and Availability and Opening of Comment Period for an Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the Red-Cockaded Woodpecker in Association With Mr. Owen Strickler's Timber Harvest of a 75-acre Tract of Forest on the Border of Sussex and Southampton Counties, Virginia

**AGENCY:** U.S. Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability and receipt of application.

**SUMMARY:** This document advises the public that Mr. Owen Strickler (president and owner of Virginia-Carolina Properties) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit (ITP) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (ESA), as amended. The application has been assigned permit number (TE090858–0). The proposed permit would authorize the incidental take of a federally endangered species, the red-cockaded woodpecker (RCW) (*Picoides borealis*), known to occur on property owned by the applicant and located off of State Route 612 on the border of Sussex and Southampton Counties, Virginia. The proposed taking is incidental to the planned timber harvest of the 75-acre tract of land. The permit would be in effect for up to 5 years depending on the availability of donor RCWs at Carolina Sandhills National Wildlife Refuge to be translocated for mitigation.

The Service announces the receipt of the Strickler ITP application and the

availability of the proposed Strickler HCP, which accompanies the ITP application, for public comment. In addition, the Service also announces the availability of a draft EA for the proposed issuance of the ITP. This notice is provided pursuant to section 10(c) of the ESA and National Environmental Policy Act of 1969 (NEPA) regulations (40 CFR 1506.6).

The Service will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of NEPA regulations and section 10(a) of the ESA. If it is determined that the requirements are met, a permit will be issued for the incidental take of the RCW. The final NEPA and permit determinations will not be completed until after the end of the 60-day comment period and will fully consider all public comments received during the comment period.

**DATES:** Written comments on the permit application, HCP, and EA should be sent to the Virginia Field Office (VAFO) (*see* **ADDRESSES**) and should be received on or before October 12, 2004.

**ADDRESSES:** Persons wishing to review the permit application, HCP, and draft EA may obtain a copy by writing the U.S. Fish and Wildlife Service, Virginia Field Office, 6669 Short Lane, Gloucester, Virginia 23061. Requests for the documentation must be in writing to be processed. Documents will also be available for public inspection by written request, by appointment only, during normal business hours (8 to 4:30). Written data or comments concerning the permit application, draft EA, and/or HCP should also be addressed to the Field Supervisor, U.S. Fish and Wildlife Service, Virginia Field Office, Gloucester, Virginia. Please refer to permit (TE090858–0) when submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jolie Harrison or Mr. Eric Davis, VAFO, at (804) 693–6694 (see **ADDRESSES** above).

**SUPPLEMENTARY INFORMATION:** Section 9 of the ESA and Federal regulation prohibits the "taking" of a species listed as endangered or threatened. Under the ESA, the term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed wildlife, or to attempt to engage in any such conduct. The Service may, under limited circumstances, issue permits to "incidentally take" listed species, if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are promulgated in 50 CFR 17.22.

**Background**

Mr. Strickler has applied to the Service for an incidental take permit pursuant to section 10(a) of the ESA. The Applicant proposes to implement an HCP for the RCW that will allow removal of RCW habitat. The Applicant's proposed timber harvest is likely to result in take, as defined in the ESA and its implementing regulations, of listed species. Authorized take would only affect the RCW; take of other federally listed species is specifically excluded from the proposed action. This permit would authorize the incidental take of one RCW group, consisting of a single male, at Mr. Strickler's property, through otherwise lawful activities, specifically the harvest of 75 acres of timber, occurring in RCW habitat. The HCP and permit would be in effect for a maximum of 5 years upon issuance.

The Applicant proposes the harvest of all mature timber at his 75-acre site. Timber will be harvested using a feller buncher, which will transport cut trees directly to a log deck, where they will be loaded onto a truck and transported to Mr. Strickler's mill. The site will undergo a prescribed burn and subsequently be replanted with loblolly pine (*Pinus taeda*). The southern boundary of the project area is approximately 2,000 feet north of State Route 612 where it joins State Route 615 in Southampton County.

The anticipated incidental take will consist of harm through permanent loss of 75 acres of foraging habitat and a cluster of cavity trees, as well as possible death of one RCW from predation or starvation due to the subsequent lack of shelter or foraging habitat. Mr. Strickler proposes to implement measures to minimize, mitigate, and monitor impacts to the RCW. Through an agreement with the Center for Conservation Biology, College of William and Mary, impacts to the lone male RCW will be minimized by removing him from the project site prior to timber harvest and placing him in a prepared cavity at an active cluster (at the Piney Grove Preserve, Sussex, Virginia) with a subadult female moved in simultaneously. Through an agreement with The Nature Conservancy, if the translocated lone male does not remain at Piney Grove, his loss will be mitigated by translocating a maximum of three subadult pairs from the designated donor population at the Carolina Sandhills National Wildlife Refuge in McBee, South Carolina to the Piney Grove Preserve.

The draft EA considers the environmental consequences of three alternatives: A no-action alternative, permit issuance (the proposed alternative), and issuance of permit with conditions (selective harvest).

The Service provides this notice pursuant to section 10(c) of the ESA. The Service will evaluate whether the issuance of a section 10(a)1)(B) ITP complies with section 7 of the ESA by conducting an intra-Service section 7 consultation. The results of the biological opinion, in combination with the evaluation of the permit application, the HCP, EA, and comments submitted thereon, will be used in the final analysis to determine whether the application meets the requirements of section 10(a) of the ESA. If the requirements are met, the Service will issue a permit to Mr. Strickler for the incidental take of one RCW group, consisting of one male, during the proposed harvest of timber on the 75-acre project site. We will make the final permit decision no sooner than 60 days from the date of this notice.

Pursuant to an order issued on June 10, 2004, by the District Court for the District of Columbia in *Spirit of the Sage Council* v. *Norton*, Civil Action No. 98–1873 (D. D.C.), the Service is enjoined from issuing new section 10(a)(1)(B) permits or related documents containing "No Surprises" assurances, as defined by the Service's "No Surprises" rule published at 63 FR 8859 (February 23, 1998), until such time as the Service adopts new permit revocation rules specifically applicable to section 10(a)(1)(B) permits in compliance with the public notice and comment requirements of the Administrative Procedures Act. This notice concerns a step in the review and processing of a section 10(a)(1)(B) permit and any subsequent permit issuance will be in accordance with the Court's order. Until such time as the June 10, 2004, order has been rescinded or the Service's authority to issue permits with "No Surprises" assurances has been otherwise reinstated, the Service will not approve any incidental take permits or related documents that contain "No Surprises" assurances.

Comments, including names and home addresses of respondents, will be available for public review during regular business hours. Individual respondents may request confidentiality. If you wish us to withhold your name and or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous

comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

*Author:* The primary author of this document is Julia Harrison from the VAFO, Endangered Species Program.

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

Dated: July 23, 2004.

**Anthony D. Leger,**

*Acting Regional Director, Region 5.*

[FR Doc. 04–18629 Filed 8–12–04; 8:45 am]

BILLING CODE 4310–55–P

# Notices

Federal Register
Vol. 69, No. 156
Friday, August 13, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

August 6, 2004.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

#### Agricultural Marketing Service

*Title:* Reporting Forms Under Milk Marketing Order Programs (From Milk Handlers and Milk Marketing Cooperatives).

*OMB Control Number:* 0581–0032.

*Summary of Collection:* Agricultural Marketing Service (AMS) oversees the administration of the Federal Milk Marketing Orders authorized by the Agricultural Marketing Agreement Act of 1937, as amended. The Act is designed to improve returns to producers while protecting the interests of consumers. The Federal Milk Marketing Order regulations require places certain requirements on the handling of milk in the area it covers. Currently, there are 10 milk marketing orders regulating the handling of milk in the respective marketing areas.

*Need and Use of the Information:* The information collected is needed to administer the classified pricing system and related requirements of each Federal Order. Forms are used for reporting purposes and to establish the quantity of milk received by handlers, the pooling status of the handler, and the class-use of the milk used by the handler and the butterfat content and amounts of other components of the milk. Without the monthly information, the market administrator would not have the information to compute each monthly price nor know if handlers were paying producers on dates prescribed in the order. Penalties are imposed for order violation, such as the failure to pay producers by the prescribed dates.

*Description of Respondents:* Business or other for-profit; not-for-profit institutions; individuals or households; farms.

*Number of Respondents:* 739.

*Frequency of Responses:* Recordkeeping; reporting: on occasion; quarterly; monthly, annually.

*Total Burden Hours:* 22,016.

**Sondra Blakey,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 04–18498 Filed 8–12–04; 8:45 am]

BILLING CODE 3410–02–M

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

August 6, 2004.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if reviewed within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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#### Risk Management Agency

*Title:* Risk Management and Crop Insurance Education; Activity Log.

*OMB Control Number:* 0563–NEW.

*Summary of Collection:* The Federal Crop Insurance Act, Title 7 U.S.C. chapter 36 section 1508(k) authorizes

the Federal Crop Insurance Corporation (FCIC) to establish crop insurance education and information programs in States that have been historically underserved by Federal Crop insurance program (7 U.S.C. 1524(a)(2)); and provide agricultural producers with training opportunities in risk management. The Commodity Partnerships and Targeted States programs are two programs available to carry out certain risk management education provisions of the Federal Crop Insurance Act.

*Need and Use of the Information:* The Risk Management Agency (RMA) will use Form RME–3, Activity Log, to collect information and monitor certain educational activities. Agreement holders are required to record specific information about each educational activity conducted under the agreement in an Activity Log and submit as part of the required quarterly progress report. In addition, RMA will use information provided by agreement holders to ensure that funded educational projects are progressing.

*Description of Respondents:* Not-for-profit institutions; Business or other for-profit; State, local, or tribal government.

*Number of Respondents:* 55.

*Frequency of Responses:* Reporting: Quarterly.

*Total Burden Hours:* 313.

**Sondra Blakey,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 04–18503 Filed 8–12–04; 8:45 am]

BILLING CODE 3410–08–M

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

August 6, 2004.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_OIRA_Submission@OMB.EOP.GOV* or fax (202 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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**Farm Service Agency**

*Title:* Application for Payment of Amounts Due Persons Who Have Died, Disappeared or Have Been Declared Incompetent.

*OMB Control Number:* 0560–0026.

*Summary of Collection:* Representatives or survivors of producers who die, disappear, or are declared incompetent must be afforded a method of obtaining any payment intended for the producer. 7 CFR 707 provides that form, FSA–325, be used as the application for person desiring to claim such payments. It is necessary to collect information recorded on FSA–325 in order to determine whether representatives or survivors of a producer are entitled to receive payments earned by a producer who dies, disappears, or is declared incompetent before receiving the payment.

*Need and Use of the Information:* FSA will collect information to determine if the survivors have rights to the existing payments or to the unpaid portions of the producer's payments.

*Description of Respondents:* Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

*Number of Respondents:* 1,000.

*Frequency of Responses:* Reporting: Other (when necessary).

*Total Burden Hours:* 1,500.

**Farm Service Agency**

*Title:* 7 CFR 1924–B Management Advice to Individuals Borrowers and Applicants.

*OMB Control Number:* 0560–0154.

*Summary of Collection:* The Consolidated Farm and Rural Development Act (CONACT) as amended, authorizes the Secretary of Agriculture to make and service direct farm loans to eligible applicants. The collection of information is needed to develop sound farm loan assessments, provide appropriate credit counseling and credit supervision that will assist the Agency's customers toward successful farming/ranching operations.

*Need and Use of the Information:* FSA will collect information to protect the government's financial interests by ensuring the farming operations of the Agency's direct loan customers be properly assessed for short and long-term financial feasibility and that all customers receive appropriate credit counseling. If the information were not collected, the Agency would be unable to make sound decisions on financial and production feasibility for direct farm loan requests, thus increasing monetary losses to the Government.

*Description of Respondents:* Farm; Business or other-for-profit; Federal Government; Not-for-profit institutions.

*Number of Respondents:* 54,081.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 143,059.

**Farms Service Agency**

*Title:* 7 CFR 1910–A, Receiving and Processing Applications.

*OMB Control Number:* 0560–0178.

*Summary of Collection:* Section 302 (7 U.S.C. 1922) and Section 339 (7 U.S.C. 1989) of the Consolidated Farm and Rural Development Act (CONACT) provides authorization to the Secretary to make and insure loans to farmers and ranchers, to prescribe that terms and conditions for making and insuring loans, security instruments and agreements. The Farm Service Agency (FSA) has issued regulations through the **Federal Register** process to implement the making and servicing of direct loans in chapter 18 of the Code of Federal Regulations.

*Need and Use of the Information:* FSA will collect information to determine eligibility and financial feasibility of respondent's requests for loans. Without the information, FSA would be unable to make an accurate eligibility and financial feasibility determination on respondent's request for new loans as required by the CONACT.

*Description of Respondents:* Farm; Individuals or households; businesses or other-for-profit; Federal Government.

*Number of Respondents:* 17,806.

*Frequency of Responses:* Reporting: Other (eligibility).

*Total Burden Hours:* 101,283.

**Sondra Blakey,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 04–18504 Filed 8–12–04; 8:45 am]

BILLING CODE 3410–05–M

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

August 6, 2004.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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**Rural Housing Service**

*Title:* 7 CFR 1942–C, "Fire and Rescue Loans".

*OMB Control Number:* 0575–0120.

*Summary of Collection:* The Rural Housing Service (RHS) is authorized by Section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public agencies, nonprofit corporations, and Indian tribes for the development of essential community facilities primarily servicing rural residents. 7 CFR 1942–A is the primary regulation for administering the Community Facility Program.

*Need And Use of the Information:* The Rural Development field offices will collect the information from applicant/borrowers. The information is used to determine eligibility, analyze financial feasibility, monitor the use of loan funds and the financial condition of borrowers, and otherwise assisting borrowers.

*Description of Respondents:* Not-for-profit institutions; State, Local or Tribal Government.

*Number of Respondents:* 1,544.

*Frequency of Responses:* Reporting: On occasion; Quarterly; Annually.

*Total Burden Hours:* 8,232.

**Sondra Blakey,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 04–18505 Filed 8–12–04; 8:45 am]

BILLING CODE 3410–XT–M

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

August 6, 2004.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC, 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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**Animal and Plant Health Inspection Service**

*Title:* Highly Pathogenic Avian Influenza; Additional Restrictions.

*OMB Control Number:* 0579–0245.

*Summary of Collection:* Disease prevention is the most effective method for maintaining a healthy animal population and enhancing the Animal and Plant Health Inspection Service (APHIS) ability to compete in the world market of animal and animal product trade. Title 21 U.S.C. authorizes sections 111, 114, 114a, 114–1, 115, 120, 121, 125, 126, 134a, 134c, 134f, and 134g. These authorities permit the Secretary to prevent, control, and eliminate domestic diseases such as brucellosis, as well as to take actions to prevent and to manage exotic diseases such as highly pathogenic avian influenza and other foreign animal diseases. Highly pathogenic avian influenza is an extremely infectious and fatal form of influenza in chickens and can strike poultry quickly without any warning signs. To protect the United States against an incursion of highly pathogenic avian influenza, APHIS published an interim rule to prohibit or restrict the importation of birds, poultry, and unprocessed bird and poultry products from regions that have reported the presence of the H5N1 subtype of highly pathogenic avian influenza.

*Need and Use of the Information:* APHIS will collect the information to ensure that U.S. origin pet birds undergo appropriate examinations before entering the United States. Without the information, it would be impossible for APHIS to establish an

effective line of defense against an introduction of highly pathogenic avian influenza.

*Description of Respondents:* Farms; Individuals or households; Federal Government.

*Number of Respondents:* 5,000.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 5,000.

**Animal and Plant Health Inspection Service**

*Title:* Karnal Bunt; Compensation for Custom Harvesters in Northern Texas.

*OMB Control Number:* 0579–0248.

*Summary of Collection:* Under the Plant Protection Act (PPA) (7 U.S.C. 7701–7772), the Animal and Plant Health Inspection Service (APHIS) has the responsibility and authorization to prohibit or restrict the importation, entry, or movement of plant and plant pests in the United States. The regulations regarding Karnal Bunt are set forth in 7 CFR Parts 301.89–1 through 301.89–16. APHIS amended the Karnal Bunt regulations to provide for the payment of compensation to custom harvesters for losses they incurred due to the requirement that their equipment be cleaned and disinfected after four counties in northern Texas were declared regulated areas for Karnal Bunt during the 2000–2001 crop season.

*Need and Use of the Information:* APHIS will collect information using PPQ 540, Certificate of Federal/State Domestic Plant Quarantines. The certificate is used for domestic movement of treated articles relating to quarantines. The information collected is critical to the mission of preventing the infestation of Karnal Bunt into non-infested areas of the United States.

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

*Number of Respondents:* 40.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 8.

**Sondra Blakey,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 04–18506 Filed 8–12–04; 8:45 am]

**BILLING CODE 3410–34–M**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. 04–071–1]**

### Notice of Request for Extension of Approval of an Information Collection

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Extension of approval of an information collection; comment request.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the Virus-Serum-Toxin Act and regulations.

**DATES:** We invite you to comment on this docket. We will consider all comments that we receive on or before October 12, 2004.

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

- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. 04–071–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–071–1.
- *E-mail:* Address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 04–071–1" on the subject line.
- *Agency Web Site:* Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.

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

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

**FOR FURTHER INFORMATION CONTACT:** For information on the Virus-Serum-Toxin Act and regulations, contact Dr. Albert Morgan, Section Leader, Operational Support Section, Center for Veterinary Biologics, VS, APHIS, 4700 River Road Unit 148, Riverdale MD 20737, (301) 734–8245. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

**SUPPLEMENTARY INFORMATION:**

*Title:* Virus-Serum-Toxin Act and Regulations.

*OMB Number:* 0579–0013.

*Type of Request:* Extension of approval of an information collection.

*Abstract:* The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture is responsible for ensuring that veterinary biological products are pure, safe, potent, and effective. This program is conducted under the Virus-Serum-Toxin Act (21 U.S.C. 151, *et seq.*) and the regulations in 9 CFR, chapter I, subchapter E. Veterinary biological products are defined as all viruses, serums, toxins (excluding substances that are selectively toxic to microorganisms, *e.g.*, antibiotics), or analogous products at any stage of production, shipment, distribution, or sale, which are intended for use in the treatment of animals and which act primarily through the direct stimulation, supplementation, enhancement, or modulation of the immune system or immune response. The term "biological products" includes, but is not limited to, vaccines, bacterins, allergens, antibodies, antitoxins, toxoids, immunostimulants, certain cytokines, antigenic or immunizing components of live organisms, and diagnostic components that are of natural or synthetic origin or that are derived from synthesizing or altering various substances or components of substances, such as microorganisms, genes or genetic sequences, carbohydrates, proteins, antigens, allergens, or antibodies.

To accomplish its mission, APHIS issues licenses to qualified establishments that produce biological products and issues permits to importers of such products. We also enforce requirements concerning production, packaging, labeling, and shipping of these products and set standards for the testing of these products.

Fulfilling this responsibility requires us to use certain information collection activities such as establishment license applications, product license applications, product import permit applications, product and test report forms, and field study summaries. This information helps us to ensure that biological products used in the United States are pure, safe, potent, and effective. If we did not collect this information, we would be unable to carry out this mission.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning these information collection activities. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.*, permitting electronic submission of responses.

*Estimate of burden:* The public reporting burden for this collection of information is estimated to average 2.490576 hours per response.

*Respondents:* U.S. importers, exporters, and shippers of veterinary biological products; State veterinary authorities; and operators of establishments that produce or test veterinary biological products or that engage in product research and development.

*Estimated annual number of respondents:* 500.

*Estimated annual number of responses per respondent:* 39.9.

*Estimated annual number of responses:* 19,950.

*Estimated total annual burden on respondents:* 49,687 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 10th day of August, 2004.

**W. Ron DeHaven,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 04–18524 Filed 8–12–04; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. 04–010–2]**

### Mycogen c/o Dow; Availability of Determination of Nonregulated Status for Cotton Lines Genetically Engineered for Insect Resistance

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that the Mycogen Seeds c/o Dow AgroSciences LLC cotton lines designated as Cry1F cotton event 281–24–236 and Cry1Ac cotton event 3006–210–23, which have been genetically engineered for insect resistance, are no longer considered regulated articles under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by Mycogen Seeds c/o Dow AgroSciences LLC in its petitions for determinations of nonregulated status, our analysis of other scientific data, and comments received from the public in response to a previous notice. This notice also announces the availability of our written determination and our finding of no significant impact.

**EFFECTIVE DATE:** July 15, 2004.

**ADDRESSES:** You may read the petitions, the determination, the environmental assessment and finding of no significant impact, and all comments that we received on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

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. Susan Koehler, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–4886. To obtain copies of the petitions or the environmental assessment and finding of no significant impact, contact Ms. Terry Hampton at (301) 734–5715; e-mail: *Terry.A.Hampton@aphis.usda.gov.* The petitions and the environmental assessment and finding of no significant impact are also available on the Internet at:

- *http://www.aphis.usda.gov/brs/aphisdocs/03_03601p.pdf*
- *http://www.aphis.usda.gov/brs/aphisdocs/03_03601p_ea.pdf*
- *http://www.aphis.usda.gov/brs/aphisdocs/03_03602p.pdf*
- *http://www.aphis.usda.gov/brs/aphisdocs/03_03602p_ea.pdf*

**SUPPLEMENTARY INFORMATION:**

#### Background

On February 5, 2003, the Animal and Plant Health Inspection Service (APHIS) received two petitions from Mycogen Seeds c/o Dow AgroSciences LLC (Mycogen/Dow) of Indianapolis, IN, requesting determinations of nonregulated status under 7 CFR part 340 for cotton (*Gossypium hirsutum* L.) designated as Cry1F cotton event 281–24–236 (cotton event Cry1F) (APHIS Petition No. 03–036–01p) and Cry1Ac cotton event 3006–210–23 (cotton event Cry1Ac) (APHIS Petition No. 03–036–02p), which have been genetically engineered for resistance to certain lepidopteran insect pests. The Mycogen/Dow petitions state that the subject cotton events should not be regulated by APHIS because they do not present a plant pest risk.

On March 9, 2004, APHIS published a notice in the **Federal Register** (69 FR 10972–10973, Docket No. 04–010–1) announcing that the Mycogen/Dow petitions and an environmental assessment (EA) were available for public review and comment. The notice also discussed the role of APHIS, the Environmental Protection Agency, and the Food and Drug Administration in regulating the subject cotton and food products developed from it. APHIS received six comments on the petitions and the EA during the 60-day comment period which ended May 10, 2004. The comments were from three individuals, an industry organization, a cotton farmer, and an academic research center. Four of the comments were in favor of deregulation for the subject cotton lines, based on predicted economic and environmental benefits resulting from higher yields and reduced pesticide use. The combination of the two subject cotton lines through breeding after deregulation was also seen as a means of reducing the potential for the development of resistance in lepidopteran populations. The one commenter opposed to deregulation for the subject cotton lines suggested the need for many more years

of testing and more stringent regulation of all genetically engineered crop plants. The remaining commenter expressed the opinion that a partial deregulation of the subject cotton lines should be approved, with restrictions imposed so that additional field tests and monitoring could be conducted to provide data in certain areas of concern. APHIS has carefully considered these comments and suggestions, and a response to the comments is included as an attachment to the finding of no significant impact (FONSI).

Cotton events Cry1F and Cry1Ac have been genetically engineered to express synthetic insecticidal proteins derived from the common soil bacterium *Bacillus thuringiensis (Bt)*. The petitioner states that the Cry1F and Cry1Ac proteins are effective in providing protection from the feeding of lepidopteran insect pests such as tobacco budworm, beet armyworm, soybean looper, and cotton bollworm. The subject cotton events also express the *pat* gene derived from *Streptomyces viridochromogenes*, a non-pathogenic bacterium. The *pat* gene encodes the enzyme phosphinothricin acetyltransferase (PAT), which confers tolerance to glufosinate herbicides and is present in cotton events Cry1F and Cry1Ac as a selectable marker. The subject cotton events were developed through use of the *Agrobacterium*-mediated transformation method. Cotton events Cry1F and Cry1Ac were developed primarily so that they could be crossed to produce a cotton line which contains both the insecticidal proteins and thereby to maintain a range of effective control options for lepidopteran insect pests and to reduce the potential for the development of resistance to *Bt* insecticides.

Cotton events Cry1F and Cry1Ac have been considered regulated articles under the regulations in 7 CFR part 340 because they contain gene sequences from the plant pathogen *Agrobacterium tumefaciens*. These cotton events have been field tested since 1999 in the United States under APHIS notifications. In the process of reviewing the notifications for field trials of the subject cotton, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical confinement or isolation, would not present a risk of plant pest introduction or dissemination.

**Determination**

Based on its analysis of the data submitted by Mycogen/Dow, a review of other scientific data, field tests of the subject cotton, and comments submitted by the public, APHIS has determined that cotton event Cry1F and cotton event Cry1Ac: (1) Exhibit no plant pathogenic properties; (2) are no more likely to become weedy than the non-transgenic parental line or other cultivated cotton; (3) are unlikely to increase the weediness potential for any other cultivated or wild species with which they can interbreed; (4) will not cause damage to raw or processed agricultural commodities; (5) will not harm threatened or endangered species or organisms that are beneficial to agriculture; and (6) should not reduce the ability to control pests and weeds in cotton or other crops. Therefore, APHIS has concluded that the subject cotton events and any progeny derived from hybrid crosses with other nontransformed cotton varieties will be as safe to grow as cotton in traditional breeding programs that are not subject to regulation under 7 CFR part 340.

The effect of this determination is that Mycogen/Dow's Cry1F cotton event 281–24–236 and Cry1Ac cotton event 3006–210–23 are no longer considered regulated articles under APHIS' regulations in 7 CFR part 340. Therefore, the requirements pertaining to regulated articles under those regulations no longer apply to the subject cotton or its progeny. However, importation of cotton events Cry1F and Cry1Ac and seeds capable of propagation are still subject to the restrictions found in APHIS' foreign quarantine notices in 7 CFR part 319 and imported seed regulations in 7 CFR part 361.

An EA was prepared to examine the potential environmental impacts associated with the proposed determinations of nonregulated status for Mycogen/Dow's Cry1F cotton event 281–24–236 and Cry1Ac cotton event 3006–210–23. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on that EA, APHIS has reached a FONSI with regard to its determination that Cry1F cotton event 281–24–236 and Cry1Ac cotton event 3006–210–23 and lines developed from them are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the EA and FONSI are available as indicated in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

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

Done in Washington, DC, this 9th day of August 2004.

**Peter Fernandez,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 04–18523 Filed 8–12–04; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

**[Docket No. 04–022N]**

### Codex Alimentarius Commission: Meeting of the Codex Committee on Nutrition and Foods for Special Dietary Uses

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice of public meeting and request for comments.

**SUMMARY:** This notice informs the public that the Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA), U.S. Department of Health and Human Services (HHS), are sponsoring a public meeting on September 9, 2004. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States' positions that will be discussed at the 26th Session of the Codex Committee on Nutrition and Foods for Special Dietary Uses (CCNFSDU) to be held in Bonn, Germany, November 1–5, 2004. The Under Secretary for Food Safety and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the 26th Session of CCNFSDU and to address items on the agenda.

**DATES:** The public meeting is scheduled for Thursday, September 9, 2004, from 1 p.m. to 4 p.m.

**ADDRESSES:** The public meeting will be held in the Auditorium (1A003), Food and Drug Administration, Harvey Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD. To receive copies of the Codex documents pertaining to the agenda items for the 26th CCNFSDU session, contact the Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250. The documents will also be accessible

via the World Wide Web at the following address: *http://www.codexalimentarius.net.* FSIS invites interested persons to submit comments on this notice. Comments may be submitted by any of the following methods:

• Mail, including floppy disks or CD–ROM's, and hand- or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250.

All submissions received must include the Agency name and docket number 04–022N.

• All comments submitted in response to this notice, as well as research and background information used by FSIS in developing this document, will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. The comments also will be posted on the Agency's Web site at *http://www.fsis.usda.gov/OPPDE/rdad/FRDockets.htm.*

The U.S. Delegate to the CCNFSDU, Dr. Barbara Schneeman of the Food and Drug Administration, also invites United States interested parties to submit their comments electronically to the following e-mail address (*nancy.crane@cfsan.fda.gov*).

*Pre-Registration:* To gain admittance to this meeting, individuals must present a photo ID for identification and also *are required to pre-register.* In addition, no cameras or videotaping equipment will be permitted in the meeting room. To pre-register, please send the following information to this e-mail address (*nancy.crane@cfsan.fda.gov*) by *September 1, 2004.*

—Your Name;
—Organization;
—Mailing Address;
—Phone number;
—E-mail Address.

**FOR FURTHER INFORMATION CONTACT:** Ellen Matten, Staff Officer, U.S. Codex Office, FSIS, Room 4861, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250, telephone number (202) 205–7760; fax (202) 720–3157. Persons requiring a sign language interpreter or other special accommodations should notify Ms. Matten at the above number.

**SUPPLEMENTARY INFORMATION:**

*Background*

Codex was established in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementations by governments, Codex seeks to ensure the world's food supply is sound, wholesome, free from adulteration, and correctly labeled.

The Codex Committee on Nutrition and Foods for Special Dietary Uses was established to study specific nutritional problems assigned to it by the Commission and advise the Commission on general nutritional issues; to draft general provisions as appropriate, concerning the nutritional aspects of all foods; to develop standards, guidelines or related texts for foods for special dietary uses, in cooperation with other committees when necessary; and to consider, amend if necessary, and endorse provisions on nutritional aspects proposed for inclusion in Codex standards, guidelines and related texts. The CCNFSDU is hosted by the Federal Republic of Germany.

**Issues To Be Discussed at the Public Meeting**

At a minimum, the following items will be on the Agenda for the 26th Session of the Committee:

1. Draft Revised Standard for Gluten-Free Foods (retained at Step 7 until more data on tolerance levels of gluten are available).
2. Guidelines for Use of Nutrition Claims: Draft Table of Conditions for Nutrient Contents (Part B, containing provisions on Dietary Fibre).
3. Draft Guidelines for Vitamin and Mineral Food Supplements.
4. Draft Revised Standard for Processed Cereal-Based Foods for Infants and Young Children.
5. Draft Revised Standard for Infant Formula.
6. Proposed Draft Revision of the Advisory Lists of Nutrient Compounds for the Use in Foods for Special Dietary Uses intended for use by Infants and Young Children.
7. Proposed Draft Recommendations of the Scientific Basis of Health Claims.
8. Guidelines on the Application of Risk Analysis to the Work of CCNFSDU.
9. Discussion Paper on the FAO Technical Workshop on Energy Conversion Factors.

**Note:** The provisional agenda for the 26th CCNFSDU session will be posted on the World Wide Web in advance of the meeting at the following *address: http://www.codexalimentarius.net.*

**Public Meeting**

At the September 9th public meeting, the issues and draft United States positions on the issues will be described, discussed, and attendees will have the opportunity to pose questions and offer comments. Comments may be sent to the FSIS Docket Room (*see* **ADDRESSES**). In addition, they may be sent electronically to the U.S. Delegate (*see* **ADDRESSES**). Please state that your comments relate to CCNFSDU activities (04–022N) and specify which issues your comments address.

**Additional Public Notification**

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov.* The Regulations.gov Web site is the central online rulemaking portal of the United States government. It is being offered as a public service to increase participation in the Federal government's regulatory activities. FSIS participates in Regulations.gov and will accept comments on documents published on the site. The site allows visitors to search by keyword or Department or Agency for rulemakings that allow for public comment. Each entry provides a quick link to a comment form so that visitors can type in their comments and submit them to FSIS. The Web site is located at *http://www.regulations.gov.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

Done in Washington, DC on August 9, 2004.

**F. Edward Scarbrough,**

*U.S. Manager for Codex Alimentarius.*

[FR Doc. 04–18499 Filed 8–12–04; 8:45 am]

BILLING CODE 3410–DM–P

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

**[Docket No. 04–025N]**

### Codex Alimentarius Commission: 22nd Session of the Codex Committee on Processed Fruits and Vegetables

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice of public meeting, request for comments.

**SUMMARY:** This notice informs the public that the Office of the Under Secretary for Food Safety, United States Department of Agriculture (USDA), and the Agricultural Marketing Service (AMS), USDA, are sponsoring a public meeting on August 31, 2004, to provide information and receive public comments on agenda items that will be discussed at the Codex Committee on Processed Fruits and Vegetables (CCPFV), which will be held in Alexandria, Virginia on September 27–October 1, 2004. The Under Secretary and AMS recognize the importance of providing interested parties with information about the Processed Fruits and Vegetables Committee of the Codex Alimentarius Commission (Codex) and to address items on the Agenda for the 22nd CCPFV.

**DATES:** The public meeting is scheduled for Tuesday, August 31, 2004, from 10 a.m. to 12 noon.

**ADDRESSES:** The public meeting will be held in Room 3501 South Building, United States Department of Agriculture, 1400 Independence Ave., SW., Washington, DC. To receive copies of the documents referenced in the notice contact the Docket Clerk, (FSIS Docket Room), U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250. The documents will also be accessible via the World Wide Web at the following address *http://www.codexalimentarius.net/ccpfv22/pf22_01e.htm*. FSIS invites interested persons to submit comments on this notice. Comments may be submitted by any of the following methods:

- Mail, including floppy disks or CD–ROM's, and hand- or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250.

All submissions received must include the Agency name and docket number 04–025N. All comments submitted in response to this notice, as well as research and background information used by FSIS in developing this document, will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. The comments also will be posted on the Agency's Web site at *http://www.fsis.usda.gov/OPPDE/rdad/FRDockets.htm*.

**FOR FURTHER INFORMATION CONTACT:** Ellen Matten, U.S. Codex Office, Food Safety and Inspection Service, Room 4861, South Building, 1400 Independence Avenue, SW., Washington, DC 20250, phone: (202) 205–7760, fax: (202) 720–3157. Persons requiring a sign language interpreter or other special accommodations should notify Ms. Matten at the above number.

**SUPPLEMENTARY INFORMATION:**

#### Background

Codex was established in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international organization for protecting the health and economic interests of consumers and encouraging fair international trade in food. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. In the United States, USDA, the Food and Drug Administration of the Department of Health and Human Services, and the Environmental Protection Agency manage and carry out U.S. Codex.

The Codex Committee on Processed Fruits and Vegetables elaborates world wide standards for various processed fruits and vegetables, including certain dried and canned products. This committee does not cover standards for fruit and vegetable juices. The Commission has also allocated to this Committee the work of revision of standards for quick frozen fruits and vegetables. The Committee is chaired by the United States of America.

#### Issues To Be Discussed at the Public Meeting

The provisional agenda items will be discussed during the public meeting:

1. Adoption of the Agenda.
2. Matters Referred by the Codex Alimentarius Commission and other Codex Committees.
3. Consideration of Codex Draft Revised Standards at Step 7.

Pickled Products.

4. Consideration of Proposed Draft Codex Standards at Step 4.

Processed Tomato Concentrates.

Canned Tomatoes.

Canned Vegetables, including Guidelines for Packing Media for Canned Vegetables.

Jams, Jellies and Marmalades.

Soy Sauce.

Canned Citrus Fruits.

5. Proposals for Amendments to the Priority List for the Standardization of Processed Fruits and Vegetables.
6. Other Business and Future Work.

Methods of Analysis and Sampling for Processed Fruits and Vegetables.

Each issue listed will be fully described in documents distributed, or to be distributed, by the United States' Secretariat to the Meeting. Members of the public may access or request copies of these documents (*see* **ADDRESSES**).

#### Public Meeting

At the August 31st public meeting, the agenda items will be described, discussed, and attendees will have the opportunity to pose questions and offer comments. Comments may be sent to the FSIS Docket Room (*see* **ADDRESSES**). Written comments should state that they relate to activities of the 22nd CCPFV, docket number 04–025N.

#### Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov*.

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS Web page.

Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

Done in Washington, DC on August 9, 2004.

**F. Edward Scarbrough,**

*U.S. Manager for Codex Alimentarius.*

[FR Doc. 04–18500 Filed 8–12–04; 8:45 am]

BILLING CODE 3410–DM–P

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

**[Docket No. 04–028N]**

### National Advisory Committee on Microbiological Criteria for Foods

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice of public meeting; request for comments.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, this notice announces that the National Advisory Committee on Microbiological Criteria for Foods (NACMCF) will hold public meetings of the full committee and subcommittees on August 24–27, 2004. The committee will continue to discuss: (1) Performance standards for ground chicken/ground turkey, (2) the scientific basis for establishing safety-based "use by" date labeling for refrigerated ready-to-eat foods, and (3) scientific criteria for redefining pasteurization.

**DATES:** The full Committee and subcommittees will hold open meetings on Tuesday, Wednesday, Thursday and Friday, August 24–27, 2004, from 8:30 a.m.–5 p.m.

**ADDRESSES:** The meetings will be held at the Hotel Monaco, Athens Room, 700 F Street, NW., Washington, DC 20004; telephone number 202–628–7177 or 877–205–5411.

FSIS invites interested persons to submit comments on this notice. Comments may be submitted by mail, including floppy disks or CD–ROM's, or by hand delivery to Docket Clerk, Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250. All submissions received must include the Agency name and docket number 04–028N.

Persons interested in making a presentation, submitting technical papers, or providing comments may send their requests, papers, or comments to the contact person identified herein at: Food Safety and Inspection Service, Department of Agriculture, Office of Public Health and Science, Aerospace Center, Room 333, 1400 Independence Avenue, SW., Washington, DC 20250–3700.

**FOR FURTHER INFORMATION CONTACT:** Karen Thomas, phone (202) 690–6620, fax (202) 690–6334, e-mail address: *Karen.thomas@fsis.usda.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Background

The NACMCF was established on April 18, 1988, in response to a recommendation of the National Academy of Sciences for an interagency approach to microbiological criteria for foods, and in response to a recommendation of the U.S. House of Representatives' Committee on Appropriations, as expressed in the Rural Development, Agriculture, and Related Agencies Appropriation Bill for fiscal year 1988. The Charter for the NACMCF is available for viewing on the FSIS Internet Web page at *http://www.fsis.usda.gov/ophs/nacmcf/charter.htm.*

The NACMCF provides scientific advice and recommendations to the Secretary of Agriculture and the Secretary of Health and Human Services on public health issues relative to the safety and wholesomeness of the U.S. food supply, including development of microbiological criteria and review and evaluation of epidemiological and risk assessment data and methodologies for assessing microbiological hazards in foods. The Committee also provides advice to the Centers for Disease Control and Prevention and the Departments of Commerce and Defense.

Dr. Merle Pierson, Deputy Under Secretary for Food Safety, USDA, is the Committee Chair, Dr. Robert E. Brackett, Director of Food and Drug Administration's Center for Food Safety and Applied Nutrition (CFSAN), is the Vice-Chair, and Gerri Ransom, FSIS, is the Executive Secretariat.

At the meetings the week of August 24–27, 2004, the Committee will discuss:

- Continuing work on performance standards for ground chicken/ground turkey;
- Continuing work on the scientific basis for establishing safety-based "use by" date labeling for refrigerated ready-to-eat foods; and
- Continuing work on the scientific criteria for redefining pasteurization.

Persons requiring a sign language interpreter or other special accommodations should notify Ms. Thomas by August 17, 2004.

#### *Availability of Advisory Committee Materials*

FSIS intends to make available to the public all materials that are reviewed and considered by NACMCF regarding its deliberations. Generally, these materials will be made available as soon as possible after the full committee meeting. Further, FSIS intends to make these materials available in both electronic formats on the FSIS Web page, as well as in hard copy format in the Docket Room. Often, an attempt is made to make the materials available at the start of the full committee meeting when sufficient time is allowed in advance to do so.

All documents related to full committee meetings will be available for inspection in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday, as soon as they become available. All comments submitted in response to this notice, as well as research and background information used by FSIS in developing this document, will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. The comments also will be posted on the Agency's Web site at *http://www.fsis.usda.gov/OPPDE/rdad/FRDockets.htm.*

See the disclaimer section below regarding modifications that may be necessary due to the presentation of the comments. The NACMCF documents also will be available on the Internet at *http://www.fsis.usda.gov/OPPDE/rdad/FRDockets.htm.*

FSIS will finalize an agenda on or before the meeting dates and post it on the FSIS Internet Web page at *http://www.fsis.usda.gov/OPPDE/rdad/FRDockets.htm.*

Also, the official transcripts of the August 2004 full committee meeting, when they become available, will be kept in the FSIS Docket Room at the above address and also will be posted on *http://www.fsis.usda.gov/OPHS/NACMCF/transcripts.*

#### Disclaimer

For electronic copies, all NACMCF documents and comments are electronic conversions from a variety of source formats into HTML that may have resulted in character translation or format errors. Readers are cautioned not to rely on this HTML document. Minor changes to materials in electronic format may be necessary in order to meet the electronic and information technology accessibility standards contained in Section 508 of the Rehabilitation Act in which graphs, charts, and tables must be accompanied by a text descriptor in order for the vision-impaired to be made aware of the content. FSIS will add these text descriptors along with a qualifier that the text is a simplified

interpretation of the graph, chart, or table. Portable Document Format (PDF) and/or paper documents of the official text, figures, and tables can be obtained from the FSIS Docket Room.

Copyrighted documents will not be posted on the FSIS Web site, but will be available for inspection in the FSIS docket room.

*Additional Public Notification*

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov*.

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

Done in Washington, DC on August 9, 2004.

**Barbara J. Masters,**

*Acting Administrator.*

[FR Doc. 04–18501 Filed 8–12–04; 8:45 am]

BILLING CODE 3410–DM–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Juncrock Timber Sale, Mt. Hood National Forest, Wasco County, OR

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare a revised environmental impact statement.

**SUMMARY:** Notice is hereby given that The USDA Forest Service, will prepare a revised environmental impact statement (EIS) for the Juncrock Timber Sale on the Barlow Ranger District of the Mt. Hood National Forest. The Notice of Availability of the Draft EIS for the Juncrock Timber Sale was published in the **Federal Register** (68 FR 53730) on September 12, 2003 and notice of the final EIS (69 FR 22025) was published on April 23, 2004. The Record of Decision of this project was administratively appealed to the Regional Forester per 36 CFR 215. After considering issues raised in the appeal the Forest Service decided on July 7, 2004 to withdraw the decision in order to conduct further analysis. This analysis will be included in the revised (EIS). The proposed action is unchanged from that published in the **Federal Register** on June 27, 2002 (67 FR 43274–43276). It is scheduled for implementation in fiscal years 2005 and 2006. The agency will give notice of the full environmental analysis and decision-making process so interested and affected people may be able to participate and contribute in the final decision.

**DATES:** Comments concerning the proposed action and scope of the analysis should be postmarked by September 30, 2004.

**ADDRESSES:** Send written comments concerning the proposed action to Becky Nelson, NEPA Coordinator, 780 N.E. Court Street, Dufur, Oregon (phone: 541–467–2291). Comments may also be sent by FAX (541–467–2271). Include your name and mailing address so documents pertaining to this project may be mailed to you.

**FOR FURTHER INFORMATION CONTACT:** Questions about the proposed action and Revised EIS should be directed to Becky Nelson (Address and phone number listed above), or to Mike Redmond, Environmental Coordination, 16400 Champion Way, Sandy, Oregon, 97055–7248 (phone: 503–668–1776).

**SUPPLEMENTARY INFORMATION:** The proposed action would promote forest health and provide commercial wood fiber by removing trees that are dead, or affected by insects, disease, overstocking, or defects on approximately 550 acres. This treatment would help reach the goals of creating multi-storied, disease resistant, stands in this area and providing a predictable sale quantity of wood fiber to local/regional economies as envisioned in the Northwest Forest Plan.

Existing roads would be extended approximately 0.5 miles where access is needed and 4 roads would be reconstructed for a total of approximately 1 mile. Approximately 21 miles of road are proposed for closure and two road segments would be decommissioned for about 1 mile.

The planning area is located about 38 miles south of Hood River, Oregon in portions of Sections 1, 12, & 13, of T.5 S., R.9 E., and portions of Sections 3, 4, 5, 6, 7, 8, 9, 10, 17, & 18, of T.5 S., R. 10 E., Williamette Meridian, Wasco County, Oregon. The planning are does not include any wilderness, RARE II inventoried roadless, or other unroaded areas. It is outside the White River Wild and Scenic River corridor as identified in the "White River Wild and Scenic River Plan". The planning area is immediately adjacent to the White River late successional reserve (LSR) and the planning area is identified as a Key Watershed in the Northwest Forest Plan. The Juncrock. Timber Sale is included in the C–1, Timber Emphasis allocation, and the B–2, Scenic Viewshed allocation, of the Mt. Hood National Forest Land and Resource Management Plan.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft EIS stage but are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 f. 2d 1016, 1022 (9th Cir., 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft revised EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft revised EIS. Comments may also address the adequacy of the draft revised EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The draft revised EIS is planned to be filed with the Environmental Protection Agency (EPA) and available for public

review in October 2004. At that time, copies of the draft revised EIS will be distributed to interested and affected agencies, organizations, Indian Tribes, and members of the public for their review and comment. The EPA will publish a Notice of Availability (NOA) of the draft revised EIS in the **Federal Register**. The comment period on the draft revised EIS will be 45 days from the date the NOA appears in the **Federal Register**.

The Forest Service is seeking information, comments, and assistance from other agencies, organizations, Indian Tribes, and individuals who may be interested in or affected by the proposed action. Your comments are appreciated throughout the analysis process.

Comments received in response to this proposed action, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without names and addresses within thirty days.

The final revised EIS is scheduled to be available by January 2005. In the final revised EIS, the Forest Service is required to respond to substantive comments received during the comment period for the draft revised EIS. The responsible official is Gary Larsen, Mt. Hood National Forest Supervisor. The responsible official will decide which, if any, of the alternatives will be implemented. The Juncrock Timber Sale decision and rationale will be documented in a Record of Decision, and subject to Forest Service Appeal Regulations (36 CFR Part 215).

Dated: August 9, 2004.

**Gary L. Larsen,**

*Forest Supervisor.*

[FR Doc. 04–18582 Filed 8–12–04; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### North Gifford Pinchot National Forest Resource Advisory Committee Meeting Notice

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The North Gifford Pinchot National Forest Resource Advisory Committee will meet on Monday, September 13, 2004 at the Depot Conference Room, located in the Amtrak Building of the Train Depot, 210 Railroad Ave., Centralia, Washington, 98531. The meeting will begin at 10 a.m. and continue until 5 p.m. The purpose of the meeting is to review 14 proposals for Title II funding of Forest projects under the Secure Rural Schools and Community Self-Determination Act of 2000.

All North Gifford Pinchot National Forest Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The "open forum" provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The "open forum" is scheduled to occur at 10:30 a.m. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

**FOR FURTHER INFORMATION CONTACT:** Direct questions regarding this meeting to Roger Peterson, Public Affairs Specialist, at (360) 891–5007, or write Forest Headquarters Office, Gifford Pinchot National Forest, 10600 NE., 51st Circle, Vancouver, WA 98682.

Dated: August 9, 2004.

**Lynn Burditt,**

*Deputy Forest Supervisor.*

[FR Doc. 04–18583 Filed 8–12–04; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

**RIN 0596–AC23**

### Maximum Term for Outfitter and Guide Special Use Permits on National Forest System Lands

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of proposed directive; request for public comment.

**SUMMARY:** The Forest Service is proposing changes to direction governing special use permits for outfitting and guiding conducted on National Forest System lands by increasing the maximum term for these authorizations from five to ten years. The proposed directive would provide the potential for greater business continuity for outfitters and guides who furnish services to recreationists on National Forest System lands and would make the Forest Service's policy on the maximum permit term for outfitting and guiding permits consistent with the policy of the National Park Service and the Bureau of Land Management. Public comment is invited and will be considered in development of a final directive.

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

**ADDRESSES:** Send comments by postal mail to Forest Service, USDA, Attn: Kenneth Karkula, Recreation, Heritage, and Wilderness Resources Staff, (2720), 1400 Independence Ave., Mailstop 1125, Washington, DC 20250–1125 or by e-mail to *outfitterpermit@fs.fed.us*. Comments also may be submitted by following the instructions at the federal eRulemaking portal at *http://www.regulation.gov*. If comments are sent by e-mail or facsimile, the public is requested not to send duplicate comments via postal mail. Please confine comments to issues pertinent to the proposed directive, explain the reasons for any recommended changes, and, where possible, reference the specific wording being addressed.

All comments, including names and addresses when provided, will be placed in the record and will be available for public inspection and copying. The public may inspect comments received on this proposed directive in the Office of the Director, Recreation, Heritage, and Wilderness Resources Staff, 4th Floor Central, Sidney R. Yates Federal Building, 14th and Independence Avenue, SW., Washington, DC, on business days between the hours of 8:30 a.m. and 4 p.m. Those wishing to inspect

comments are encouraged to call ahead at (202) 205–1426 or (202) 205–1399 to facilitate entry into the building.

**FOR FURTHER INFORMATION CONTACT:** Ken Karkula, (202) 205–1426, or Carolyn Holbrook, (202) 205–1399, Recreation, Heritage, and Wilderness Resources Staff.

**SUPPLEMENTARY INFORMATION:**

**1. Background and Need for the Proposed Directive**

*Supporting Small Businesses*

The Forest Service regulates occupancy and use of National Forest System (NFS) lands by outfitters and guides through issuance of special use permits. Outfitters and guides provide opportunities for recreating on NFS lands to those who might not otherwise have them, as well as information and education to the public about the National Forests. Outfitters and guides thus serve as important partners of the Forest Service in providing public services.

Currently, special use permits for outfitters and guides are issued for a period of up to five years. The maximum five-year term has been a concern in recent years to outfitters and guides, who perceive it as a barrier to building and maintaining a sustainable small business. For example, the five-year term may hamper outfitters' and guides' ability to secure financing from lenders if business equipment cannot be fully amortized within the permit term. The five-year term also is not conducive to long-term business planning. Customer service suffers when outfitters and guides cannot invest in needed equipment or conduct long-term business planning. Revising the maximum term of their special use permit from five to ten years would provide outfitters and guides with the potential for greater business continuity for planning and investing.

*Special Uses Streamlining*

This directive would decrease administrative costs to the Forest Service and outfitters and guides by reducing the analysis and processing required by more frequent permit issuance. This practice supports the Department's special uses streamlining regulations promulgated November 30, 1998, at 36 CFR part 251, subpart B (63 FR 65949).

*Inter-Agency Consistency*

This proposed directive would make Forest Service policy on permit terms for outfitters and guides consistent with the policy of the Bureau of Land Management, adopted on February 6, 2004 (69 FR 5702), and the National Park Service as provided for in Title IV of the National Parks Omnibus Management Act of 1998 (16 U.S.C. 5953). Consistency in the permitting process is important, since many outfitters and guides operate on lands administered by all three agencies.

**2. Regulatory Requirements**

*Environmental Impact*

This proposed directive would revise national policy governing administration of special use permits for outfitting and guiding. Section 31b of Forest Service Handbook 1909.15 (57 FR 43180, September 18, 1992) excludes from documentation in an environmental assessment or environmental impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." The agency's conclusion is that this proposed directive falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

*Regulatory Impact*

This proposed directive has been reviewed under USDA procedures and Executive Order 12866 on regulatory planning and review. It has been determined that this is not a significant directive. This proposed directive would not have an annual effect of $100 million or more on the economy, nor would it adversely affect productivity, competition, jobs, the environment, public health and safety, or State or local governments. This proposed directive would not interfere with an action taken or planned by another agency, nor would it raise new legal or policy issues. Finally, this proposed directive would not alter the budgetary impact of entitlement, grant, user fee, or loan programs or the rights and obligations of beneficiaries of such programs. Accordingly, this proposed directive is not subject to Office of Management and Budget review under Executive Order 12866.

Moreover, this proposed directive has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). It has been determined that this proposed directive would not have a significant economic impact on a substantial number of small entities as defined by the act because the proposed directive would not impose record-keeping requirements on them; it would not affect their competitive position in relation to large entities; and it would not significantly affect their cash flow, liquidity, or ability to remain in the market. To the contrary, the efficiencies and consistency to be achieved by this directive should benefit small businesses that seek to use and occupy National Forest System lands by providing the potential for greater business continuity for outfitters and guides and by reducing the frequency of time-consuming and sometimes costly processing of special use applications. The benefits cannot be quantified and are not likely substantially to alter costs to small businesses.

*No Takings Implications*

This proposed directive has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the proposed directive would not pose the risk of a taking of private property.

*Civil Justice Reform*

This proposed directive has been reviewed under Executive Order 12988 on civil justice reform. If this proposed directive were adopted, (1) all State and local laws and regulations that are in conflict with this proposed directive or that would impede its full implementation would be preempted; (2) no retroactive effect would be given to this proposed directive; and (3) it would not require administrative proceedings before parties may file suit in court challenging its provisions.

*Federalism and Consultation and Coordination With Indian Tribal Governments*

The agency has considered this proposed directive under the requirements of Executive Order 13132 on federalism, and has made an assessment that the proposed directive conforms with the federalism principles set out in this executive order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the agency has determined that no further assessment of federalism implications is necessary at this time.

Moreover, this proposed directive does not have tribal implications as defined by Executive Order 13175, entitled "Consultation and Coordination With Indian Tribal Governments," and therefore advance consultation with Tribes is not required.

*Energy Effects*

This proposed directive has been reviewed under Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use." It has been determined that this proposed directive does not constitute a significant energy action as defined in the executive order.

*Unfunded Mandates*

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the agency has assessed the effects of this proposed directive on State, local, and Tribal governments and the private sector. This proposed directive would not compel the expenditure of $100 million or more by any State, local, or Tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

*Controlling Paperwork Burdens on the Public*

This proposed rule does not contain any record-keeping or reporting requirements or other information collection requirements as defined in 5 U.S.C. part 1320 that are not already required by law or not already approved for use. Any information collected from the public as a result of this action has been approved by the Office of Management and Budget under control number 0596–0082. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

Dated: August 3, 2004.

**Dale N. Bosworth,**

*Chief.*

**3. Proposed Directive Changes for Outfitter and Guides**

**Note:** The Forest Service organizes its directive system by alphanumeric codes and subject headings. Only those sections of the Forest Service Handbook that are the subject of this notice are set out here. The intended audience for this direction is Forest Service employees charged with issuing and administrating outfitter and guide special use permits.

**Forest Service Handbook**

*2709.11–Special Uses Handbook*

Chapter 40–Special Uses Administration

* * * * *

41.53–Outfitters and Guides

* * * * *

41.53c–Definitions

* * *

*Priority Use.* Authorization of use for a period not to exceed ten years. The amount of use is based on the holder's past use and performance and on land management plan allocations. Except as provided for in Title 36, Code of Federal Regulations, part 251, subpart E, authorizations providing for priority use are subject to renewal (sec. 41.53f).

* * * * *

41.53h–Assignment and Management of Priority Use

* * * * *

2. * * *

a. Use may be based on the average of the highest two years of actual use during the previous permit term.

* * * * *

41.53j–Permit Terms and Conditions

1. For new applicants, authorize use for up to one year. For holders assigned priority use, use may be authorized for up to ten years.

* * * * *

[FR Doc. 04–18543 Filed 8–12–04; 8:45 am]

BILLING CODE 3410–11–P

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to Procurement List.

**SUMMARY:** The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** September 12, 2004.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

**FOR FURTHER INFORMATION CONTACT:** Sheryl D. Kennerly, (703) 603–7740.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions. If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

**Regulatory Flexibility Act Certification**

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

**End of Certification**

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

*Products*

*Product/NSN:* Paper, Tabulating.
7530–00–144–9600 (Multi-Part Computer Paper).
7530–00–144–9601 (Multi-Part Computer Paper).
7530–00–144–9602 (Multi-Part Computer Paper).
7530–00–144–9604 (Multi-Part Computer Paper).
7530–00–185–6751 (Multi-Part Computer Paper).
7530–00–185–6754 (Multi-Part Computer Paper).
*NPA:* Association for Vision Rehabilitation and Employment, Inc., Binghamton, New York.
*Contract Activity:* Office Supplies & Paper Products Acquisition Center, New York, New York.

*Services*

*Service Type/Location:* Custodial & Grounds Maintenance. Federal

Building, U.S. Post Office and Courthouse, 600 East First Street, Rome, Georgia.

*NPA:* Bobby Dodd Institute, Inc., Atlanta, Georgia.

*Contract Activity:* GSA, Property Management Center (4PMB), Atlanta, Georgia.

*Service Type/Location:* Custodial Services. U.S. Border Patrol Station and U.S. Customs House, I–29 at Canadian Border, Pembina, North Dakota.

*NPA:* The Home Place Corporation, Grand Forks, North Dakota.

*Contract Activity:* GSA, Public Buildings Service, Region 8, Denver, Colorado.

**Sheryl D. Kennerly,**

*Director, Information Management.*

[FR Doc. 04–18544 Filed 8–12–04; 8:45 am]

BILLING CODE 6353–01–P

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Additions

**AGENCY:** Committee for Purchase from People Who Are Blind or Severely Disabled.

**ACTION:** Additions to Procurement List.

**SUMMARY:** This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**EFFECTIVE DATE:** September 12, 2004.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

**FOR FURTHER INFORMATION CONTACT:** Sheryl D. Kennerly, (703) 603–7740.

**SUPPLEMENTARY INFORMATION:** On June 14, and June 18, 2004, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (69 FR 32975/76 and, 34121) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

### Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the government.

2. The action will result in authorizing small entities to furnish the products and services to the government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

### End of Certification

Accordingly, the following products and services are added to the Procurement List:

*Products*

*Product/NSN:* Bag, T-Shirt Style (Defense Commissary Agency Requirements for the Southern and Central Regions only), 8105–00–NIB–1023.
*NPA:* Envision, Inc., Wichita, Kansas.
*Contract Activity:* Defense Commissary Agency, Fort Lee, Virginia.
*Product/NSN:* Belt, Rigger's,
8415–01–517–0305 (Size 34, Color: Black),
8415–01–517–0308 (Size 40, Color: Black),
8415–01–517–0310 (Size 46, Color: Black),
8415–01–517–0946 (Size 34, Color: Brown),
8415–01–517–0948 (Size 40, Color: Brown),
8415–01–517–0949 (Size 46, Color: Brown),
8415–01–517–0951 (Size 34, Color: Gray),
8415–01–517–0954 (Size 46, Color: Gray),
8415–01–517–0961 (Size 40, Color: Gray),
8415–01–517–1046 (Size 34, Color: Green),
8415–01–517–1051 (Size 40, Color: Green),
8415–01–517–1055 (Size 46, Color: Green),
8415–01–517–1079 (Size 34, Color: Tan),
8415–01–517–1081 (Size 40, Color: Tan),
8415–01–517–1083 (Size 46, Color: Tan).
*NPA:* Travis Association for the Blind, Austin, Texas.
*Contract Activity:* Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.
*Product/NSN:* Tray, Mess, Compartmented, 7350–01–411–5266.
*NPA:* The Lighthouse for the Blind in New Orleans, New Orleans, Louisiana.
*Contract Activity:* GSA, Southwest Supply Center, Fort Worth, Texas.

*Services*

*Service Type/Location:* Administrative Service Program Executive Office (PEO) Aviation. At the following locations: Fort Bragg, North Carolina, Fort Campbell, Kentucky, Fort Rucker, Alabama, Fort Hood, Texas, Fort Huachuca, Arizona, Huntsville, Alabama, Redstone Arsenal, Alabama.
*NPA:* Huntsville Rehabilitation Foundation, Huntsville, Alabama.
*Contract Activity:* U.S. Army Aviation and Missile Command, Huntsville, Alabama.
*Service Type/Location:* Post-wide Administrative Services, Fort McPherson, Georgia.
*Service Type/Location:* Post-wide Administrative Services, Fort Gillem, Georgia.
*NPA:* WORKTEC, Jonesboro, Georgia.
*Contract Activity:* U.S. Army, ACA SRCC. Fort McPherson, Georgia.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

**Sheryl D. Kennerly,**

*Director, Information Management.*

[FR Doc. 04–18545 Filed 8–12–04; 8:45 am]

BILLING CODE 6353–01–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 1344]**

### Grant of Authority for Subzone Status; E.I. du Pont de Nemours and Company, Inc. (Crop Protection Products), Belle, WV

Pursuant to its authority under the Foreign-Trade Zones Act, of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas,* the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to

qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

*Whereas,* the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

*Whereas,* the West Virginia Economic Development Authority, grantee of Foreign-Trade Zone 229, has made application to the Board for authority to establish a special-purpose subzone at the crop protection products manufacturing facilities of E.I. du Pont de Nemours and Company, Inc., located in Belle, West Virginia (FTZ Docket 5–2004, filed 2/25/2004);

*Whereas,* notice inviting public comment was given in the **Federal Register** (69 FR 11368–11369, 3/10/2004); and,

*Whereas,* the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

*Now, therefore,* the Board hereby grants authority for subzone status at the crop protection products manufacturing facilities of E.I. du Pont de Nemours and Company, Inc., located in the Belle, West Virginia (Subzone 229B), at the location described in the application, and subject to the FTZ Act and the Board's regulations, including section 400.28.

Signed in Washington, DC, this 5th day of August, 2004.

**Joseph A. Spetrini,**

*Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

**Dennis Puccinelli,**

*Executive Secretary.*

[FR Doc. 04–18542 Filed 8–12–04; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–549–813]**

## Notice of Final Results of Antidumping Duty Administrative Review and Final Determination To Revoke Order in Part: Canned Pineapple Fruit From Thailand

**AGENCY:** Import Administration, International Trade Administration, U.S. Department of Commerce.

**SUMMARY:** On April 8, 2004, the Department of Commerce ("the Department") published the preliminary results of its administrative review of the antidumping duty order on canned pineapple fruit ("CPF") from Thailand. This review covers four producers/exporters of the subject merchandise. The period of review ("POR") is July 1, 2002 through June 30, 2003. Based on our analysis of the comments received, these final results differ from the preliminary results. The final results are listed below in the *Final Results of Review* section.

Consistent with the preliminary results, we are revoking the order with respect to Dole Food Company, Inc., Dole Packaged Foods Company, Dole Thailand, Ltd., (collectively "Dole") Kuiburi Fruit Canning Co., Ltd., and The Thai Pineapple Public Co., Ltd., based on our determination that these companies have demonstrated three consecutive years of sales at not less than normal value and their respective aggregate sales to the United States have been made in commercial quantities during the last three segments of this proceeding.

**EFFECTIVE DATE:** August 13, 2004.

**FOR FURTHER INFORMATION CONTACT:** Marin Weaver or Charles Riggle, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2336 and (202) 482–0650, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

This review covers the following producers/exporters of merchandise subject to the antidumping duty order on CPF from Thailand: Dole, Kuiburi Fruit Canning Co., Ltd. ("Kuiburi"), The Thai Pineapple Public Co., Ltd. ("TIPCO"), and Vita Food Factory (1989) Co., Ltd. ("Vita").

On April 8, 2004, the Department published the preliminary results of this review and invited interested parties to comment on those results. *See* Notice of Preliminary Results and Preliminary Determination to Revoke Order in Part: Canned Pineapple Fruit From Thailand, 69 FR 18524 (Preliminary Results). On May 10, 2004, we received case briefs from Dole and the petitioners.[1] On May 17 and 18, 2004, we received rebuttal briefs from the petitioners and Dole, respectively.[2] Dole requested a hearing but subsequently withdrew this request in a letter to the Department dated May 19, 2004.

On June 28, 2004, the Department published the Final Results of Antidumping Duty Changed Circumstances Review: Canned Pineapple Fruit from Thailand, 69 FR 36058, where we found that Tipco Foods (Thailand) Public co., Ltd. (Tipco Foods) is the successor-in-interest to TIPCO as of December 2003 when TIPCO changed its name to Tipco Foods. Even though the name change occurred after the POR, the Department conducted the changed circumstances review in conjunction with the instant review because we are revoking the order as to TIPCO/Tipco Foods.

### Scope of the Order

The product covered by this order is CPF, defined as pineapple processed and/or prepared into various product forms, including rings, pieces, chunks, tidbits, and crushed pineapple, that is packed and cooked in metal cans with either pineapple juice or sugar syrup added. CPF is currently classifiable under subheadings 2008.20.0010 and 2008.20.0090 of the Harmonized Tariff Schedule of the United States ("HTSUS"). HTSUS 2008.20.0010 covers CPF packed in a sugar-based syrup; HTSUS 2008.20.0090 covers CPF packed without added sugar (*i.e.*, juice-packed). Although these HTSUS subheadings are provided for convenience and for customs purposes, the written description of the scope is dispositive.

### Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the *Issues and Decision Memorandum for the Final Results of the Eighth Antidumping Duty Administrative Review: Canned Pineapple Fruit from Thailand* from Jeffrey A. May, Deputy Assistant Secretary for Import Administration, Group I, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated August 6, 2004 (Decision Memorandum), which is hereby adopted by this notice.

A list of the issues which the parties have raised and to which we have responded, all of which are addressed in the *Decision Memorandum*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the

[1] The petitioners in the case are Maui Pineapple Company and the International Longshoremen's and Warehousemen's Union.

[2] We note that the Dole rebuttal brief was timely because it was filed on May 17, 2004, with bracketing not final and then re-filed on May 18, 2004, with bracketing final.

corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099 of the main Commerce building.

In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

**Fair Value Comparisons**

Except for the calculations for Dole and Kuiburi, we calculated export price ("EP"), constructed export price ("CEP"), and normal value ("NV") based on the same methodology used in the preliminary results. Changes to the ocean freight, U.S-dollar denominated credit expenses, and Euro-denominated direct and indirect selling expenses for Kuiburi, and the programming language used to apply the revised early payment discounts, the application of an adverse inference of facts available for Dole's unreported sales to Puerto Rico, and the re-calculation of foreign indirect selling expenses for Dole are detailed in their respective analysis memoranda and/or the Decision Memorandum.

**Cost of Production**

We calculated the cost of production ("COP") for the merchandise based on the same methodology used in the preliminary results.

**Revocation of the Order in Part**

On July 28, 2003, both Kuiburi and TIPCO, and on July 31, 2003, Dole, requested that, pursuant to 19 CFR 351.222(b)(2), the Department revoke the antidumping duty order in part based on their three consecutive years of sales at not less than normal value. Dole, Kuiburi, and TIPCO submitted, along with their revocation requests, a certification stating that: (1) Each company sold subject merchandise at not less than NV during the POR, and that in the future each company would not sell such merchandise at less than NV (see 19 CFR 351.222 (e)(1)(i)); (2) Each company has sold the subject merchandise to the United States in commercial quantities during each of the past three years (see 19 CFR 351.222(e)(1)(ii)); and (3) Each company agreed to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Department concludes that the company, subsequent to the revocation, sold the subject merchandise at less than NV. See 19 CFR 351.222(b)(2)(iii), and as referenced at 19 CFR 351.222(e)(1)(iii)). No comments were filed by any party on our preliminary decision to revoke the order with respect to Dole, Kuiburi, or TIPCO.

Based on the final results of this review and the final results of the two preceding reviews (*see Preliminary Results; Notice of Final Results of Antidumping Duty Administrative Review, Rescission of Administrative Review in Part, and Final Determination to Revoke Order in Part: Canned Pineapple Fruit from Thailand*, 67 FR 76718 (December 13, 2002); and *Notice of Final Results of Antidumping Duty Administrative Review, Rescission of Administrative Review in Part, and Final Determination to Not Revoke Order in Part: Canned Pineapple Fruit from Thailand*, 68 FR 65247 (November 19, 2003)), Dole, Kuiburi, and TIPCO have demonstrated three consecutive years of sales at not less than NV. Furthermore, Dole's, Kuiburi's, and TIPCO's aggregate sales to the United States have been made in commercial quantities during the last three segments of this proceeding. *See* the April 1, 2004, *Memorandum to Holly Kuga: Preliminary Determination to Revoke in Part the Antidumping Duty Order on Canned Pineapple Fruit from Thailand*.

Based on the above facts and absent any evidence to the contrary, the Department determines that the continued application of the order to Dole, Kuiburi, and TIPCO/Tipco Foods is not otherwise necessary to offset dumping. Dole, Kuiburi, and TIPCO/Tipco Foods has each agreed in writing to its immediate reinstatement in the order, as long as any producer or exporter is subject to the order, should the Department conclude that Dole, Kuiburi, and/or TIPCO/Tipco Foods, subsequent to the revocation, sold the subject merchandise at less than NV. Therefore, we revoke the order with respect to merchandise produced and exported by Dole, Kuiburi, and TIPCO/Tipco Foods. In accordance with 19 CFR 351.222(f)(3), we will terminate the suspension of liquidation for any such merchandise entered, or withdrawn from warehouse, for consumption on or after July 1, 2003, and will instruct U.S. Customs and Border Protection (CBP) to refund any cash deposit.

**Final Results of Review**

As a result of our review, we determine that the following weighted-average percentage margins exist for the period July 1, 2002, through June 30, 2003:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| Dole Food Company, Inc. (Dole). | 0.20 (*de minimis*) |
| Kuiburi Fruit Canning Co. Ltd. (Kuiburi). | 0.31 (*de minimis*) |
| The Thai Pineapple Public Company, Ltd. (TIPCO). | 0.12 (*de minimis*) |
| Vita Food Factory (1989) Co. Ltd. (Vita). | 0.96 |

The Department will determine, and CBP will assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1) of the Department's regulations, we have calculated importer-specific assessment rates by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise. Where the importer-specific assessment rate is above *de minimis* we will instruct CBP to assess antidumping duties on that importer's entries of subject merchandise. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a) of the Tariff Act of 1930, as amended, (the Act): (1) For Vita the cash deposit rate will be the rate listed above; (2) For merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results in which that manufacturer or exporter participated; (3) If the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review or in the most recent segment of the proceeding in which that manufacturer participated; and (4) If neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 24.64 percent, the all-others rate established in the less-than-fair-value investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)

of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3) of the Department's regulations. Failure to comply is a violation of the APO.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 6, 2004.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

**Appendix—List of Comments in the Issues and Decision Memorandum**

**I. Issues Specific to Dole**

Comment 1: Sales Process
Comment 2: Quantity and Value and Completeness
Comment 3: Foreign Indirect Selling Expenses
Comment 4: Repacking
Comment 5: Short-Term Borrowing Rate
Comment 6: Warranties
Comment 7: General and Administrative (G&A) Expense
Comment 8: Interest Expense
Comment 9: Credit Expenses
Comment 10: Early Payment Discount

**II. Issues Specific to Kuiburi**

Comment 11: Conversion of Euro-denominated Gross Unit Prices
Comment 12: Unreported Sales to Puerto Rico
Comment 13: Ocean Freight Currency Denomination
Comment 14: Credit Expense
Comment 15: Net Realizable Value (NRV) Calculation
Comment 16: Discrepancies in Gross Unit Price Calculations
Comment 17: Direct and Indirect Selling Expense for Euro-Denominated Sales

[FR Doc. 04–18548 Filed 8–12–04 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–583–837]**

### Polyethylene Terephthalate Film, Sheet, and Strip from Taiwan: Final Results of Antidumping Duty Administrative Review

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

**ACTION:** Notice of final results of antidumping duty administrative review.

**SUMMARY:** On April 8, 2004, the Department of Commerce ("the Department") published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip ("PET film") from Taiwan. *See Polyethylene Terephthalate Film, Sheet, and Strip from Taiwan: Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 18531 (April 8, 2004) ("*Preliminary Results*"). This review covers imports of subject merchandise exported to the United States by Nan Ya Plastics Corporation, Ltd. ("Nan Ya") and Shinkong Synthetic Fibers Corporation ("Shinkong"), in accordance with 19 CFR 351.213. The period of review ("POR") is December 21, 2001, through June 30, 2003. Based on our analysis of the comments received, we have made changes in the margin calculations for Nan Ya. We have no changes to the margin calculation in the preliminary results of review for Shinkong Synthetic Fibers Corporation, the other respondent in this administrative review. Therefore, the final results differ from the *Preliminary Results*. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of the Review."

**EFFECTIVE DATE:** August 13, 2004.

**FOR FURTHER INFORMATION CONTACT:** Tom Martin or Zev Primor at (202) 482–3936 and (202) 482–4114, respectively; AD/CVD Enforcement Office IV, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Department published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on PET film from Taiwan, dated April 8, 2004. *See Preliminary Results*. The merchandise covered by this order is PET film from Taiwan, as described in the "Scope of the Review" section of this notice. We received written comments addressing our analysis on May 10, 2004, from Nan Ya, and separate comments from certain U.S. customers of Nan Ya that the Department deemed to be affiliated with Nan Ya in the *Preliminary Results*. We received a rebuttal brief from the petitioners [1] on May 17, 2004.

**Scope of the Review**

For purposes of this administrative review, the products covered are all gauges of raw, pretreated, or primed PET film, whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches thick. Imports of PET film are currently classifiable in the Harmonized Tariff Schedule of the United States ("HTSUS") under item number 3920.62.00. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" from Jeff May, Deputy Assistant Secretary, Import Administration, Group I, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated August 6, 2004, ("Issues and Decision Memorandum"), which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Issues and Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, Room B–099 of the main Department building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the Issues and

[1] The petitioners in this review are DuPont Teijin Films, Mitsubishi Polyester Film of America and Toray Plastics (America), Inc. (collectively, the petitioners).

Decision Memorandum are identical in content.

**Changes Since the Preliminary Results**

Based on our analysis of comments received, we have made changes in the margin calculations for Nan Ya. The changes to the margin calculations are listed below:

*Nan Ya*

- The Department revised its conversion of dollars per pound to dollars per kilogram for converting U.S. gross prices and their respective expenses. *See* Issues and Decision Memorandum, at Comment 6, below. *See* also Memorandum from Zev Primor and Thomas Martin to The File, "Calculation Memorandum for the Final Results of Review for Nan Ya Plastics Corporation, Ltd.," dated August 8, 2004 ("Nan Ya Calculation Memorandum"), at 2.
- The Department has corrected minor discrepancies in the U.S. sales databases submitted by the U.S. customers that the Department has deemed to be affiliated with Nan Ya. *See* Nan Ya Calculation Memorandum, at 3.

**Final Results of Review**

We determine that the following weighted average percentage margins exist for the period December 21, 2001 through June 30, 2003.

| Manufacturer/exporter | Margin (percent) |
|---|---|
| Nan Ya Plastics Corporation, Ltd. | 2.02 |
| Shinkong Synthetic Fibers Corporation | 0.62 |

**Assessment**

The Department will determine, and U.S. Customs and Border Protection ("CBP") will assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we calculated importer-, and where appropriate, customer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. For those sales where the respondent did not report actual entered value, we calculated importer-, and where appropriate, customer-specific assessment rates by aggregating the dumping margins calculated for the U.S. sales examined and dividing that amount by the total quantity of the sales examined. In accordance with 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties all entries of subject merchandise during the POR for which the importer- or customer-specific assessment rate is zero or *de minimis* (*i.e.*, less than 0.50 percent). To determine whether the per-unit duty assessment rates are *de minimis* (*i.e.*, less than 0.50 percent), in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-or customer-specific *ad valorem* ratios based on export prices. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review.

**Cash Deposit Requirements**

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of PET film from Taiwan entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for Nan Ya and Shinkong will be the rates shown above; (2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) If the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value ("LTFV") investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) If neither the exporter nor the manufacturer is a firm covered in these or any previous reviews conducted by the Department, the cash deposit rate will be the "all others" rate established in the LTFV investigation, which is 2.56 percent. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

**Notification to Importers**

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

**Administrative Protective Orders**

This notice also serves as the only reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: August 6, 2004.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

**Appendix I—Issues in the Issues and Decision Memorandum**

Comment 1: The Department should determine that certain of Nan Ya's U.S. customers are unaffiliated with Nan Ya.

Comment 2: Nan Ya's pricing to U.S. customers does not support a finding that certain U.S. customers are affiliated.

Comment 3: The Department cannot find affiliation between members of a family when there is no blood relationship.

Comment 4: The Department should grant Nan Ya a constructed export price ("CEP") offset.

Comment 5: The Department should not double count profit on sales in the CEP profit calculation.

Comment 6: The Department should correct the margin calculation for ministerial errors.

[FR Doc. 04–18547 Filed 8–12–04 8:45 am]
BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–475–820, A–588–843, A–580–829, A–469–807, A–401–806, A–583–828]**

### Continuation of Antidumping Duty Orders: Stainless Steel Wire Rod From Italy, Japan, Korea, Spain, Sweden, and Taiwan

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

**ACTION:** Notice of Continuation of Antidumping Duty Orders: Stainless Steel Wire Rod from Italy, Japan, Korea, Spain, Sweden, and Taiwan.

**SUMMARY:** As a result of the determinations by the Department of Commerce ("the Department") and the

International Trade Commission ("Commission") that revocation of these antidumping duty orders would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing notice of the continuation of the antidumping duty orders on stainless steel wire rod ("SSWR") from Italy, Japan, Korea, Spain, Sweden, and Taiwan.

**EFFECTIVE DATE:** September 13, 2004.

**FOR FURTHER INFORMATION CONTACT:** Hilary E. Sadler, Esq., Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482–5050 or 482–4340.

**SUPPLEMENTARY INFORMATION:**

**Background**

On August 1, 2003, the Department initiated [1] and the Commission instituted sunset reviews of the antidumping duty orders on SSWR from Italy, Japan, Korea, Spain, Sweden, and Taiwan pursuant to section 751(c) of the Tariff Act of 1930, as amended ("Act"). As a result of its review, the Department found that revocation of the antidumping duty orders would be likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margins likely to prevail were the orders to be revoked.[2]

On July 28, 2004, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on SSWR from Italy, Japan, Korea, Spain, Sweden, and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See SSWR from Italy, Japan, Korea, Spain, Sweden, and Taiwan,* 69 FR 45077 (July 28, 2004), USITC Publication 3702 (July 2004) (Investigation No. 731–TA–770 (Review)).

**Scope of the Orders**

For purposes of these reviews, the product covered is stainless steel wire rod ("SSWR" or "subject merchandise"). SSWR comprises products that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons, or other shapes, in coils, that may also be coated with a lubricant containing copper, lime, or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/or descaling, and are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar. The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches in diameter. Two stainless steel grades, SF20T and K-M35FL, are excluded from the scope of the orders. The percentages of chemical makeup for the excluded grades are as follows:

| | |
|---|---|
| SF20T: | |
| Carbon | 0.05 max |
| Manganese | 2.00 max |
| Phosphorous | 0.05 max |
| Sulfur | 0.15 max |
| Silicon | 1.00 max |
| Chromium | 19.00/21.00 |
| Molybdenum | 1.50/2.50 |
| Lead | added (0.10/0.30) |
| Tellurium | added (0.03 min) |
| K–M35FL: | |
| Carbon | 0.015 max |
| Manganese | 0.40 max |
| Phosphorous | 0.04 max |
| Sulfur | 0.03 max |
| Silicon | 0.70/1.00 |
| Chromium | 12.50/14.00 |
| Nickel | 0.30 max |
| Lead | added (0.10/0.30) |
| Aluminum | 0.20/0.35 |

The products covered by these orders are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these orders is dispositive.

**Determination**

As a result of the determinations by the Department and the Commission that revocation of these antidumping duty orders would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty orders on SSWR from Italy, Japan, Korea, Spain, Sweden, and Taiwan.

The Department will continue to instruct Customs and Border Protection to collect antidumping duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of these antidumping orders not later than July 2009.

Dated: August 5, 2004.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 04–18546 Filed 8–12–04; 8:45 am]

**BILLING CODE 3510–DS–P**

[1] *See Initiation of Five-Year ("Sunset") Reviews,* 68 FR 45219 (August 1, 2003).

[2] *See SSWR from Italy; Final Results of the Sunset Review of Antidumping Duty Order,* 68 FR 68862 (December 10, 2003); *SSWR from Italy; Final Results of the Sunset Review of Countervailing Duty Order,* 69 FR 40354 (July 2, 2004); *SSWR from Japan; Final Results of Expedited Sunset Review of Antidumping Duty Order,* 68 FR 68864 (December 10, 2003); *SSWR from South Korea; Final Results of Expedited Sunset Review of Antidumping Duty Order,* 68 FR 68863 (December 10, 2003); *SSWR from Spain; Final Results of Expedited Sunset Review of Antidumping Duty Order,* 68 FR 68866 (December 10, 2003); *SSWR from Sweden; Final Results of Expedited Sunset Review of Antidumping Duty Order,* 68 FR 68860 (December 10, 2003); *SSWR from Taiwan; Final Results of the Sunset Review of Antidumping Duty Order,* 68 FR 68865 (December 10, 2003) (collectively "*Department's Final Results*").

## DEPARTMENT OF COMMERCE

### International Trade Administration

### North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Notice of Completion of Panel Review

**AGENCY:** NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Completion of Panel Review of the final remand determination made by the U.S. International Trade Administration, in the matter of Circular Welded Non-Alloy Steel Pipe from Mexico, Secretariat File No. USA/MEX–98–1904–05.

**SUMMARY:** Pursuant to the Order of the Binational Panel dated July 6, 2004, affirming the final remand determination described above was completed on July 6, 2004.

**FOR FURTHER INFORMATION CONTACT:** Caratina L. Alston, United States

Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

**SUPPLEMENTARY INFORMATION:** On July 6, 2004, the Binational Panel issued an order which affirmed the final remand determination of the United States International Trade Administration ("ITA") concerning Circular Welded Non-Alloy Steel Pipe from Mexico. The Secretariat was instructed to issue a Notice of Completion of Panel Review on the 31st day following the issuance of the Notice of Final Panel Action, if no request for an Extraordinary Challenge was filed. No such request was filed. Therefore, on the basis of the Panel Order and Rule 80 of the *Article 1904 Panel Rules*, the Panel Review was completed and the panelists discharged from their duties effective August 6, 2004.

Dated: August 6, 2004.

**Caratina L. Alston,**

*United States Secretary, NAFTA Secretariat.*

[FR Doc. 04–18495 Filed 8–12–04; 8:45 am

**BILLING CODE 3510–GT–P**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in Bulgaria

August 10, 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:** August 13, 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 Web site at *http://www.cbp.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site 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 60922, published on October 24, 2003.

**James C. Leonard III**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

August 10, 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 October 20, 2003, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool and man-made fiber textile products, produced or manufactured in Bulgaria and exported during the twelve-month period which began on January 1, 2004 and extends through December 31, 2004.

Effective on August 13, 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] |
|---|---|
| 410/624 | 4,538,075 square meters of which not more than 931,399 square meters shall be in Category 410. |
| 435 | 33,340 dozen. |

[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 of 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. 04–18528 Filed 8–12–04; 8:45 am]

**BILLING CODE 3510–DR–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 Thailand

August 10, 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:** August 16, 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 Web site at *http://www.cbp.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site 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, carryover, and the recrediting of unused 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 60923, published on October 24, 2003.

**James C. Leonard III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

August 10, 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 October 20, 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 Thailand and exported during the twelve-month period which began on January 1, 2004 and extends through December 31, 2004.

Effective on August 16, 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] |
|---|---|
| Levels in Group I | |
| 200 | 2,319,678 kilograms. |
| 218 | 33,979,568 square meters. |
| 219 | 11,925,806 square meters. |
| 300 | 8,242,180 kilograms. |
| 301–O [2] | 1,714,639 kilograms. |
| 314–O [3] | 86,629,266 square meters. |
| 315–O [4] | 61,858,143 square meters. |
| 317–O/326–O [5] | 25,968,648 square meters. |
| 363 | 38,769,496 numbers. |
| 369–S [6] | 618,582 kilograms. |
| 604 | 1,447,270 kilograms of which not more than 927,871 kilograms shall be in Category 604–A [7]. |
| 613/614/615 | 93,487,125 square meters of which not more than 54,435,168 square meters shall be in Categories 613/615 and not more than 54,435,168 square meters shall be in Category 614. |
| 619 | 13,542,664 square meters. |
| 620 | 13,416,528 square meters. |
| 625/626/627/628/629 | 27,267,077 square meters of which not more than 21,650,350 square meters shall be in Category 625. |
| Group II | |
| 237, 331pt.[8], 332–348, 351, 352, 359pt.[9], 433–438, 440, 442–448, 459pt.[10], 631pt.[11], 633–648, 651, 652, 659–H [12], 659pt.[13], 845, 846 and 852, as a group | 520,025,310 square meters equivalent. |
| Sublevels in Group II | |
| 334/634 | 1,206,235 dozen. |
| 335/635 | 968,663 dozen. |
| 336/636 | 629,967 dozen. |
| 338/339 | 2,969,811 dozen. |
| 340 | 540,379 dozen. |
| 341/641 | 1,328,541 dozen. |
| 342/642 | 1,204,439 dozen. |
| 345 | 566,476 dozen. |
| 347/348 | 1,487,030 dozen. |
| 351/651 | 447,217 dozen. |
| 433 | 11,804 dozen. |
| 434 | 15,227 dozen. |
| 435 | 69,195 dozen. |
| 438 | 22,841 dozen. |
| 442 | 26,523 dozen. |
| 638/639 | 3,453,040 dozen. |
| 640 | 1,020,656 dozen. |
| 645/646 | 618,582 dozen. |
| 647/648 | 2,122,792 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 2003.

[2] Category 301–O: only HTS numbers 5205.21.0020, 5205.21.0090, 5205.22.0020, 5205.22.0090, 5205.23.0020, 5205.23.0090, 5205.24.0020, 5205.24.0090, 5205.26.0020, 5205.26.0090, 5205.27.0020, 5205.27.0090, 5205.28.0020, 5205.28.0090, 5205.41.0020, 5205.41.0090, 5205.42.0020, 5205.42.0090, 5205.43.0020, 5205.43.0090, 5205.44.0020, 5205.44.0090, 5205.46.0020, 5205.46.0090, 5205.47.0020, 5205.47.0090, 5205.48.0020 and 5205.48.0090.

[3] Category 314–O: all HTS numbers except 5209.51.6015.

[4] Category 315–O: all HTS numbers except 5208.52.4055.

[5] Category 317–O: all HTS numbers except 5208.59.2085; Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[6] Category 369–S: only HTS number 6307.10.2005.

[7] Category 604–A: only HTS number 5509.32.0000.

[8] Categories 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.

[9] Category 359pt.: all HTS numbers except 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.

[10] 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.

[11] 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.

[12] 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.

[13] Category 659pt.: all HTS numbers except 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 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.

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. 04–18527 Filed 8–12–04; 8:45 am]

BILLING CODE 3510–DR–S

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Designations under the Textile and Apparel Commercial Availability Provisions of the United States-Caribbean Basin Trade Partnership Act (CBTPA)

August 9, 2004.

**AGENCY:** The Committee for the Implementation of Textile Agreements (The Committee).

**ACTION:** Designation.

**SUMMARY:** The Committee for the Implementation of Textile Agreements (Committee) has determined that 100 percent cotton yarn-dyed woven flannel fabrics, made from 14 through 41 NM single ring-spun yarns, classified in 5208.43.00 of the Harmonized Tariff Schedule of the United States (HTSUS), of construction 2 X 1 twill weave, weighing 200 grams per square meter or less, for use in apparel articles excluding gloves, cannot be supplied by the domestic industry in commercial quantities in a timely manner. The Committee hereby designates apparel articles, excluding gloves, that are both cut and sewn or otherwise assembled in an eligible CBTPA beneficiary country, from these fabrics as eligible for quota-free and duty-free treatment under the textile and apparel commercial availability provisions of the CBTPA and eligible under HTSUS subheadings 9820.11.27, to enter free of quota and duties, provided that all other fabrics are wholly formed in the United States from yarns wholly formed in the United States.

**EFFECTIVE DATE:** August 13, 2004.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act (CBERA) as added by Section 211(d) of the CBTPA; Presidential Proclamation 7351 of October 2, 2000; Executive Order No. 13191 of January 17, 2001.

### Background

The commercial availability provision of the CBTPA provides for duty-free and quota-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or

more beneficiary CBTPA country from fabric or yarn that is not formed in the United States if it has been determined that such yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner and certain procedural requirements have been met. In Presidential Proclamation 7351, the President proclaimed that this treatment would apply to apparel articles from fabrics or yarn designated by the appropriate U.S. government authority in the **Federal Register**. In Executive Order 13191, the President authorized the Committee to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner.

On May 12, 2004 the Chairman of the Committee received a petition from Sandler, Travis, and Rosenberg, P.A., on behalf of Dillard's, Inc. of Little Rock, Arkansas and BWA, Inc. of New York, New York, that 100 percent cotton yarn-dyed woven flannel fabrics, made from 14 through 41 NM single ring-spun yarns, classified in 5208.43.00 of the HTSUS, of construction 2 X 1 twill weave, weighing 200 grams per square meter or less, for use in apparel articles excluding gloves, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the CBTPA for apparel articles that are both cut and sewn in one or more CBTPA beneficiary countries from such fabrics.

In response to a previous commercial availability request by the same petitioners on the subject fabrics, the Committee requested public comments on March 11, 2004 (69 FR 11596). Also in response to the previous petition, the Committee and the U.S. Trade Representative (USTR) sought the advice of the Industry Trade Advisory Committee for Textiles and Clothing and the Industry Trade Advisory Committee for Distribution Services regarding the proposed action on March 30, 2004. On March 29, 2004, the Committee and USTR offered to hold consultations with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (Congressional Committees) regarding the proposed action. On April 15, 2004, the U.S. International Trade Commission provided advice regarding the proposed action. On May 6, 2004, the Committee denied the previous petition on the subject fabrics. However, new information was subsequently obtained supporting the petitioners' claim that such fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner. Based on the information and advice received and its understanding of the industry, the Committee determined that the fabric set forth in the instant petition cannot be supplied by the domestic industry in commercial quantities in a timely manner. On June 2, 2004, the Committee and USTR submitted a report to the Congressional Committees that set forth the action proposed, the reasons for such action, and advice obtained. A period of 60 calendar days since this report was submitted has expired.

The Committee hereby designates as eligible for preferential treatment under HTSUS subheading 9820.11.27, apparel articles, excluding gloves, that are both cut and sewn or otherwise assembled in one or more eligible CBTPA beneficiary countries, from 100 percent cotton yarn-dyed woven flannel fabrics, made from 14 through 41 NM single ring-spun yarns, classified in 5208.43.00 of the HTSUS, of construction 2 X 1 twill weave, weighing 200 grams per square meter or less, not formed in the United States, provided that all other fabrics are wholly formed in the United States from yarns wholly formed in the United States, subject to the special rules for findings and trimmings, certain interlinings and de minimis fibers and yarns under section 112 (d) of the CBTPA, and that such articles are imported directly into the customs territory of the United States from an eligible CBTPA beneficiary country.

An "eligible CBTPA beneficiary country" means a country which the President has designated as a CBTPA beneficiary country under section 213(b)(5)(B) of the CBERA (19 U.S.C. 2703(b)(5)(B)) and which has been the subject of a finding, published in the **Federal Register**, that the country has satisfied the requirements of section 213(b)(4)(A)(ii) of the CBERA (19 U.S.C. 2703(b)(4)(A)(ii)) and resulting in the enumeration of such country in U.S. note 1 to subchapter XX of Chapter 98 of the HTSUS.

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc.04–18526 Filed 8–12–04; 8:45 am]

BILLING CODE 3510–DR–S

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Establishment of Missile Defense Advisory Committee

**AGENCY:** Department of Defense.

**ACTION:** Notice of establishment.

**SUMMARY:** The Missile Defense Advisory Committee (MDAC) is being established in consonance with the public interest, and in accordance with the provisions of Pub. L. 92–463, the "Federal Advisory Committee Act."

The MDAC shall provide the Department of Defense advice on all matters relating to missile defense, including system development, technology, program maturity and readiness of configurations of the ballistic Missile Defense System (BMDS) to enter the acquisition process.

The Committee shall be composed of 5–10 selected leaders from government and the private sector who are recognized authorities in defense policy, acquisition, strategy implications, capability-based requirements process, and other technical areas relating to the missile defense program. The committee will be balanced in terms of the functions to be performed, points of view to be considered and will include subject matter experts knowledgeable of BMDS programs. In addition, the committee may consult with experts in academia and industry.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Phyllis Goldsmith, DoD Committee Management Officer, 703–588–8153.

Dated: August 9, 2004.

**L.M. Bynum,**

*Alternate, OSD Federal Register, Liaison Officer, Department of Defense.*

[FR Doc. 04–18492 Filed 8–12–04; 8:45 am]

BILLING CODE 5001–06–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Privacy Act of 1974; System of Records

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Notice to alter a system of records.

**SUMMARY:** The Office of the Secretary is proposing to alter a system of records notice in its inventory of records systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

The Office of the Secretary is proposing to alter the existing system of records to expand the categories of records being maintained.

**DATES:** The changes will be effective on September 13, 2004, unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to OSD Privacy Act Coordinator, Directives and Records Division, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

**FOR FURTHER INFORMATION CONTACT:** Ms. Juanita Irvin at (703) 601–4722, extension 110.

**SUPPLEMENTARY INFORMATION:** The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on August 9, 2004, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996.

Dated: August 9, 2004.

**L. M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**DHA 07**

**SYSTEM NAME:**

Military Health Information System (November 21, 2001, 66 FR 58456).

**CHANGES:**

* * * * *

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Add to the entry 'CLINICAL DATA: Inpatient and out patient medical records, diagnosis procedures, and pharmacy records'.

**AUTHORITY FOR THE MAINTENANCE OF THE SYSTEM:**

Delete entry and replace with '5 U.S.C. 301, Departmental Regulation; 10 U.S.C., Chapter 55; Pub. L. 104–191, Health Insurance Portability and Accountability Act of 1996; DoD 6025.18–R, DoD Health Information Privacy Regulation; and E.O. 9397 (SSN)'.

* * * * *

**RETRIEVABILITY:**

Add to the end of the paragraph 'diagnosis codes, admission and discharge dates, location of care or any combination of the above'.

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**DHA 07**

**SYSTEM NAME:**

Military Health Information System (November 21, 2001, 66 FR 58456).

**SYSTEM LOCATION:**

Primary location: Defense Enterprise Computing Center—Denver/WEE, 6760 E. Irvington Place, Denver, CO 80279–5000.

Secondary locations: Directorate of Information Management, Building 1422, Fort Detrick, MD 21702–5000; Service Medical Treatment Facility Medical Centers and Hospitals; Uniformed Services Treatment Facilities; Defense Enterprise Computing Centers; TRICARE Management Activity, Department of Defense, 5111 Leesburg Pike, Skyline 6, Suite 306, Falls Church, VA 22041–3206 and contractors under contract to TRICARE. For a complete listing of all facility addresses and TRICARE contractors maintaining these records, write to the system manager.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Uniformed services medical beneficiaries enrolled in the Defense Enrollment Eligibility Reporting System (DEERS) who receive or have received medical care at one or more of DoD's medical treatment facilities (MTFs), Uniformed Services Treatment Facilities (USTFs), or care provided under TRICARE programs.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

*Personal Identification Data:* Selected electronic data elements extracted from the Defense Enrollment and Eligibility Reporting System (DEERS) beneficiary and enrollment records that include data regarding personal identification including demographic characteristics.

*Eligibility and Enrollment Data:* Selected electronic data elements extracted from DEERS regarding personal eligibility for and enrollment in various health care programs within the Department of Defense (DoD) and among DoD and other federal healthcare programs including those of the Department of Veterans Affairs (DVA), the Department of Health and Human Services (DHHS), and contracted health care provided through funding provided by one of these three Departments.

*Clinical Encounter Data:* Electronic data regarding beneficiaries' interaction with the MHS including health care encounters, health care screenings and education, wellness and satisfaction surveys, and cost data relative to such healthcare interactions. Electronic data regarding Military Health System beneficiaries' interactions with the DVA or DHHS healthcare delivery programs where such programs effect benefits determinations between these Department-level programs, continuity of clinical care, or effect payment for care between Departmental programs inclusive of care provided by commercial entities under contract to these three Departments.

*Budgetary and Managerial Cost Accounting Data:* Electronic budgetary and managerial cost accounting data associated with beneficiaries interactions with the MHS, DVA, DHHS or contractual commercial healthcare providers.

*Clinical Data:* Inpatient and outpatient medical records, diagnosis procedures, and pharmacy records.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental Regulation; 10 U.S.C., Chapter 55; Pub. L. 104–191, Health Insurance Portability and Accountability Act of 1996; DoD 6025.18–R, DoD Health Information Privacy Regulation; and E.O. 9397 (SSN).

**PURPOSE(S):**

Data collected within and maintained by the Military Health Information System supports benefits determination for MHS beneficiaries between DoD, DVA, and DHHS healthcare programs, provides the ability to support continuity of care across Federal programs including use of the data in the provision of care, ensures more efficient adjudication of claims and supports healthcare policy analysis and clinical research to improve the quality and efficiency of care within the MHS.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To permit the disclosure of records to the Department of Health and Human Services (HHS) and its components for the purpose of conducting research and analytical projects, and to facilitate collaborative research activities between DoD and HHS.

To the Congressional Budget Office for projecting costs and workloads associated with DoD Medical benefits.

To the Department of Veterans Affairs (DVA) for the purpose of providing medical care to former service members and retirees, to determine the eligibility for or entitlement to benefits, to coordinate cost sharing activities, and to facilitate collaborative research activities between the DoD and DVA.

The DoD "Blanket Routine Uses" set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are maintained on optical and magnetic media.

**RETRIEVABILITY:**

Records may be retrieved by individual's Social Security Number, sponsor's Social Security Number, Beneficiary ID (sponsor's ID, patient's name, patient's DOB, and family member prefix or DEERS dependent suffix), diagnosis codes, admission and discharge dates, location of care or any combination of the above.

**SAFEGUARDS**

Automated records are maintained in controlled areas accessible only to authorized personnel. Entry to these areas is restricted to personnel with a valid requirement and authorization to enter. Physical entry is restricted by the use of a ciper lock. Back-up data maintained at each location is stored in a locked room. The system will complies with the DoD Information Technology Security Certification and Accreditation Process (DITSCAP).

Access to HMIS records is restricted to individuals who require the data in the performance of official duties. Access is controlled through use of passwords.

**RETENTION AND DISPOSAL:**

Records are maintained until no longer needed for current business.

**SYSTEM MANAGER(S) AND ADDRESS:**

Program Manager, Executive Information/Decision Support Program Office, Six Skyline Place, Suite 809, 5111 Leesburg Pike, Falls Church, VA 22041–3201.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the TRICARE Management Activity Privacy Office, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041–3201.

Requests should contain the full names of the beneficiary and sponsor, sponsor Social Security Number, sponsor service, beneficiary date of birth, beneficiary sex, treatment facility(ies), and fiscal year(s) of interest.

**RECORD ACCESS PROCEDURES:**

Individuals seeking across to information about themselves contained in this system of records should address written requests to TRICARE Management Activity Privacy Office, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041–3201.

Requests should contain the full names of the beneficiary and sponsor, sponsor's Social Security Number, sponsor's service, beneficiary date of birth, beneficiary sex, treatment facility(ies) that have provided care, and fiscal year(s) of interest.

**CONTESTING RECORD PROCEDURES:**

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are contained in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES**

The individual data records that are assembled to form the MHIS are submitted by the Military Departments' medical treatment facilities, commercial healthcare providers under contract to the MHS, the Defense Enrollment Eligibility Reporting System, the Uniformed Service Treatment Facility Managed Care System, the Department of Health and Human Services, the Department of Veterans Affairs, and any other source financed through the Defense Health Program.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 04–18494 Filed 8–12–04; 8:45 am]
BILLING CODE 5001–06–17

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice to amend systems of records.

**SUMMARY:** The Department of the Air Force is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This action will be effective without further notice on September 13, 2004 unless comments are received which result in a contrary determination.

**ADDRESSES:** Send comments to the Air Force Privacy Act Manager, Office of the Chief Information Officer, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Anne Rollins at (703) 696–6280.

**SUPPLEMENTARY INFORMATION:** The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 9, 2004.

**L. M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**F036 AF AETC A**

**SYSTEM NAME:**

Student Records (July 8, 2004, 69 FR 41233).

**CHANGES:**

* * * * *

**RETENTION AND DISPOSAL:**

Add a new beginning paraphrase 'Retain graduate records for 10 years after course completion by affiliate schools;'

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**F036 AF AETC A**

**SYSTEM NAME:**

Student Records.

**SYSTEM LOCATION:**

Professional Military Education Center, NCO Academies and schools at Air Force Major Commands and bases.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Military personnel, foreign military personnel, and civilians assigned to the centers or schools as students, faculty and staff.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Student records which may include but are not limited to name, rank, Social

Security Number, branch of service, AFSC or equivalent, date of birth, education level, aero rating, aircraft type, flying status, gender, type of commission, commissioning date, student identification number, class number, student computer login, phone number, final grade, permanent and/or temporary duty location, assigned instructors, certificates, and equipment issue.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 8013, Secretary of the Air Force; Air Force Instruction 36–2201, Air Force Training Program; and E.O. 9397 (SSN).

**PURPOSE(S):**

Used as a record of attendance and training, class standing, completion or elimination, as locator, supply issue, and as a source of statistical information.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy act, these records or information contained therein may specially be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Maintained in paper files, and on computer and computer output products.

**RETRIEVABILITY:**

Retrieved by name and Social Security Number.

**SAFEGUARDS:**

Records are stored in security file containers/cabinets or rooms. Records are accessed by the custodian of the system or persons responsible for maintenance of the records in course of their official duties. Computer records are protected by computer system software.

**RETENTION AND DISPOSAL:**

Retain graduate records for 10 years after course completion by affiliate schools; student grade books and training review board records are destroyed one year after completion of training; summary training records are retained in office files for two years after completion or discontinuance of course; other records are retained in office files until superseded, obsolete, no longer needed for reference or on inactivation. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

**SYSTEM MANAGER(S) AND ADDRESS:**

Superintendent for PME at each Major Command, commandant at each academy or leadership school or director of personnel at each base where a school is located. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Superintendent for PME at each Major Command, commandant at each academy or leadership school or director of personnel at each base where a school is located. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Superintendent for PME at each Major Command, commandant at each academy or leadership school or director of personnel at each base where a school is located. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

**CONTESTING RECORD PROCEDURES:**

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33–332; 32 CFR part 806b; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Information obtained from students, staff, correspondence generated within the agency in the conduct of official business, educational institutions, and civil authorities.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 04–18493 Filed 8–12–04; 8:45 am]
BILLING CODE 5001–06–M

## DEPARTMENT OF DEFENSE

### Department of the Army

### Draft Environmental Impact Statement for the Proposed Leasing of Lands at Fort Bliss, Texas for the Proposed Siting, Construction, and Operation by the City of El Paso of a Brackish Water Desalination Plant and Support Facilities

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of availability.

**SUMMARY:** The Department of the Army announces the availability of the Draft Environmental Impact Statement (DEIS) evaluating the potential environmental impacts that could result from granting an easement to the City of El Paso, El Paso Water Utilities (EPWU), to use land in the South Training Areas of Fort Bliss for construction and operation of a desalination plant and support facilities, including wells, pipelines, and disposal sites for the residual brine resulting from the desalination process. The purpose of the proposed plant is to treat brackish (salty) water pumped from the Hueco Bolson Aquifer to provide an additional reliable source of potable water for use by the City of El Paso and Fort Bliss. Pumping of fresh water by EPWU, Fort Bliss, Ciudad Juárez, and others has resulted in declining groundwater levels in the aquifer. In addition, brackish water is intruding into the aquifer's freshwater layer and has the potential to affect water wells on Fort Bliss and in other areas of El Paso.

A sizable volume of brackish water exists adjacent to the freshwater zone of the Hueco Bolson Aquifer. Desalination of the brackish water offers a way to extend the life of the freshwater aquifer as a source of potable water that is to the mutual benefit of Fort Bliss and the City of El Paso. The proposed desalination plant would reduce withdrawals of fresh water from the aquifer, extending its useful life and intercepting the flow of brackish water to wells that are operated by Fort Bliss. Both Fort Bliss and the City of El Paso have considered constructing desalination facilities to tap into this potential water source. The Army and EPWU believe that building a single desalination plant to provide potable water for both the installation and the city would be more efficient and cost effective than constructing separate desalination plants.

**DATES:** The public comment period for the DEIS will end September 27, 2004. A public hearing will be held in El Paso, TX, for the purpose of receiving comments on this DEIS. Additional details about the hearing will follow in

the media, or can be obtained by contacting the Fort Bliss Public Affairs Office at (915) 568–4505. Public comments received on the DEIS will be addressed in the Final Environmental Impact Statement (FEIS) and considered by the Army in its Record of Decision.

**ADDRESSES:** To obtain copies of the DEIS, contact John F. Barrera (915) 568–3908 or write to: Fort Bliss Directorate of the Environment, ATTN: AZC–DOE–C, Building 624, Pleasanton Road, Fort Bliss, TX 79916–6812. Written comments on the DEIS should be submitted to the same address or can be e-mailed to *desaleis@bliss.army.mil.*

**FOR FURTHER INFORMATION:** Contact John F. Barrera, (915) 568–3908.

**SUPPLEMENTARY INFORMATION:** The proposed desalination plant would treat brackish water drawn from the Hueco Bolson Aquifer using a technology called reverse osmosis (RO). RO uses semipermeable membranes to remove dissolved solids (primarily salts) from brackish water, producing fresh water. Water for the desalination process would be drawn from existing EPWU wells on the east side of El Paso International Airport and from proposed new wells to be installed on Fort Bliss land north of Biggs Army Airfield. The plant is being designed to produce approximately 27.5 million gallons per day (MGD) of drinking water and 3.0 MGD of a brine called concentrate. To implement the proposed desalination project, EPWU is applying for an easement for land in the South Training Areas of Fort Bliss for a desalination plant site, 16 new water wells, concentrate disposal sites, and various connecting pipelines.

The DEIS considers seven alternatives, six action alternatives and the No Action Alternative. The six action alternatives include various combinations of three potential sites for the proposed desalination plant and two methods of disposal of the concentrate. The three alternative desalination plant sites are located in Training Area 1B of the South Training Areas of Fort Bliss, adjacent to El Paso International Airport, north of Montana Avenue, and west of Loop 375. The two concentrate disposal methods under consideration include (1) injecting the concentrate underground into a confined zone where it would be isolated from potable water sources, or (2) piping the concentrate to evaporation ponds, where the liquid would evaporate leaving a solid salt residue that would be trucked to a landfill for final disposal.

Under the No Action Alternative, the Army would not provide land on Fort Bliss for construction and operation of the proposed desalination plant. None of the proposed facilities would be constructed on Army land at Fort Bliss. This alternative could, however, include one or more of the following actions without Army action or participation: construction and operation of a desalination plant on non-Army land, increase in water conservation measures, development of other water sources in the El Paso region, and/or importation of water from sources outside El Paso. Without the proposed desalination project, EPWU would continue to pump from the freshwater layer of the Hueco Bolson Aquifer until it no longer met drinking water standards.

The Army has not yet selected a preferred alternative, which will be identified in the FEIS.

The DEIS analyzes the environmental consequences each alternative could have on geology and soils; water resources; utilities and services; hazardous materials, hazardous waste, and safety; air quality; biological resources; land use and aesthetics; transportation; cultural resources; and socioeconomics and environmental justice.

Copies of the DEIS are available for review at the following libraries in El Paso, TX: El Paso Public Library, 501 N. Oregon Street; Richard Burges Branch Library, 9600 Dyer; Irving Schwartz Branch Library, 1865 Dean Martin; and Westside Branch Library, 125 Belvidere. The document can also be reviewed at *http://www.bliss.army.mil.*

**Hugh M. Exton, Jr.,**

*Director, SWRO, Installation Management Agency.*

[FR Doc. 04–18518 Filed 8–12–04; 8:45 am]

**BILLING CODE 3710–08–M**

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Intent To Prepare a Draft Environmental Impact Statement for Improvements to the Cedar Bayou Navigation Channel Near Baytown in Harris and Chambers Counties, TX

**AGENCY:** Department of the Army; U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** The proposed study to improve the existing channel on Cedar Bayou was authorized by the Water Resources Development Act of 2000, Section 349. The proposed action to be addressed in the Draft Environmental Impact Statement (DEIS) is to evaluate several widening and deepening alternatives to improve navigation efficiency and safety of the Cedar Bayou Navigation Channel from the Houston Ship Channel in Galveston Bay up Cedar Bayou to the State Highway (Hwy) 146 crossing in Harris and Chambers Counties, Texas. The existing navigation channel has dimensions of 10 feet depth and 100 feet width from the Houston Ship Channel to approximately Mile 3.0 in the lower reach of Cedar Bayou. The study will focus on alternatives for improving the navigability of Cedar Bayou and examine the impacts of extending the channel another 8 miles upstream to Hwy 146. The project is located in the City of Baytown, which is located approximately 25 miles east of the City of Houston. The non-federal sponsor for the project is the Chambers County Cedar Bayou Navigation District (CCCBND).

**DATES:** A public meeting will be scheduled during the 45-day public review period for the Draft EIS in January 2005.

**ADDRESSES:** Written comments for the public review period and meeting should be forwarded to Dr. Terrell Roberts, Environmental Lead, U.S. Army Corps of Engineers, P.O. Box 1229, Galveston, TX 77553–1229; fax: (409) 766–3064.

**FOR FURTHER INFORMATION CONTACT:** Questions about the proposed action and DEIS can be answered by: Mr. Richard Tomlinson, Project Manager, Project Management Branch, Telephone: (409) 766–3917, E-mail: *richard.d.tomlinson@usace.army.mil* or Dr. Terrell Roberts, Environmental Lead, Environmental Section, Telephone: (409) 766–3035, E-mail: *terrell.w.roberts@usace.army.mil.*

**SUPPLEMENTARY INFORMATION:**

1. *Background:* The study process began in 1997 when the CCBND was created by the 75th Texas State Legislature to improve the navigability of Cedar Bayou. The feasibility study began in 1999 and will determine the most cost-effective alternative for improving the channel while protecting the local environment.

2. *Alternative:* Several construction alternatives and an "no-action" alternative will be evaluated for deepening and widening Cedar Bayou Channel. Alternatives will also be evaluated for the management of dredged material. The alternatives to be evaluated are: (1) Deepening and widening the channel to dimensions of 12 feet deep and 125 feet wide from the

Houston Ship Channel (Mile -3) to SH 146 (Mile 11.4); (2) Deepening and widening the channel from Mile 3 to Mile 11.4 to match the currently maintained channel from the Houston Ship Channel to Mile 3 (10 ft deep and 100 ft wide); (3) Deepening the channel to 9 feet from Mile 3 to Mile 11.4; (4) Eliminating a series of tight bends known as the Devil's Elbow by dredging a new channel (Devil's Elbow Cutoff) to the north of these bends; (5) Creating 200-ft wide passing lanes in straight stretches of the channel; and (6) No Action. A "no-action" alternative will be evaluated and presented for comparison purposes in evaluating the various construction alternatives.

3. *Scoping:* The scoping process will involve Federal, State, and Local agencies, and other interested persons and organizations. Three public scoping meetings were held (March 22, 2000, December 11, 2000, and March 16, 2004) to explain the project and solicit information about public concerns and comments on the project. The information provided by the public, resource agencies, local industry, local government, and other interested parties was used to help develop planning objectives, identify significant resources and issues, evaluate impacts of various alternatives, and identify a plan that will be socially and environmentally acceptable. Another public meeting will be conducted during the public review period for the DEIS to update the public on the project, collect public comments on the DEIS, and discuss various issues associated with the channel improvements and placement of dredged material.

4. *Coordination:* Further coordination with environmental agencies will be conducted under the National Environmental Policy Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the Migratory Bird Treaty Act, the Clean Water Act, the Clean Air Act, the National Historic Preservation Act, the Magnuson-Stevens Fishery Conservation and Management Act (Essential Fish Habitat), and the Coastal Zone Management Act (Texas Coastal Management Program). Coordination with Federal and State regulatory agencies, the Local sponsors, and the U.S. Army Corps of Engineers has been initiated and will continue throughout the development of the DEIS.

5. DEIS Preparation. It is estimated that the DEIS will be available to the public for review and comment in December 2004.

Dated: August 10, 2004.

**Carolyn Murphy,**

*Chief, Environmental Section.*

[FR Doc. 04–18516 Filed 8–12–04; 8:45 am]

BILLING CODE 3710–52–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 October 12, 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: August 10, 2004.

**Angela C. Arrington,**

*Leader, Regulatory Information Management Group, Office of the Chief Information Officer.*

**Office of Postsecondary Education**

*Type of Review:* Reinstatement.
*Title:* Student Support Services Annual Performance Report.
*Frequency:* Annually.
*Affected Public:* Not-for-profit institutions.
*Reporting and Recordkeeping Hour Burden:*
*Responses:* 936.
*Burden Hours:* 5,616.

*Abstract:* Student Support Services Program grantees must submit the report annually. The reports are used to evaluate grantees' performance, and to award prior experience points at the end of each project (budget) period. The Department also aggregates the data to provide descriptive information on the projects and to analyze the impact of the Student Support Services Program on the academic progress of participating students.

Requests for copies of the 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 2599. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at *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. 04–18519 Filed 8–12–04; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Notice of Intent To Prepare an Environmental Impact Statement for the Decommissioning of the Fast Flux Test Facility at the Hanford Site, Richland, WA

**AGENCY:** Department of Energy.

**ACTION:** Notice of intent.

**SUMMARY:** The U.S. Department of Energy (DOE) announces its intent to prepare an Environmental Impact Statement (EIS), pursuant to the National Environmental Policy Act of 1969 (NEPA), on proposed decommissioning of the Fast Flux Test Facility (FFTF) at the Hanford Site, Richland, Washington. DOE proposes to decommission the FFTF and its support buildings on the Hanford Site. Alternatives to be analyzed will include no action, entombment, and removal.

**DATES:** DOE invites public comments on the proposed scope of this EIS. The public scoping period begins with the publication of this notice and concludes October 8, 2004. DOE invites Federal agencies, Native American Tribal Nations, State and local governments, and the public to comment on the scope of this EIS. To ensure consideration, comments must be postmarked by Friday, October 8, 2004. Late comments will be considered to the extent practicable. Two public scoping meetings will be held to provide the public with an opportunity to ask questions on the scope of the EIS, discuss concerns with DOE officials, and present comments. The locations, dates, and times for the meetings are as follows: Wednesday, September 22, 2004, from 7 p.m.–10 p.m., at the Red Lion Inn—Hanford House, 802 George Washington Way, Richland, Washington 99352; and on Thursday, September 30, 2004, from 7 p.m.–10 p.m., at the Shilo Inn, 780 Lindsay Boulevard, Idaho Falls, Idaho 83402.

**ADDRESSES:** Comments or suggestions on the scope for the EIS and questions concerning the proposed action may be submitted to: Mr. Douglas H. Chapin, NEPA Document Manager, FFTF Decommissioning EIS, U.S. Department of Energy, Richland Operations Office, Post Office Box 550, Mail Stop A3–04, Richland, Washington, 99352. You may also leave a message at (888) 886–0821, send a fax to (509) 376–0177, or an e-mail to: *Douglas_H_Chapin@rl.gov*.

**FOR FURTHER INFORMATION CONTACT:** For further information about FFTF, to request information about this EIS and the public scoping meetings, or to be placed on the EIS distribution list, please contact Mr. Chapin using any of the methods identified above. For general information about the DOE NEPA process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119, telephone: (202) 586–4600, or leave a message at (800) 472–2756.

**SUPPLEMENTARY INFORMATION:**

*Background:* The FFTF is a DOE-owned, 400-megawatt (thermal) liquid-metal (sodium) cooled nuclear test reactor located on the DOE Hanford Site's 400 Area near Richland, Washington. FFTF full-scale operations were conducted between 1982 and 1992. DOE operated FFTF as a non-breeder test reactor for the U.S. liquid metal fast breeder reactor program testing advanced nuclear fuels, materials, components, and reactor safety designs. DOE also conducted ancillary experimental activities including cooperative international research and irradiation to produce a variety of medical and industrial isotopes.

In May 1995, DOE issued the Environmental Assessment: Shutdown of the Fast Flux Test Facility, Hanford Site, Richland, Washington (DOE/EA–0993, May 1995) and Finding of No Significant Impact (FONSI, May 1995). This Environmental Assessment (EA) evaluated the potential impacts associated with actions necessary to place the FFTF in a radiologically-safe and industrially-safe permanent shutdown and deactivation condition (Phase I), suitable for a long-term surveillance and maintenance (Phase II) prior to decommissioning (Phase III). The EA did not evaluate Phase III. DOE determined that an EIS was not required for the permanent shutdown and deactivation of the FFTF, and issued a Finding of No Significant Impact (FONSI).

Based on the Final Programmatic Environmental Impact Statement for Accomplishing Expanded Civilian Nuclear Energy Research and Development and Isotope Production Missions in the United States, Including the Role of the Fast Flux Test Facility (NI–PEIS)(DOE/EIS–0310, December 2000), DOE decided in the Record of Decision (ROD) (66 FR 7877, January 26, 2001), that the permanent closure of FFTF was to be resumed, with no new missions. The NI PEIS reviewed the environmental impacts associated with enhancing the existing DOE nuclear facility infrastructure to provide for the following missions: (1) Production of isotopes for medical, research, and industrial uses; (2) production of plutonium-238 for use in advanced radioactive isotope power systems for future National Aeronautics and Space Administration (NASA) space exploration missions, and (3) to support the nation's civilian nuclear energy research and development needs. In the NI PEIS, FFTF was evaluated as an alternative irradiation services facility for the aforementioned missions.

DOE is currently engaged in the permanent deactivation of the FFTF consistent with the May 1995 FFTF Shutdown EA and FONSI and the January 26, 2001, ROD. Major deactivation activities underway at this time include: washing the FFTF fuel to remove sodium, placing the fuel into dry cask storage, draining sodium systems, and deactivating auxiliary plant systems. The FFTF fuel, which includes sodium-bonded fuel, is being managed and dispositioned consistent with previous applicable DOE NEPA decisions (*see* "Related NEPA Reviews").

*Proposed Action:* NEPA requires the preparation of an EIS for major federal actions that significantly affect the quality of the human environment. DOE is preparing an EIS (DOE/EIS–0364) for proposed FFTF decommissioning activities.

DOE's purpose and need is to reduce long-term risks associated with the deactivated FFTF and its ancillary support facilities, and to reduce surveillance and maintenance costs. In order to meet this purpose and need, DOE proposes to decommission the deactivated FFTF and its support facilities by September 2012, consistent with the ongoing Request for Proposal No. DE–RP06–04RL14600 for the FFTF Closure Project. Alternatives for accomplishing this proposed action described below.

*Preliminary Alternatives:* Consistent with NEPA implementation requirements, the EIS will assess the range of reasonable alternatives regarding DOE's need for decommissioning the FFTF, and a No Action alternative. The EIS will provide a means for soliciting public input on the alternatives to be analyzed as part of DOE's decisionmaking process. DOE's current proposed alternatives include entombment and removal.

Other reasonable alternatives that may arise during public scoping and preparation of the draft EIS would also be considered. Because DOE has made a programmatic decision to permanently shutdown and deactivate FFTF, and is currently performing deactivation activities consistent with this decision, restart of the FFTF is not considered a reasonable decommissioning alternative. The preferred alternative for decommissioning would be identified in the EIS and DOE's decision would be announced in a ROD. Consistent with this ROD, DOE would also prepare any regulatory documents that might be required as a result of permitting, closure, or documentation requirements under the Atomic Energy Act; the Resource Conservation and Recovery

Act, and the Washington State Hazardous Waste Management Act of 1976; or the Comprehensive Environmental, Response, Compensation and Liability Act. In meeting any State (of Washington) Environmental Policy Act (SEPA) requirements related to state permitting or other regulatory actions, the State of Washington Department of Ecology (Ecology) can adopt a NEPA document if it determines that it is sufficient to meet SEPA requirements. DOE intends to coordinate with Ecology to ensure these needs are addressed.

The EIS will analyze reasonable alternatives for the management and disposition of FFTF waste, and reasonable onsite (Hanford Site) and offsite (Idaho) alternatives for the management and disposition of the Hanford Site radioactive sodium inventory.

The proposed alternatives to be considered in the EIS include:

• *No Action Alternative.* The Council on Environmental Quality NEPA Regulations (40 CFR parts 1500–1508), and the DOE NEPA Regulations (10 CFR part 1021) require analysis of a No Action alternative. Under this alternative, deactivation would be completed consistent with previous NEPA decisions, such that the FFTF and support buildings could be maintained in a long-term surveillance and maintenance condition for the foreseeable future; no decommissioning would occur. The facility would be monitored and periodic surveillance and maintenance performed to ensure that no environmental releases or safety issues develop. The impacts from this No Action alternative will be used as the basis for comparing the impacts of the action alternatives.

• *Entombment Alternative.* Under this alternative, DOE would decontaminate, dismantle, and remove the FFTF Reactor Containment Building dome (and structures within) above grade level (*i.e.*, 550 feet above mean sea level). The FFTF Reactor Vessel, contained within the Reactor Containment Building, along with radioactive and contaminated equipment, components, piping, and materials, including any asbestos, depleted uranium shielding, and lead shielding, would remain in place. The Reactor Containment Building below grade level would be filled with grout or other suitable fill material to immobilize remaining radioactive and chemically-hazardous materials to the maximum extent practicable, and to minimize subsidence. The Reactor Containment Building fill material may include hazardous, and/or radioactive and contaminated materials, as allowed by regulations. A regulatory-compliant, engineered barrier would be used to cover the filled area. The barrier, together with the lower Reactor Containment Building structure and internal structures, and the immobilization and/or subsidence matrix would comprise the entombment structure (*i.e.*, the entombed area).

The FFTF support buildings outside the entombed area, would be decontaminated and demolished to below grade level, backfilled, and remediated, as appropriate. Below-grade portions would be backfilled and covered to minimize free (void) spaces. Appropriate institutional controls would also be implemented (*e.g.*, deed restrictions, *etc.*).

• *Removal Alternative.* Under this alternative, DOE would decontaminate, dismantle, and remove the Reactor Containment Building dome (and structures within) above grade level. The Reactor Vessel, contained within the Reactor Containment Building below grade level, along with radioactive and contaminated equipment, components, piping, and materials, including any asbestos, depleted uranium shielding, and lead shielding, would also be removed. The removed radioactive and contaminated equipment, components, piping, and materials would include intermediate heat exchangers, primary pumps, primary isolation valves, primary overflow tanks, Interim Examination and Maintenance Cell equipment, test assembly hardware, and the Interim Decay Storage tank. Additional radioactive and contaminated equipment from the Reactor Containment Building and the FFTF Heat Transport System would also be removed, as necessary. The removed radioactive and contaminated equipment, components, piping, and materials would be disposed of in appropriate Hanford Site 200 Area disposal units such as, but not necessarily limited to, the existing Environmental Restoration and Disposal Facility or the Integrated Disposal Facility, which is proposed for construction. The Reactor Containment Building (and structures within) at grade and below grade, and the FFTF support buildings outside the Reactor Containment Building area, would be decontaminated and demolished to below grade, backfilled and covered to minimize free (void) spaces), and remediated, as appropriate. Appropriate institutional controls would also be implemented (*e.g.*, deed restrictions, *etc.*).

*EIS Schedule:* This EIS will be prepared pursuant to NEPA, the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and DOE's NEPA Implementing Procedures (10 CFR part 1021). Following publication of this Notice of Intent, DOE will conduct a 45-day public scoping period, including public scoping meetings; and prepare and distribute the draft EIS. A comment period on the draft EIS is planned, which will include public hearings to receive comments. Availability of the draft EIS, the dates of the public comment period, and information about the public hearings will be announced in the **Federal Register** and in local news media. The final EIS is scheduled for issuance by September 2005. A ROD would be issued no sooner than 30 days after publication of the Environmental Protection Agency's (EPA's) Notice of Availability of the final EIS in the **Federal Register**.

**Preliminary Identification of Environmental and Other Issues**

DOE intends to analyze the following issues when assessing the potential environmental impacts of the proposed action and alternatives in this EIS. DOE invites comments on these and any other issues that should be addressed in this EIS.

• Potential accident scenarios at appropriate onsite (Hanford Site) and offsite locations associated with the decommissioning of the FFTF and support facilities and with the management and disposition of resulting waste and Hanford Site radioactive sodium inventory.

• Potential effects on the public and onsite workers from releases of radiological and nonradiological materials during decommissioning operations and reasonably foreseeable accidents.

• Potential long-term risks resulting from the management and disposition of the FFTF waste and Hanford Site radioactive sodium inventory.

• Potential effects on air quality, and water quantity and quality from decommissioning operations and reasonably foreseeable accidents.

• Potential cumulative effects, including impacts from other past, present and reasonably foreseeable actions at or in the vicinity of the Hanford Site.

• Potential effects on biological resources (*e.g.*, rare, threatened, or endangered species and their habitat).

• Potential effects on archaeological/cultural/historical sites.

- Potential effects from transportation activities and from reasonably foreseeable transportation accidents.
- Potential socioeconomic impacts on surrounding communities.
- Potential for disproportionately high and adverse effects on low-income and minority populations (Environmental Justice).
- Potential, unavoidable adverse environmental effects.
- Potential, short-term uses of the environment versus long-term productivity.
- Potential irreversible and irretrievable commitment of resources.
- Potential consumption of natural resources and energy, including water, geologic materials, natural gas, and electricity.
- Potential pollution prevention, waste minimization, and mitigative measures.

*Related NEPA Reviews:* Listed below are some of the key NEPA documents to be considered in relation to the EIS:

- Environmental Statement, Fast Flux Test Facility, Richland, Washington (WASH–1510, May 1972). This Environmental Statement (prepared by the U.S. Atomic Energy Commission) assessed the potential environmental impacts associated with the FFTF Project.
- Final Environmental Impact Statement: Department of Energy Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs (DOE/EIS–0203, April 1995) and ROD (60 FR 28680, May 1, 1995). This EIS analyzed (at a programmatic level) the potential environmental consequences over the next 40 years of alternatives related to the transportation, receipt, processing, and storage of spent nuclear fuel under the responsibility of DOE. For programmatic spent nuclear fuel management, this EIS analyzed alternatives of no action, decentralization, regionalization, centralization, and the use of the plans that existed in 1992 and 1993 for the management of these materials.
- Environmental Assessment: Shutdown of the Fast Flux Test Facility, Hanford Site, Richland, Washington and FONSI (DOE/EA–0993, May 1995). This EA evaluated the impacts associated with deactivation actions necessary to place the FFTF in a radiologically- and industrially-safe condition (Phase I), suitable for long-term surveillance and maintenance (Phase II) prior to decommissioning (Phase III). The EA did not evaluate Phase III. DOE determined that an EIS was not required for the permanent shutdown and deactivation of the FFTF and issued a FONSI.
- Environmental Assessment: Management of Hanford Site Non-Defense Production Reactor Spent Nuclear Fuel, Hanford Site, Richland, Washington and FONSI (DOE/EA–1185, March 1997). This EA evaluated the environmental impacts associated with actions necessary to place the Hanford Site's non-defense production reactor spent nuclear fuel, which includes FFTF's spent nuclear fuel, in a radiologically- and industrially-safe, and passive, consolidated storage condition pending final decommissioning. DOE determined that the interim management and storage of the subject spent nuclear fuel at the Hanford Site did not require an EIS and issued a FONSI.
- Environmental Assessment: Shutdown of Experimental Breeder Reactor-II (EBR-II) at Argonne National Laboratory-West and FONSI (DOE/EA–1199, September 1997). This EA addressed the placement of EBR-II and its supporting facilities in an industrially and radiologically safe shutdown condition pending ultimate decommissioning, including the draining of the primary and secondary sodium and reaction of the sodium in the Sodium Processing Facility. The EA did not evaluate final decontamination and decommissioning of EBR-II or the Sodium Processing Facility. DOE determined that an EIS was not required and issued a FONSI.
- Final Hanford Comprehensive Land Use Plan Environmental Impact Statement (DOE/EIS–0222, September 1999) and ROD (64 FR 61615, November 12, 1999). This EIS focused on developing an overall strategy for future land use at Hanford and included a proposed comprehensive land use plan for the Hanford Site for at least the next 50 years of ownership. DOE decided in the ROD that the 400 Area would be designated "industrial." This land-use designation supports the 1997 EPA Brownfields Initiative for contaminated areas ("Brownfields Economic Development Initiative, EPA 500–F–97–158, U.S. Environmental Protection Agency, Washington, D.C., September 1997.")
- Final Environmental Impact Statement for the Treatment and Management of Sodium-Bonded Spent Nuclear Fuel (DOE/EIS–0306, July 2000) and ROD (65 FR 56565, September 19, 2000). This EIS evaluated strategies to remove or stabilize the reactive sodium contained in a portion of DOE's spent nuclear fuel inventory to prepare the spent nuclear fuel for disposal in a geologic repository. The EIS analyzed, under the proposed action, six alternatives that employ one or more of the following technology options at nuclear fuel management facilities at the Savannah River Site or the INEEL: electrometallurgical treatment; the plutonium-uranium extraction process; packaging in high-integrity cans; and the melt and dilute treatment process. DOE decided in the ROD to implement the preferred alternative of electrometallurgically treating the EBR-II spent nuclear fuel and miscellaneous small lots of sodium bonded spent nuclear fuel at the ANL-W facility at the INEEL. FFTF has a small inventory of sodium bonded fuel identified in this EIS.
- Final Environmental Impact Statement, Commercial Low-Level Radioactive Waste Disposal Site, Hanford Site, Richland, Washington, State of Washington Department of Ecology (May 2004)). This EIS was prepared by Ecology to evaluate pending actions, including an operating license renewal, at the existing commercial low-level radioactive waste disposal site located on the Hanford Site in Richland, Washington.
- Final Programmatic Environmental Impact Statement for Accomplishing Expanded Civilian Nuclear Energy Research and Development and Isotope Production Missions in the United States, Including the Role of the Fast Flux Test Facility (NI–PEIS, DOE/EIS–0310, December 2000) and ROD (66 FR 7877, January 26, 2001). This nuclear infrastructure programmatic EIS evaluated the proposed expansion of the nuclear irradiation capabilities for accomplishing civilian nuclear energy research and development activities, accommodating the projected growth in demand for medical and industrial isotopes, and production of plutonium-238 to support future National Aeronautics and Space Administration space exploration missions. Also included was an alternative to permanently deactivate the FFTF. The EIS concluded that "lack of clear commitments from likely users discouraged the Department from planning to build new facilities or to restart the FFTF." DOE decided in the ROD that the FFTF would be permanently deactivated.
- Final Hanford Site Solid (Radioactive and Hazardous) Waste Program Environmental Impact Statement, Richland, Washington (DOE/EIS–0286, January 2004) and ROD (69 FR 39449, June 30, 2004). This EIS evaluated alternatives to provide capabilities to treat, store, and/or dispose of existing and anticipated quantities of solid low-level waste

(LLW), mixed low-level waste (MLLW), Transuranic (TRU) waste, and immobilized low activity waste to support clean up at Hanford and to assist other DOE sites in completing their cleanup programs. DOE decided in the ROD to (1) limit the volumes of LLW and MLLW received at Hanford from other sites for disposal; (2) dispose of LLW in lined disposal facilities, a practice already used for MLLW; (3) construct and operate a lined, combined-use disposal facility (previously referenced in this Notice of Intent as the "Integrated Disposal Facility") in Hanford's 200 East Area for disposal of LLW and MLLW, and further limit offsite waste receipts until the IDF is constructed; (4) treat LLW and MLLW (requiring treatment) at either offsite facilities or existing or modified facilities, as appropriate; and (5) use existing and modified onsite facilities to store, process, and certify TRU waste for subsequent shipment to the DOE Waste Isolation Pilot Plant.

• Environmental Impact Statement for Retrieval, Treatment, and Disposal of Tank Waste and Closure of Single-Shell Tanks at the Hanford Site, Richland, Washington (DOE/EIS–0356). This EIS will evaluate the potential environmental impacts of the proposed action and range of reasonable alternatives, including no action, to treating and disposing of the subject tank waste and the safe management and closure of the subject tanks. The document is currently in development and a draft EIS has not yet been issued.

**Public Reading Rooms**

Documents referenced in this Notice of Intent and related information are available at the following locations: DOE Reading Room, WSU Tri-Cities, 2710 University Drive, Richland, Washington 99352, 509–372–7443; and the U.S. Department of Energy Headquarters Public Reading Room, 1000 Independence Avenue, SW., Room 1E–190 (ME–74) FORS, Washington, DC 20585, 202–586–3142.

Issued in Washington, DC on August 9, 2004.

**John Spitaleri Shaw,**

*Acting Assistant Secretary, Office of Environment, Safety and Health.*

[FR Doc. 04–18535 Filed 8–12–04; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Amended Record of Decision for the Department of Energy's Final Programmatic Environmental Impact Statement for Accomplishing Expanded Civilian Nuclear Energy Research and Development and Isotope Production Missions in the United States, Including the Role of the Fast Flux Test Facility, DOE/EIS–0310

**AGENCY:** Department of Energy.

**ACTION:** Amended record of decision.

**SUMMARY:** The Department of Energy (DOE), pursuant to 10 CFR 1021.315, its implementing regulations under the National Environmental Policy Act (NEPA), is amending its Record of Decision (ROD) (66 FR 7877, January 26, 2001) for its Final Programmatic Environmental Impact Statement for Accomplishing Expanded Civilian Nuclear Energy Research and Development and Isotope Production Missions in the United States, Including the Role of the Fast Flux Test Facility (Nuclear Infrastructure (NI) PEIS). DOE had decided to transport neptunium-237 (Np-237), after conversion to neptunium oxide ($NpO_2$), from DOE's Savannah River Site (SRS) to the Radiochemical Engineering Development Center (REDC) at the Oak Ridge National Laboratory (ORNL) for use in production of plutonium-238 in the future. Np-237 is categorized as special nuclear material (SNM). After the September 11, 2001, terrorist attack, storage of all SNM requires additional security and safeguards. Since REDC does not meet security requirements for storage of SNM, it would require costly security upgrades to qualify for safe storage of $NpO_2$. DOE's Argonne National Laboratory-West (ANL–W) site, located in Idaho, meets the security requirements for storage of SNM, currently stores such materials, and has the storage space available for storage of $NpO_2$.

DOE prepared a Supplement Analysis (SA) for the NI PEIS for the change of storage location of $NpO_2$ from REDC to ANL–W (DOE/EIS–0310–SA–01) to determine whether further NEPA review is required. DOE has determined that no additional NEPA review is necessary because the relocation and change in storage location does not constitute a substantial change in the original proposed action, and the impacts analyzed in the NI PEIS bound the impacts of transfer to and storage at the new proposed storage location. Therefore, DOE has decided to change its decision on the storage location for $NpO_2$ from REDC to ANL–W.

**FOR FURTHER INFORMATION CONTACT:** For further information on this project or to receive copies of the SA, initial ROD, or this Amended ROD contact: Dr. Rajendra Sharma, U.S. Department of Energy, Office of Nuclear Energy, Science and Technology, 19901 Germantown Road, Germantown, Maryland 20874, telephone (301) 903–2899, fax (301) 903–5005, e-mail: *Rajendra.Sharma@nuclear.energy.gov.* For general information on the DOE NEPA process, contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, EH–42/ Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119, telephone (202) 586–4600 or leave a message at (800) 472–2756.

**SUPPLEMENTARY INFORMATION:**

**Background**

The SRS has the remaining domestic inventory of recovered Np-237 which is no longer useable at that site because production of Pu-238 is no longer possible since the reactors have been shutdown. To support the future production of Pu-238 for the National Aeronautics and Space Administration (NASA) and national security missions, DOE must convert this material to neptunium oxide ($NpO_2$), a stable form, that can be safely stored and used later to produce Pu-238. The $NpO_2$ also needs to be relocated and stored at a site that meets the security requirements for storage of SNM (Np-237 is categorized as SNM) and is readily available for production of Pu-238. After analyzing various alternatives, DOE originally selected REDC, located at ORNL, for storage of $NpO_2$. However, REDC no longer meets the security requirements for storage of SNM and would have to incur costly upgrades to comply with such requirements. ANL–W site in Idaho already stores SNM and meets the enhanced security requirements for storage of SNM.

The proposed plan calls for the shipment of approximately 70 drums containing small cans of $NpO_2$ to ANL–W beginning in FY 2004 and ending in FY 2006. For shipment from SRS, one to three (depending on mass of neptunium, no more than 6 kg) crimp-sealed can(s) of $NpO_2$ will be placed inside a 35-gallon shipping drum. The drums will be transported to ANL–W where the material will be stored until needed for Pu-238 production.

**Basis for Decision**

DOE has prepared a SA (DOE/EIS–0310–SA–01) in accordance with the Council on Environmental Quality (CEQ) and DOE regulations

implementing NEPA. CEQ regulations at title 40, section 1502.9(c) of the Code of Federal Regulations (40 CFR 1502.9(c)) require Federal agencies to prepare a supplement to an EIS when an agency makes substantial changes in the proposed action that are relevant to environmental concerns or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. DOE regulations at 10 CFR 1021.314(c) direct that when it is unclear whether a supplement to an EIS is required, an SA be prepared to determine whether an EIS should be supplemented; a new EIS should be prepared; or no further NEPA documentation is required. The SA analyzed whether this transportation and storage (change of $NpO_2$ storage location from ORNL to ANL–W) is substantially relevant to environmental concerns and whether a supplement to the NI PEIS should be prepared. The environmental impacts of shipment of $NpO_2$ from SRS were analyzed in the NI PEIS for several storage locations including FDPF and CPP–651 storage vault at the Idaho National Engineering and Environmental Laboratory (INEEL). The ANL–W site is in close proximity of FDPF and CPP–651. The transportation route and distance from SRS to ANL–W is virtually identical to FDPF/CPP–651. Because the impacts of shipment to and storage at FDPF/CPP–651 at INEEL were analyzed in the NI PEIS, the impacts for shipment to and storage at ANL–W are expected to be virtually the same. In addition, ANL–W currently stores SNM and meets the security requirements for storage of SNM. This change of storage location for $NpO_2$ would obviate the need for costly security upgrades at ORNL.

**Decision**

On the basis of the SA and the analyses conducted in NI PEIS, DOE has determined that the proposed change in storage location of $NpO_2$ from REDC to ANL–W would not require further review under NEPA. The impacts due to relocation and storage of $NpO_2$ would be no greater than those assessed in the NI PEIS.

DOE is issuing this amendment to the original ROD to announce the change of storage location for $NpO_2$ from REDC to ANL–W.

Issued in Washington, DC, August 5, 2004.

**William D. Magwood, IV,**

*Director, Office of Nuclear Energy, Science and Technology.*

[FR Doc. 04–18534 Filed 8–12–04; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP96–200–127]**

### CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rate Filing

August 9, 2004.

Take notice that on August 4, 2004, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing and approval certain negotiated rate agreements between CEGT and Entergy Arkansas, Inc., Entergy Louisiana, Inc. and Entergy Gulf States, Inc. CEGT states that it has entered into several agreements to provide service to these shippers to be effective August 5, 2004.

CEGT indicates that it tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Third Revised Sheet No. 685, to be effective August 5, 2004.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–1821 Filed 8–12–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP04–440–000]**

### Gas Transmission Northwest Corporation; Notice of Proposed Changes In FERC Gas Tariff

August 9, 2004.

Take notice that on August 4, 2004, Gas Transmission Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1–A, the tariff sheets listed on Appendix A to the filing, to become effective September 3, 2004.

GTN states that the purpose of this filing is to correct, update or remove certain outdated Tariff provisions contained in GTN's Tariff and to make other minor "housekeeping" changes.

GTN states that a copy of this filing has been served on GTN's jurisdictional customers and interested State regulatory agencies.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically

should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–1818 Filed 8–12–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–81–019]**

### Kinder Morgan Interstate Gas Transmission LLC; Notice of Compliance Filing

August 9, 2004.

Take notice that on August 5, 2004, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1–B, Substitute Original Sheet No. 44A, to be effective April 1, 2004.

KMIGT states that the above-referenced tariff sheet reflects changes to the General Terms and Conditions of KMIGT's Tariff regarding term coordination provisions between contracts associated with planned, interconnecting pipeline projects.

KMIGT also states that the tariff sheet is being filed in compliance with the Commission's Letter Order issued in this proceeding on July 20, 2004.

KMIGT states that a copy of this filing has been served upon all parties to this proceeding, KMIGT's customers and affected state commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–1812 Filed 8–12–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER04–839–000 and ER04–839–001]**

### MAG Energy Solutions; Notice of Issuance of Order

August 9, 2004.

MAG Energy Solutions, Inc. (MAG) filed an application, as amended, for market-based rate authority, with an accompanying tariff. The proposed tariff provides for wholesale sales of energy and capacity at market-based rates. MAG also requested waiver of various Commission regulations. In particular, MAG requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by MAG.

On August 5, 2002, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by MAG should file a motion to intervene or protest 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).

Notice is hereby given that the deadline for filing motions to intervene or protest, is September 7, 2004.

Absent a request to be heard in opposition by the deadline above, MAG is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of MAG, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of MAG's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. 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 electronic filings.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–1814 Filed 8–12–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ES04–44–000]**

### MDU Resources Group, Inc.; Notice of Application

August 9, 2004.

Take notice that on July 30, 2004, MDU Resources Group, Inc. (MDU) submitted an application pursuant to section 204 of the Federal Power Act requesting that the Commission authorize the issuance of an additional

400,000 shares of common stock to be issued from time to time in connection with the Non-Employee Director Stock Compensation Plan.

MDU also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Any person desiring to intervene or to protest this filing 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 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 for TTY, contact (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.

*Comment Date:* 5 p.m. eastern time on August 26, 2004.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–1823 Filed 8–12–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP04–441–000]**

### Northern Border Pipeline Company; Notice of Proposed Changesin FERC Gas Tariff

August 9, 2004.

Take notice that on August 4, 2004, Northern Border Pipeline Company (Northern Border) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective September 3, 2004:

Eighth Revised Sheet No. 1;
Original Sheet No. 475;
Third Revised Sheet No. 268D.01;
Original Sheet No. 476;
Second Revised Sheet No. 268D.01a;
Original Sheet No. 477;
Original Sheet No. 268D.01b;
Eighth Revised Sheet No. 298A;
Original Sheet No. 478;
Sixth Revised Sheet No. 299;
Original Sheet No. 299A;
Original Sheet No. 479;
Original Sheet No. 474;
Original Sheet No. 480; and
Sheet Nos. 481—499.

Northern Border states that the purpose of this filing is to establish a standard form of Operational Balancing Agreement (OBA) as part of Northern Border's Tariff and to make all necessary housekeeping changes associated with the establishment of such agreement. Northern Border indicates that such agreement is designed to facilitate more efficient operations, accounting, and system management at physical point(s) of interconnection.

Northern Border states that it has served copies of its filing upon all of its contracted shippers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–1819 Filed 8–12–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP04–391–000]**

### Northern Natural Gas Company; Notice of Request Under Blanket Authorization

August 9, 2004.

Take notice that on July 30, 2004, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP04–391–000, an application pursuant to sections 157.205 and 157.211 of the Commission's Regulations for authorization to construct and operate delivery point facilities on its pipeline in Juneau County, Wisconsin, for deliveries to Merrick's, Inc., for its animal food processing plant. Northern states that it filed this application under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to section 7 of the NGA. Northern further states that it is estimated that the cost of the facilities would be $213,308, for which Northern would be reimbursed by Merrick's. Northern asserts that the addition of the delivery point will not have a significant impact on Northern's annual deliveries or peak day operations, because transportation will be provided under Northern's currently authorized level of service.

Any questions concerning this application may be directed to Michael T. Loeffler, Director, Certificates and Reporting, at (402) 398–7103, or Donna Martens, Senior Regulatory Analyst, at (402) 398–7138.

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 filed to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. 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 intervenors to file electronically.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–1813 Filed 8–12–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP04–442–000]**

### Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes In FERC Gas Tariff

August 9, 2004.

Take notice that on August 4, 2004, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, and the following tariff sheets, to become effective October 1, 2004:

Fifth Revised Sheet No. 337;
Second Revised Sheet No. 337.10;
First Revised Sheet No. 341A.

Transco states that the purpose of the instant filing is to revise Section 28.1(a) of the General Terms and Conditions (GT&C) to provide that the original nomination provided by a shipper for each day shall apply to the intraday cycles for the gas day unless the shipper revises the nomination. Transco also states that if, a shipper revises its nomination at any of the intraday cycles, the revised nomination shall apply to, or "roll forward" to, subsequent cycles within the gas day. Transco further states that it proposes to revise Section 28.9 of the GT&C to provide that the latest explicit confirmation provided by a point operator shall also roll forward to the remaining cycles within the gas day. Transco notes that it proposes these tariff changes as an enhancement to its 1Line system.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–1820 Filed 8–12–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. CP04–388–000; CP04–389–000; CP04–390–000]**

### Uzal, LLC; Notice of Application

August 9, 2004.

On July 30, 2004, Uzal, LLC (Uzal), 80 Park Plaza, T22, Newark, New Jersey, 07101–4194 filed an application in Docket No. CP04–388–000, pursuant to section 7(c) of the Natural Gas Act (NGA) to operate and maintain an existing liquefied natural gas (LNG) storage facility located near Lovelock in Pershing County, Nevada and an associated 61-mile, 20-inch diameter pipeline facility located in Pershing, Churchill, and Washoe Counties, Nevada. Uzal also requests, in Docket No. CP04–389–000, a blanket construction certificate under Part 157 of the Commission's regulations and, in Docket No. CP04–390–000, a blanket certificate under Part 284 of the Commission's Regulations to provide open-access firm and interruptible LNG storage and transportation services. Uzal states that the LNG and pipeline facilities are currently operated by Paiute Pipeline Company (Paiute) and are the subject of a pending abandonment application filed by Paiute in Docket No. CP04–343–000.

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 "e-Library" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676, or for TTY, (202) 502–8659.

Questions concerning this application may be directed to William M. Lange, Esq., Pillsbury Winthrop LLP, 1133 Connecticut Ave. NW., 11th Floor, Washington, DC 20365, 202–775–6633 (phone) 202–833–8491 (fax).

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project

should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

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.

*Comment Date:* August 30, 2004.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–1822 Filed 8–12–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER03–1410–001, et al.]**

### Fitchburg Gas and Electric Light Company, et al.; Electric Rate and Corporate Filings

August 9, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

**1. Fitchburg Gas and Electric Light Company**

[Docket No. ER03–1410–001]

Take notice that on July 30, 2004, Fitchburg Gas and Electric Light Company (FG&E) tendered for filing with the Commission an informational filing relating to the formula rates charged under its First Revised Open Access Transmission Tariff. FG&E states that the filing revises the annual transmission revenue requirement for Network Integration Transmission Service and charges for Firm and Non-firm Point-to-Point Transmission Service for the period June 1, 2004 through May 31, 2005 pursuant to FG&E's formula rates on file with the Commission.

FG&E states that a copy of the filing was served upon the Massachusetts Department of Telecommunications and Energy and on affected wholesale customers.

*Comment Date:* 5 p.m. eastern time on August 20, 2004.

**2. American Electric Power Service Corporation; PJM Interconnection, L.L.C.**

[Docket No. ER04–1072–000]

On August 5, 2004, the Commission issued a "Notice of Filing" in the above-referenced docket number. The notice was issued in error and is hereby rescinded.

**3. American Electric Power Service Corporation; PJM Interconnection, L.L.C.**

[Docket No. ER04–1072–000]

Take notice that on July 30, 2004, American Electric Power Service Corporation, as agent for certain operating companies of the American Electric Power System, (collectively AEP) and PJM Interconnection, L.L.C. (PJM), tendered for filing unexecuted Service Agreement No. 1055 under PJM's FERC Electric Tariff, Sixth Revised Volume No. 1 to meet the condition in the Commission's orders to hold harmless utilities in Michigan and Wisconsin from the financial impacts of loop flows and congestion resulting from the choice of AEP to participate as a transmission-owning member of PJM. AEP and PJM request an effective date of October 1, 2004.

AEP and PJM state that a copy of the filing was served upon parties to Docket No. ER04–364, AEP's transmission service customers, PJM members, the Midwest ISO, and the state regulatory commissions exercising jurisdiction over AEP.

*Comment Date:* 5 p.m. eastern time on August 20, 2004.

**4. Westar Energy, Inc.; Kansas Gas and Electric Company**

[Docket No. ER04–1083–000]

Take notice that on August 3, 2004, Westar Energy, Inc. (WE) submitted for filing Annually Revised Exhibit Pages 32–39, 41–50 to WE's Electric Power Transmission, and Service Contract with Kansas Electric Power Cooperative (KEPCo). WE also submitted, on behalf of its wholly owned subsidiary Kansas Gas and Electric Company, d/b/a Westar Energy (KGE), Revised Pages 32–26 to KGE's Electric Power, Transmission and Service Contract with KEPco. These revisions are part of WE's and KGE's annual exhibits filed with the Commission. WE requests an effective date of June 1, 2004 for the proposed revised pages.

WE states that copies of the filing were served upon KEPCo and the Kansas Corporation Commission.

*Comment Date:* 5 p.m. eastern time on August 24, 2004.

**5. Southern California Edison Company**

[Docket No. ER04–1084–000]

Take notice that on August 3, 2004 Southern California Edison Company (SCE) submitted for filing Service Agreement No. 26 under SCE's FERC Electric Tariff, Second Revised Volume No. 6, a Letter Agreement between SCE and the Blythe Energy, LLC (Blythe Energy). SCE states that the purpose of the Agreement is for SCE to provide Blythe Energy with certain transmission engineering and real estate data for two separate transmission projects: one from Western Area Power Administration's (Western) Buck Blvd. Substation to SCE's 230kV substation facilities at Metropolitan Water District's Julian

Hinds Pumping Plant Substation and the other from Western's Buck Blvd. Substation to a new 500–230–161 kV substation to be located adjacent to or under SCE's existing Palo Verde-Devers transmission line.

SCE states that copies of the filing were served upon the Public Utilities Commission of the State of California and Blythe Energy.

*Comment Date:* 5 p.m. eastern time on August 24, 2004.

**6. Panda Power Corporation**

[Docket No. ER04–1086–000]

Take notice that on August 3, 2004, Panda Power Corporation filed a Notice of Cancellation of its Electric Rate Schedule FERC No. 1, to be effective January 1, 2004.

*Comment Date:* 5 p.m. eastern time on August 24, 2004.

**7. California Independent System Operator Corporation**

[Docket No. ER04–1087–000]

Take notice that on August 3, 2004, the California Independent System Operator Corporation (ISO) tendered for filing Amendment No. 62 to the ISO Tariff. ISO states that the amendment modifies ISO tariff provisions regarding the implementation of a Real-Time Market Application and application of Uninstructed Deviation Penalties previously approved by the Commission.

ISO states that this filing has been served upon the Public Utilities Commission, the California Energy Commission, the California Electricity Oversight Board, all parties in Docket Nos. ER03–1046 and ER04–609, and all parties with effective Scheduling Coordinator Agreements under the ISO Tariff.

*Comment Date:* 5: p.m. eastern time on August 24, 2004.

**8. Southwest Power Pool, Inc.**

[Docket No. ER04–1088–000]

Take notice that on August 3, 2004, Southwest Power Pool, Inc. (SPP) submitted for filing an executed service agreement for Network Integration Transmission Service and an executed Network Operating Agreement with Southwestern Public Service Company (Southwestern). SPP requests an effective date of July 8, 2004..

SPP states that Southwestern was served with a copy of this filing.

*Comment Date:* 5 p.m. eastern time on August 24, 2004.

**9. El Paso Electric Company**

[Docket No. ER04–1089–000]

Take notice that on August 3, 2004, El Paso Electric Company (EPE) filed a Notice of Cancellation of Supplement No. 5 to FERC Electric Rate Schedule No. 16, a Contingent Capacity Agreement between EPE and Public Service Company of New Mexico. EPE requests an effective date October 1, 2004.

*Comment Date:* 5 p.m. eastern time on August 24, 2004.

**10. Tucson Electric Power Company**

[Docket No. ER04–1090–000]

Take notice that on August 3, 2004, Tucson Electric Power Company (Tucson Electric) tendered for filing Service Agreement No. 233 under Tucson Electric's FERC Electric Tariff Third Revised Volume No. 2, an Interconnection Agreement between Tucson Electric and Navopache Electric Cooperative. Tucson Electric requests an effective date of August 3, 2004.

*Comment Date:* 5 p.m. eastern time on August 24, 2004.

**11. Illinois Power Company**

[Docket No. ER04–1092–000]

Take notice that on August 3, 2004, Illinois Power Company (Illinois Power) submitted for filing a revised version of Service Agreement No. 390, pursuant to which Illinois Power takes Network Integration Transmission Service under its Open Access Transmission Tariff for the purpose of serving retail native load customers. Illinois Power requests an effective date of August 1, 2004.

*Comment Date:* 5 p.m. eastern time on August 24, 2004.

**Standard Paragraph**

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, . using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, . or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–1824 Filed 8–12–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 11858–002]**

### Elsinore Valley Municipal Water District, the Nevada Hydro Company, Inc.; Notice of Intent To Prepare an Environmental Impact Statement and Notice of Scoping Meetings and Site Visit and Soliciting Scoping Comments [1]

August 9, 2004.

Take notice that the following hydroelectric application has been filed with Commission and is available for public inspection:

a. *Type of Application:* major unconstructed project.

b. *Project No.:* 11858–02.

c. *Date filed:* February 2, 2004.

d. *Applicant:* Elsinore Valley Municipal Water District (District) and the Nevada Hydro Company, Inc.

e. *Name of Project:* Lake Elsinore Advanced Pumped Storage Project.

f. *Location:* On Lake Elsinore and San Juan Creek, near the City of Lake Elsinore, Riverside County, California. The project would, in whole or in part,

[1] The Elsinore Valley Municipal Water District is also using this notice as its notice of scoping meeting under Public Resources Code Section 21083.9(d), which states: "A scoping meeting that is held in the city or county within which the project is located pursuant to the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and the regulations adopted pursuant to that act shall be deemed to satisfy the requirement that a scoping meeting be held for a project subject to paragraph (2) of subdivision (a) if the lead agency meets the notice requirements of subdivision (b) or subdivision (c)." The full text of the statute can be viewed on the Internet at *http://www.ceres.ca.gov/ceqa*.

occupy federal lands, including lands managed by the Forest Service (Cleveland National Forest), Bureau of Land Management, and the Department of Defense (Camp Pendleton).

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Rexford Wait, The Nevada Hydro Company, Inc., 2416 Cades Way, Vista, California 92083, (760) 599–0086.

i. *FERC Contact:*[2] Jim Fargo, 202–502–6095, *james.fargo@ferc.gov.*

j. *Deadline for filing scoping comments:* October 11, 2004.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. This application is not ready for environmental analysis at this time.

l. *The proposed project would consist of:* (1) A new upper reservoir (Morrell Canyon) having a 180-foot-high main dam and a gross storage volume of at least 5,500 acre-feet, at a normal reservoir surface elevation of 2,880 feet above mean sea level (msl); (2) a powerhouse with two reversible pump-turbine units with a total installed capacity of 500 megawatts; (3) the existing Lake Elsinore to be used as a lower reservoir; (4) about 30 miles of 500 kV transmission line connecting the project to an existing transmission line owned by Southern California Edison located north of the proposed project and to an existing San Diego Gas & Electric Company transmission line located to the south, including substations and associated appurtenant facilities; and (5) local distribution facilities.

[2] The District's contact is Mr. Greg A. Morrison, Director of Legislative and Community Affairs, 31315 Chaney Street (P.O. Box 3000), Lake Elsinore, California 92531–3000.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Scoping Process. The Commission intends to prepare an Environmental Impact Statement (EIS) on the project in accordance with the National Environmental Policy Act. The EIS will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

**Scoping Meetings**

FERC staff will hold three scoping meetings in the project area. We invite all interested agencies, non-governmental organizations, Native American tribes, and individuals to attend one or more of the meetings and to assist the staff in identifying the scope of environmental issues to be analyzed in the EIS. The District staff will also be present to provide information about the project and to receive comments on the scope of environmental review under the California Environmental Quality Act. The times and locations of these meetings are as follows:

*Evening Scoping Meetings*

When: Wednesday, September 8, 2004, 6 p.m.–9 p.m.

Where: San Juan Capistrano Community Center, 25925 Camino del Avion, San Juan Capistrano, CA 92675.

When: Thursday, September 9, 2004, 7 p.m.–10 p.m.

Where: Elsinore Valley Municipal Water District Headquarters, 31315 Chaney Street, Lake Elsinore, CA 92531.

*Afternoon Scoping Meeting*

When: Thursday, September 9, 2004, 1 p.m. to 3 p.m.

Where: Elsinore Valley Municipal Water District Headquarters, 31315 Chaney Street, Lake Elsinore, CA 92531.

Copies of the Scoping Document (SD1) outlining the subject areas to be addressed in the EIS are being distributed to the parties on the Commission(s mailing list under separate cover. Copies of the SD1 will be available at the scoping meeting or may be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link (*see* item m above).

**Site Visit**

We also will visit the site of the proposed project facilities on September 8, meeting at the District headquarters, 31315 Chaney Street, Lake Elsinore, at 8 a.m. Participants on the site visits will need to provide their own transportation and bring their own lunch.

**Objectives**

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EIS; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EIS, including viewpoints in opposition to, or in support of, the staff(s preliminary views; (4) determine the resource issues to be addressed in the EIS; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

**Procedures**

The meetings are recorded by a stenographer and become part of the formal record of the Commission proceeding on the project.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meeting and to assist the staff in defining and clarifying the issues to be addressed in the EIS.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–1815 Filed 8–12–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 7264–010]**

### Fox River Paper Company and N.E.W. Hydro, Inc.; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

August 9, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent License for a Minor Project.

b. *Project No.:* P–7264–010.

c. *Date Filed:* January 22, 2003.

d. *Applicant:* Fox River Paper Company and N.E.W. Hydro, Inc.

e. *Name of Project:* Middle Appleton Dam Hydroelectric Project.

f. *Location:* Located on the Lower Fox River, Outagamie County, Wisconsin. This project does not use federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. John Rom, Manager, Fox River Paper Company, P.O. Box 2215, Appleton, Wisconsin 54913, 920–733–7341 or Mr. Arie DeWaal, Mead and Hunt, Inc., 6501 Watts Road, Madison Wisconsin 53719, 608–273–6380.

i. *FERC Contact:* John Ramer, (202) 502–8969 or E-Mail *john.ramer@ferc.gov*.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, ff an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments and recommendations may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* CFP. 385.200 (a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. This application has been accepted, and is ready for environmental analysis at this time.

l. The Middle Appleton Hydroelectric Project would consist of the following existing facilities: (1) A 372-foot-long by about 20-foot-high dam, topped with 15 functional and one non-functional, 20-foot-wide by 10-foot-high, steel Taintor gates; (2) a 35.5-acre reservoir with a gross storage capacity of about 195-acre feet; (3) two power channels, one about 500-foot-long by 40-foot-wide, and another 1,700-foot-long and from 120 foot-to 200-foot-wide; (4) three powerhouses containing seven open-flume Francis turbines with a total maximum hydraulic capacity of 1,650 cubic feet per second (cfs) and seven generating units with a total installed generating capacity of 1,190 kilowatts (kW) and producing a total of 8,635,000 kilowatt hours (kWh) annually; (5) two transformer banks and one 4.16-kilovolt (kV) transmission line; along with (6) appurtenant facilities. The dam and existing project facilities are owned by Fox River Paper Company and N.E.W. Hydro, Inc.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the elibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

All filings must (1) Bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS", "TERMS AND CONDITIONS", or "PRESCIPTIONS"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2005. All comments, recommendations, terms and conditions, or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–1816 Filed 8–12–04; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP04–386–000]**

### Northwest Pipeline Corporation; Notice of Technical Conference

August 9, 2004.

In an order issued July 30, 2004,[1] the Commission directed staff to convene a technical conference to discuss numerous issues raised by Northwest Pipeline Corporation's filing, including the appropriateness of pipeline capacity reductions, the structure and eligibility criteria for open seasons contemplated by the tariff changes ("reverse" open seasons), the exit fee, including how the fee is derived and why it must be paid as a lump sum. Other issues were raised by protestors/intervenors as well.

Take notice that a technical conference will be held on Tuesday August 24, 2004, at 10 a.m. e.s.t.), in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426.

All interested parties and staff are permitted to attend. For further information please contact: Harris Wood at (202) 502–8224.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–1817 Filed 8–12–04; 8:45 am]

**BILLING CODE 6717–01–P**

[1] Northwest Pipeline Company, 108 FERC ¶ 61,103 (2004).

## ENVIRONMENTAL PROTECTION AGENCY

[OAR–2004–0092, FRL–7801–1]

## Agency Information Collection Activities: Proposed Collection; Comment Request; Motor Vehicle Emission and Fuel Economy Compliance; Light Duty Vehicles, Light Duty Trucks, Motorcycles and Recreational Vehicles; EPA ICR Number 783.47, OMB Control Number 2060–0104

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on 2005 July 31. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before October 12, 2004.

**ADDRESSES:** Submit your comments, referencing docket ID number OAR 2004–0092, to EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-docket@epamail.epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Lynn Sohacki, Environmental Protection Agency, 2000 Traverwood, Ann Arbor MI 48105; telephone number: (734) 214–4851; fax number: (734) 214–4869; email address: *sochacki.lynn@epa.gov*.

**SUPPLEMENTARY INFORMATION:** EPA has established a public docket for this ICR under Docket ID number OAR–2004X–0092, which is available for public viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1744. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket*.

*Affected entities:* Entities potentially affected by this action are passenger car, light truck, motorcycle and recreational vehicle manufacturers and importers.

*Title:* Emission Compliance and Fuel Economy Information; Light Duty Vehicles, Light Duty Trucks, Motorcycles and Recreational Vehicles.

*Abstract:* Under the Clean Air Act (42 U.S.C. 7521 *et seq.*) manufacturers and importers of light duty vehicles (passenger cars), light trucks, motorcycles and recreational vehicles must have a certificate of conformity issued by EPA covering any vehicle they intend to offer for sale. In addition, light duty vehicle and light truck manufacturers and importers must also submit fuel economy information and reports required by the Energy Policy and Conservation Act (49 U.S.C. 32901 *et seq.*). EPA reviews vehicle information and test data to determine if the vehicle design conforms to applicable requirements and to verify that the required testing has been performed. After a certificate of conformity has been issued, subsequent audit and enforcement actions may be taken based on the initial information submitted as well as on information submitted while the vehicles are in service. Until a vehicle is available for purchase, information is confidential. Some proprietary information is permanently confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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.

*Burden Statement:* EPA estimates that 153 respondents will submit information each year spending a total of 542,118 hours and incurring an annualized cost of 10.9 million dollars. The average burden per respondent varies greatly; it is a function of the diversity of the products produced or imported. (A large, diversified motor vehicle manufacturer will have a much greater burden than a small importer of a few identical vehicles.) Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able

to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: August 6, 2004.

**Robert Brenner,**

*Acting Assistant Administrator for Air and Radiation.*

[FR Doc. 04–18577 Filed 8–12–04; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[OPPT–2003–0004; FRL–7674–1]**

### Access to Confidential Business Information by Versar Incorporated

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has authorized its contractor Versar Incorporated (Versar), of Springfield, VA, access to information which has been submitted to EPA under sections 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

**DATES:** Access to the confidential data will occur no sooner than August 20, 2004.

**FOR FURTHER INFORMATION CONTACT:** Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: *TSCA–Hotline@.epa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. General Information

*A. Does this Notice Apply to Me?*

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under TSCA. 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 Documents?*

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0004. 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 CBI or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in the EPA Docket Center, is (202) 566–0280.

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

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

#### II. What Action is the Agency Taking?

Under Contract Number EP–W–04–035, Versar, of 6850 Versar Center, Springfield, VA, will assist EPA in evaluating the exposure of new chemical substances including microorganisms. They will also assist in evaluating existing chemicals for exposure and the need to develop data bearing on such exposure.

In accordance with 40 CFR 2.306(j), EPA has determined that under Contract Number EP–W–04–035, Versar will require access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA, to perform successfully the duties specified under the contract.

Versar personnel will be given information submitted to EPA under sections 4, 5, 6, and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, and 8 of TSCA, that the Agency may provide Versar access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and Versar's site located at 6850 Versar Center, Springfield, VA. Versar will be authorized access to TSCA CBI at their facility, provided they comply with the provisions of EPA's *TSCA Confidential Business Information Security Manual.* Before access to TSCA CBI is authorized at Versar's site, EPA will perform the required inspection of the facility and ensure that the facility is in compliance with the Manual.

Clearance for access to TSCA CBI under Contract Number EP–W–04–035 may continue until June 30, 2009. Access will commence no sooner than August 20, 2004.

Versar personnel have signed nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

#### List of Subjects

Environmental protection, Confidential business information.

Dated: August 2, 2004.

**Brion Cook**

*Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 04–18585 Filed 8–12–04; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6654–6]**

### Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.* Weekly receipt of Environmental Impact Statements Filed August 2, 2004 through August 6, 2004 Pursuant to 40 CFR 1506.9.

EIS No. 040367, DRAFT SUPPLEMENT, COE, PA, Wyoming Valley Levee Raising Project, Design Modification and Recreational Enhancements, Wilkes-Barre, Pennsylvania River Commons, Susquehanna River, Luzerne County, PA, Comment Period Ends: September 27, 2004, Contact: William Abadie (410) 962–4713.This document is available on the Internet at: *http://www.nab.usace.army.mil/publications/non-reg_pub.htm.*

EIS No. 040368, FINAL EIS, AFS, NM, Sacramento, Dry Canyon and Davis Grazing Allotments, Authorization of Livestock Grazing Activities, Lincoln National Forest, Sacramento Ranger District, Otero County, NM, Wait Period Ends: September 13, 2004, Contact: Frank R. Martinez (505) 682–2551.

EIS No. 040369, DRAFT EIS, AFS, MT, ID, WY, Grizzly Bear Conservation for the Greater Yellowstone Area National Forests, Implementation, Amend Six Forest Plans: Beaverhead-Deerlodge National Forest, Bridger-Teton National Forest, Caribour-Targhee National Forest and Shoshone National Forest, MT,WY and ID, Comment Period Ends: November 12, 2004, Contact: Dave Cawrse (307) 527–6241.

EIS No. 040370, FINAL EIS, NPS, TX, Big Bend National Park General Management Plan, Implementation, Brewster County, TX, Wait Period Ends: September 13, 2004, Contact: John Paige (915) 477–2251. This document is available on the Internet at: *http://www.eh.doe.gov/nepa/documents.html.*

EIS No. 040371, FINAL EIS, AFS, MN, Chippewa and Superior National Forests Land and Resource Management Plans Revision, Implementation, Beltrami, Cass, Itasca, Cook, Lake and St. Louis Counties, MN, Wait Period Ends: September 13, 2004, Contact: Duane Lula (218) 626–4300.

EIS No. 040372, DRAFT EIS, NPS, AL, Selma to Montgomery National Historic Trail Comprehensive Management Plan, Implementation, Dallas, Lowndes and Montgomery Counties, AL, Comment Period Ends: September 27, 2004, Contact: John Barrett (404) 562–3124.

EIS No. 040373, DRAFT EIS, USA, TX, Fort Bliss, Texas Proposed Leasing of Lands, Proposed Siting, Construction and Operation, by the City of El Paso of a Brackish Water Desalination Plant and Support Facilities, El Paso Water Utilities (EPWU), City of El Paso, TX and New Mexico, Comment Period Ends: September 27, 2004, Contact: John Barrera (915) 568–3908.

EIS No. 040374, FINAL EIS, AFS, OR, Davis Fire Recovery Project, Moving Resource Conditions Closer to the Desired Conditions, Deschutes National Forest, Crescent Ranger District, Deschutes and Klamath Counties, OR, Wait Period Ends: September 13, 2004, Contact: Chris Mickle (541) 433–3216.

EIS No. 040375, FINAL EIS, BLM, OR, Andrews Management Unit/Steens Mountain Cooperative Management and Protection Area Resource Management Plan, Implementation, Harney and Malheur Counties, OR, Wait Period Ends: September 13, 2004, Contact: Gary Foulkes (541) 573–4541.

EIS No. 040376, DRAFT EIS, FHW, OR, Spencer Creek Bridge U.S. Highway 101 Replacement Project, To Maintain the Connectivity and Highway Functions of U.S. 101 between Otter River and Watt Creek, Funding, Lincoln County, OR, Comment Period Ends: September 27, 2004, Contact: John Gernhauser (503) 399–5749.

EIS No. 040377, DRAFT EIS, AFS, WY, Yates Petroleum Federal #1 Oil and Gas Lease, Application for Permit To Drill (APD), Medicine Bow-Routt National Forests and Thunder Basin National Grassland, Duck Creek, Campbell County, WY, Comment Period Ends: September 27, 2004, Contact: Liz Moncrief (307) 745–2456.

EIS No. 040378, DRAFT SUPPLEMENT, NRC, AL, Generic EIS—License Renewal of Nuclear Plants, Joseph M. Farley Nuclear Plants, Units 1 and 2, Supplemental 18 to NUREG–1437, (TAC Nos. MCO768 and MCO769), Houston County, AL, Comment Period Ends: November 5, 2004, Contact: Jack Cushing (301) 415–1424.

EIS No. 040379, FINAL EIS, DOD, Programmatic EIS—Chemical and Biological Defense Program, Protection of our Soldiers, Sailors, Marines and Airmen on the Battlefield, United States and other Countries, Wait Period Ends: September 13, 2004, Contact: JoLane Souris (301) 619–2004.

**Amended Notices**

EIS No. 040339, DRAFT EIS, NPS, GA, Chattahoochee River National Recreation Area General Management Plan, Implementation, Chattahoochee River,Atlanta, GA, Comment Period Ends: November 15, 2004, Contact: Dave Elk (678) 538–1321. Revision of FR Notice Published on 7/30/04: CEQ Comment PeriodEnding 9/13/2004 has been Extended to 11/15/2004.

EIS No. 040350, DRAFT EIS, FAA, VA, Norfolk International Airport Project, Construction and Operation for the New Air Carrier Runway and Associated Improvements, 1995 Master Plan and the April 2004 Airport Layout Plan, Norfolk Airport Authority (NAA), Norfolk, VA, Comment Period Ends: September 20, 2004, Contact: Brad Mehaffy (703) 661–1364. Revision of FR Notice Published on 8/06/2004: Officially Withdrawn by the Preparing Agency by letter Dated 08/4/2004.

Dated: August 10, 2004.

**B. Katherine Biggs,**

*Associate Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 04–18540 Filed 8–12–04; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6654–7]**

### Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 574–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 2, 2004 (69 FR 17403).

**Draft EISs**

ERP No. D–FHW–G40182–AR Rating LO, I–69 Section of Independent Utility 13 EL Dorado to McGehee, Construction of Four-Lane DividedAccess Facility, U.S. Coast Guard Bridge Permit, NPDES Permit, and U.S. Army COE Section 404 Permit, Ouachita River, Ouachita, Union, Calhoun, Bradley Drew and Desha Counties, AR.

*Summary:* EPA has no objection to the selection of the preferred alternative.

ERP No. D–HUD–K60034–CA Rating LO, Marysville Hotel Demolition Project, Proposed Acquisition and Demolition of Building, City of Marysville, Yuba County, CA.

*Summary:* EPA has no objection to the proposed project. EPA requested that the Final EIS address the new 8-hour ozone National Ambient Air Quality Standard (NAAQS).

ERP No. D–NPS–L65458–ID Rating LO, Craters of the Moon National Monument and Preserve, Update and Consolidate Management Plans into One Comprehensive Plan, Snake River Plain, Blaine, Butte, Lincoln and Minidoka Counties, ID.

*Summary:* EPA supports Alternative D, but recommended including additional information for identifying and managing water resources and cultural resources.

ERP No. DA–FHW–C40129–NY Rating EC2, NY–9A Reconstruction Project, West Thames Street to Chambers Street in Lower Manhattan the Result of September 11, 2001 Attack,

Lower Manhattan Redevelopment, New York County, NY.

*Summary:* EPA has environmental concerns with the impacts to air quality and requests additional analysis of the cumulative impacts to air quality ($NO_x$ and VOC). EPA also asked more information be provided regarding: traffic analyses; hazardous materials; and mitigation proposals and commitments.

**Final EISs**

ERP No. F–AFS–J65362–MT Pipestone Timber Sale and Restoration Project, Timber Harvest, Prescribed Fire Burning, Watershed Restoration and Associated Activities, Kootenai National Forest, Libby Ranger District, Lincoln Lincoln County, MT.

*Summary:* EPA expressed lack of objection to the proposed action. However, EPA believes that minor changes to the proposal would provide for additional opportunities to apply water quality mitigation measures.

ERP No. F–AFS–L65435–ID Mission Brush Project, Proposes Vegetation, Wildlife Habitat, Recreation and Aquatic Improvement Treatments, Idaho Panhandle National Forests, Bonners Ferry Ranger District, Bounty County, ID.

*Summary:* EPA continues to express environmental concerns with the potential impacts to water temperature and increased sediment loading on streams; potential increase in invasive species; adverse impacts to regional biodiversity; and cumulative impacts.

ERP No. F–COE–K36138–AZ El Rio Antiguo Feasibility Study, Ecosystem Restoration along the Rillito River, Pima County, AZ.

*Summary:* No comment letter was sent to the preparing agency.

ERP No. F–FHW–D40314–MD MD–97 Brookeville Project Improvements and Preservation, South of Gold Mine Road to North of Holliday Drive, Funding and U.S. Army Corps of Engineers Section 10 and 404 Permits Issuance, Montgomery County, MD.

*Summary:* The final EIS adequately addressed EPA's comments.

ERP No. F–FRC–K05228–CA Pit 3, 4, 5 Hydroelectric Project, (FERC No. 233–081), Application for New License, Pit River, Pit River Basin, Shasta-Trinity National Forest and Lassen National Forest, ShastaCounty, CA.

*Summary:* No comment letter was sent to the preparing agency.

ERP No. F–NPS–K65253–CA Whiskeytown Fire Management Plan, Implementation, Whiskeytown National Recreation Area, Klamath Mountains, Shasta County, CA.

*Summary:* EPA expressed no objection to the proposed action.

Dated: August 10, 2004.

**B. Katherine Biggs,**

*Associate Director, Office of Federal Activities.*

[FR Doc. 04–18541 Filed 8–12–04; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2004–0184; FRL–7364–9]**

## Methoxyfenozide; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

**DATES:** Comments, identified by docket identification (ID) number OPP–2004–0184, must be received on or before September 13, 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:** Joseph Tavano, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6411; e-mail address: *josephtavano@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 a agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

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

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

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2004–0184. 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. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA's 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–2004–0184. 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–2004–0184. 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–2004–0184.

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–2004–0184. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

*D. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

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

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

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

**II. What Action is the Agency Taking?**

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on the pesticide petition.

**List of Subjects**

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 2, 2004.

**Betty Shackleford,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

**Summary of Petition**

The petitioner's summary of the pesticide petition (PP) is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

**Dow AgroSciences**

*PP 3F6794*

EPA has received a pesticide petition 3F6794 from Dow AgroSciences, 9330 Zionsville Road, Indianapolis, IN 46268 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of methoxyfenozide in or on the raw agricultural commodity soybean, seed at 2 parts per million (ppm), soybean, forage at 45 ppm, soybean, hay at 65 ppm, soybean, aspirated grain fractions at 200 ppm, soybean, hulls at 3 ppm, soybean, meal at 0.1 ppm, soybean, oil at 1.0 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

*A. Residue Chemistry*

1. *Plant metabolism.* The qualitative nature of methoxyfenozide residues in plants and animals is adequately understood and was previously published in the **Federal Register** of July 5, 2000 (65 FR 41355) (FRL–6497–5).

2. *Analytical method.* Adequate enforcement methods are available for determination of methoxyfenozide residues in plant commodities. The available Analytical Enforcement Methodology was previously reviewed in the **Federal Register** of September 20, 2002 (67 FR 59193) (FRL–7198–5).

3. *Magnitude of residues.* Complete residue data for methoxyfenozide on soybeans has been submitted. The requested tolerances are adequately supported.

*B. Toxicological Profile*

The toxicological profile and endpoints for methoxyfenozide which supports this petition to establish tolerances were previously published in the **Federal Register** of September 20, 2002 (67 FR 59193).

*C. Aggregate Exposure*

1. *Dietary exposure.* Assessments were conducted to evaluate potential risks due to chronic and acute dietary exposure of the U.S. population subgroups to residues of methoxyfenozide. These analyses cover all registered crops, as well as, uses pending with the Agency, active and proposed section 18 uses, and proposed IR–4 minor uses. There are no registered residential nonfood uses of methoxyfenozide.

i. *Food*—a. *Acute risk.* No appropriate toxicological endpoint attributable to a single exposure was identified in the available toxicology studies on methoxyfenozide including the acute neurotoxicity study in rats, the developmental toxicity study in rats and the developmental toxicity study in rabbits. Since no acute toxicological endpoints were established, Dow AgroSciences considers acute aggregate risk to be negligible.

b. *Chronic.* Assessments were conducted to evaluate potential risks due to chronic dietary exposure of the U.S. population and selected population subgroups to residues of methoxyfenozide. These analyses cover all registered crops, uses pending with the EPA, active and proposed section 18 uses and new proposed IR–4 uses. Dow AgroSciences used the Dietary Exposure Evaluation Model (DEEM), Novigen Sciences, Washington, DC software for conducting a chronic dietary (food) risk analysis. DEEM is a dietary exposure analysis system that is used to estimate exposure to a pesticide chemical in foods comprising the diets of the U.S. population, including population subgroups. DEEM contains food consumption data as reported by respondents in the United States Department of Agriculture (USDA) Continuing Surveys of Food Intake by Individuals conducted in 1994 to 1998. Dow AgroSciences assumed 100% of crops would be treated and contain methoxyfenozide residues at the tolerance level. The resulting dietary exposure analysis is summarized in Table 1.

The resulting dietary food exposures occupy up to 49.4% of the chronic population adjusted dose (PAD) for the most highly exposed population subgroup, children 1 to 2 years old. These results should be viewed as conservative (health protective) risk estimates. Refinements such as use of percent crop-treated information and/or anticipated residue values would yield even lower estimates of chronic dietary exposure.

TABLE 1.—CHRONIC DIETARY EXPOSURE ANALYSIS BY DEEM (TIER 1)

| Population Subgroup | Exposure milligrams/kilogram/day (mg/kg/day) | Percent of chronic PAD |
|---|---|---|
| U.S. population - (total) | 0.022050 | 21.6 |
| All infants (<1–year) | 0.025136 | 24.6 |
| Nursing infants | 0.012513 | 12.3 |
| Non-nursing infants | 0.029929 | 29.3 |

TABLE 1.—CHRONIC DIETARY EXPOSURE ANALYSIS BY DEEM (TIER 1)—Continued

| Population Subgroup | Exposure milligrams/kilogram/day (mg/kg/day) | Percent of chronic PAD |
|---|---|---|
| Children (1 to 6 years old) | 0.042473 | 41.6 |
| Children (1 to 2 years old) | 0.050351 | 49.4 |
| Children (7 to 12 years old) | 0.024944 | 24.5 |
| Females 13+ (nursing) | 0.021631 | 21.2 |
| Non-Hispanic/non-white/non-black | 0.030599 | 30.0 |

Percent chronic PAD - (exposure divided by chronic PAD x 100%). The subgroups listed are:

- The U.S. population (total).
- Those for infants and children.
- The most highly exposed of the females sub-groups, in this case females 13+ (nursing).
- The most highly exposed of the remaining subgroups, in this case non-hispanic/non-white/non-black.

ii. *Drinking water.* There are no water-related exposure data from monitoring to complete a quantitative drinking water exposure analysis and risk assessment for methoxyfenozide. Generic Expected Environmental Concentration (GENEEC) and/or EPA's Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) (both produce estimates of pesticide concentration in a farm pond) are used to generate estimated environmental concentrations (EECs) for surface water and Screening Concentration in Ground Water (SCI-GROW) (an empirical model based upon actual monitoring data collected for a number of pesticides that serve as benchmarks) predicts EECs in ground water. These models take into account the use patterns and the environmental profile of a pesticide, but do not include consideration of the impact that processing 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 at this stage is to provide a coarse screen for assessing whether a pesticide is likely to be present in drinking water at concentrations which would exceed human health levels of concern.

A drinking water level of comparison (DWLOC) is the concentration of a pesticide in drinking water that would be acceptable as a theoretical upper limit in light of total aggregate exposure to that pesticide from food, water, and residential uses. EPA's Health Effects Division (HED) uses DWLOCs internally in the risk assessment process as a surrogate measure of potential exposure associated with pesticide exposure through drinking water. In the absence of monitoring data for a pesticide, the DWLOC is used as a point of comparison against the conservative EECs provided by computer modeling (SCI-GROW, GENEEC, PRZM/EXAMS).

a. *Acute exposure and risk.* Because no acute dietary endpoint was determined, Dow AgroSciences concludes that there is a reasonable certainty of no harm from acute exposure from drinking water.

b. *Chronic exposure and risk.* Tier II screening-level assessments can be conducted using the simulation models SCI-GROW and PRZM/EXAMS to generate EECs for ground water and surface water, respectively. The modeling was conducted based on the environmental profile and the maximum seasonal application rate proposed for methoxyfenozide (1.0 lb active ingredient (a.i.)/acre/season). PRZM/EXAMS was used to generate the surface water EECs, because it can factor the persistent nature of the chemical into the estimates.

The EECs for assessing chronic aggregate dietary risk used by HED are 3.5 parts per billion (ppb) (in ground water, based on SCI-GROW) and 30 ppb (in surface water, based on the PRZM/EXAMS, long-term mean). The back-calculated DWLOCs for assessing chronic aggregate dietary risk range from 516 ppb for the most highly exposed population subgroup (children 1 to 2 years old) to 2,798 ppb for the U.S. population (total).

The SCI-GROW and PRZM/EXAMS chronic EECs are less than the Agency's level of comparison (the DWLOC value for each population subgroup) for methoxyfenozide residues in drinking water as a contribution to chronic aggregate exposure. Dow AgroSciences thus concludes with reasonable certainty that residues of methoxyfenozide in drinking water will not contribute significantly to the aggregate chronic human health risk and that the chronic aggregate exposure from methoxyfenozide residues in food and drinking water will not exceed the Agency's level of concern (100% of the chronic PAD) for chronic dietary aggregate exposure by any population subgroup. EPA generally has no concern for exposures below 100% of the chronic PAD, because it is a level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to the health and safety of any population subgroup. This risk assessment is considered high confidence, conservative, and very protective of human health.

TABLE 2.—DWLOC FOR CHRONIC EXPOSURE TO METHOXYFENOZIDE

| Population Group | cPAD (mg/kg bwt/day) | Dietary Exposure[a] (mg/kg bwt/day) | DWLOC[b] gram/Liter (µg/L) | Surface water (µg/L) | Ground water (µg/L) |
|---|---|---|---|---|---|
| U.S. population (total) | 0.102 | 0.022050 | 2798 | 30 | 3.5 |
| All infants (<1–year old) | 0.102 | 0.025136 | 769 | 30 | 3.5 |
| Children (1–2years old) | 0.102 | 0.050351 | 516 | 30 | 3.5 |
| Females (13–49years old) | 0.102 | 0.019634 | 2471 | 30 | 3.5 |

[a] From DEEM Analysis
[b] DWLOC = (cPAD - dietary exposure) x body weight/drinking water consumption

2. *Non-dietary exposure.* Methoxyfenozide is not currently registered for use on any residential non-food sites. Therefore, there is no non-dietary acute, chronic, short-term or intermediate-term exposure.

*D. Cumulative Effects*

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

EPA does not have, at this time, available data to determine whether methoxyfenozide has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, methoxyfenozide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, it is assumed that methoxyfenozide does not have a common mechanism of toxicity with other substances.

*E. Safety Determination*

1. *U.S. population.* Using the DEEM exposure assumptions described in this unit, Dow AgroSciences has concluded that aggregate exposure to methoxyfenozide from the proposed new tolerances will utilize 21.6% of the chronic PAD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is children 1 to 2 years old at 49.4% of the chronic PAD and is discussed below. EPA generally has no concern for exposures below 100% of the chronic PAD because the chronic PAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to methoxyfenozide in drinking water, the aggregate exposure is not expected to exceed 100% of the chronic PAD. Dow AgroSciences concludes that there is a reasonable certainty that no harm will result from aggregate exposure to methoxyfenozide residues.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of methoxyfenozide, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional ten–fold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines 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 margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (UF) (usually 100 for combine interspecies and intraspecies variability) and not the additional ten–fold MOE/UF when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

The toxicology data base for methoxyfenozide included acceptable developmental toxicity studies in both rats and rabbits as well as a 2–generation reproductive toxicity study in rats. The data provided no indication of increased sensitivity of rats or rabbits to *in utero* and/or postnatal exposure to methoxyfenozide. There is a complete toxicity data base for methoxyfenozide and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. Based on the completeness of the data base and the lack of prenatal and postnatal toxicity, EPA determined that an additional safety factor was not needed for the protection of infants and children.

Since no toxicological endpoints were established, acute aggregate risk is considered to be negligible. Using the exposure assumptions described in this unit, Dow AgroSciences has concluded that aggregate exposure to methoxyfenozide from the proposed new tolerances will utilize 49.4% of the cPAD for infants and children. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to methoxyfenozide in drinking water, Dow AgroSciences does not expect the aggregate exposure to exceed 100% of the cPAD. Short and intermediate term risks are judged to be negligible due to the lack of significant toxicological effects observed. Based on these risk assessments, Dow AgroSciences concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to methoxyfenozide residues.

*F. International Tolerances*

There are no Codex or Canadian maximum residue levels (MRLs) established for residues of methoxyfenozide. Mexican MRLs are established for residues of methoxyfenozide in cottonseed (0.05 ppm) and maize (0.01 ppm). The U.S. tolerances on these commodities are 2.0 ppm and 0.05 ppm, respectively. Based on the current use patterns, the U.S. tolerance levels cannot be reduced to harmonize with the Mexican MRLs, so incompatibility will exist.

[FR Doc. 04–18576 Filed 8–12–04; 8:45 am]
BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2004–0157; FRL–7371–7]**

## S-metolachlor; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

**DATES:** Comments, identified by docket ID number OPP–2004–0157, must be received on or before September 13, 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:** Sidney Jackson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number:

(703) 305–7610; e-mail address:*jackson.sidney@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does This Action Apply to Me?*

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

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

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

### *B. How Can I Get Copies of This Document and Other Related Information?*

1. *EPA Docket.* EPA has established an official public docket for this action under docket ID number OPP–2004–0157. 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, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

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

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on 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–2004–0157. 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–2004–0157. 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–2004–0157.

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, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2004–0157. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

*D. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

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

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

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

**II. What Action is the Agency Taking?**

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

**List of Subjects**

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 4, 2004.

**Lois Rossi**

*Director, Registration Division, Office of Pesticide Programs.*

**Summary of Petition**

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3), except in this notice, the full text of the petition summary is incorporated by reference. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

**Interregional Research Number 4 (IR-4)**

*PP 3E6787*

EPA has received a pesticide petition (3E6787) from IR-4, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR 180.368(a)(2) by establishing tolerances for combined residues (free and bound) of the herbicide S-metolachlor acetamid,2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)-, (*S*) and its metabolites, determined as the derivatives, 2-(2-ethyl-6-methylphenyl)amino-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound, S-metolachlor, in or on the following raw agricultural commodities (RACs):

1. Brassica, head and stem, subgroup 5A at 0.5 parts per million (ppm).

2. Cattle, fat at 0.04 ppm; cattle, kidney at 0.20 ppm; cattle, meat at 0.04 ppm; cattle, meat byproducts, except kidney at 0.04 ppm.

3. Corn, field, grain at 0.10 ppm; corn, field, stover at 6.0 ppm; corn, field, forage at 6.0 ppm; corn, sweet, forage at 6.0 ppm; corn, sweet, stover at 6.0 ppm; corn, pop, stover at 6.0 ppm; corn, pop, grain at 6.0 ppm; corn, sweet, kernel plus cob with husk removed at 0.1 ppm.

4. Cotton, gin byproducts at 4.0 ppm; cotton, undelinted seed at 0.1 ppm.

5. Egg at 0.04 ppm.

6. Garlic, bulb at 0.1 ppm.

7. Goat, fat at 0.04 ppm; goat, kidney at 0.20 ppm; goat, meat at 0.04 ppm; goat, meat byproducts, except kidney at 0.04 ppm.

8. Horse, fat at 0.04 ppm; horse, kidney at 0.20 ppm; horse, meat at 0.04 ppm; Horse, meat byproducts, except kidney at 0.04 ppm.

9. Leaf petioles subgroup 4B at 0.10 ppm.

10. Milk at 0.02 ppm.

11. Onion, dry bulb at 0.1 ppm; onion, green at 2.0 ppm.

12. Pea and bean, dried shelled, except soybean, subgroup 6C at 0.1 ppm.

13. Peanut at 0.2 ppm; peanut, hay at 20 ppm; peanut, meal at 0.40.

14. Poultry, fat at 0.04 ppm; poultry, meat at 0.04 ppm; poultry, meat byproducts, except liver at 0.04 ppm.

15. Safflower, seed at 0.1 ppm.

16. Shallot at 0.1 ppm.

17. Sheep, fat at 0.04 ppm; sheep, kidney at 0.20 ppm; sheep, meat at 0.04 ppm; sheep, meat byproducts, except kidney at 0.04 ppm.

18. Sorghum grain, stover at 4.0 ppm; sorghum grain, forage at 1.0 ppm; sorghum grain, grain at 0.3 ppm.

19. Soybean, seed at 0.2 ppm; soybean, forage at 5.0 ppm; soybean, hay at 8.0 ppm.

20. Vegetable, foliage of legume, except soybean, subgroup 7A at 15 ppm.

21. Vegetable, fruiting, group 8 at 0.5 ppm.

22. Vegetable, legume, edible podded, subgroup 6A at 0.5 ppm.

23. Vegetable, root, except sugar beet, subgroup 1B at 0.3 ppm.

24. Vegetable, tuberous and corm, subgroup 1C at 0.2 ppm.

IR-4 proposes to amend 40 CFR 180.368(a)(2) by removing tolerances established for the combined residues (free and bound) of the herbicide S-metolachlor acetamid, 2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)-, (*S*) and its metabolites, determined as the derivatives, 2-(2-ethyl-6-methylphenyl)amino-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound, S-metolachlor, in or on the following RACs: Carrot, roots at 0.20 ppm; horseradish at 0.20 ppm; onion, green at 0.20; rhubarb at 0.10 ppm; Swiss chard at 0.10 ppm; celery at 0.10 ppm; and tomato at 0.1 ppm.

IR-4 also proposes, upon approval of the aforementioned tolerances, to amend 40 CFR 180.368(b)(2) by deleting the time-limited tolerance for the combined residues (free and bound) of the herbicide S-metolachlor [(S)-2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl) acetamide], its R-enantiomer and its metabolites, determined as the derivatives, 2-(2-ethyl-6-methylphenyl)amino-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound, in or on the RAC sweet potato, roots at 0.2 ppm.

Additionally, IR-4 proposes to amend 40 CFR 180.368(d) by establishing tolerances for combined residues (free and bound) of the herbicide S-metolachlor acetamid, 2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)-, (*S*) and its metabolites, determined as the derivatives, 2-(2-ethyl-6-methylphenyl)amino-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound, S-metolachlor, in or on the following RACs:

1. Animal feed, nongrass, group 18 at 1.0 ppm.

2. Barley, grain at 0.1 ppm; barley straw at 0.1 ppm.

3. Buckwheat, grain at 0.1 ppm.

4. Oat, forage at 0.5 ppm; oat, grain at 0.1 ppm; oat straw at 0.5 ppm.

5. Peanut, meal at 0.4 ppm.

6. Rice, grain at 0.1 ppm; rice, straw at 0.5 ppm.

7. Rye, forage at 0.5 ppm; rye, grain at 0.1 ppm; rye straw at 0.5 ppm.

8. Wheat, forage at 0.5 ppm; wheat grain at 0.1 ppm; wheat straw at 0.5 ppm.

EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition. This notice includes a summary of the petition prepared by the registrant, Syngenta Crop Protection, 410 Swing Road, Greensboro, NC 27419. For a detailed discusssion of the petitioner's synopsis of the science findings from environmental and human health assessments of this agricultural pesticide, please refer to the**Federal Register** of August 13, 2003 (68 FR 48373) (FRL–7320–9), "S-Metolachlor; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food."

[FR Doc. 04–18553 Filed 8–12–04; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

[FRL–7800–9]

## State Program Requirements; Revisions to the National Pollutant Discharge Elimination System (NPDES) Program; LA

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposal to Approve Revisions to the Louisiana Pollutant Discharge Elimination System Program.

**SUMMARY:** Pursuant to a request by the Environmental Protection Agency (EPA) and as required by the regulations, the State of Louisiana has submitted a request for approval of revisions to the Louisiana Pollutant Discharge Elimination System (LPDES) program, which was originally approved on August 26, 1996. Through the submission of the revised program authorization documents, including a complete program description, a Memorandum of Agreement (MOA) with EPA Region 6, and an Attorney General's Statement, the Louisiana Department of Environmental Quality (LDEQ) seeks approval of the proposed revisions to the LPDES program. Today, EPA Region 6 is providing public notice of its intent to approve the proposed revisions to the LPDES program and announcing a 30-day public comment period on the proposed revisions accompanied by an opportunity for a public hearing, if requested. EPA will either approve or disapprove the State's request based upon the requirements after considering all comments received. EPA and LDEQ want the citizens of Louisiana to understand the proposed revisions to the LPDES program and encourage public participation in the decision making process. Therefore, EPA requests that the public review the revised program documents and provide any appropriate comments.

**DATES:** The public comment period on the revised LPDES program will be from the date of publication until September 13, 2004. Comments must be received or post-marked by no later than midnight on September 13, 2004. A public hearing will be held if there is significant public interest based upon requests received prior to the end of the 30-day public comment period.

**ADDRESSES:** Send all paper copy comments to: Diane Smith, Water Quality Protection Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202. Comments may also be submitted electronically to the following e-mail address:

*"smith.diane@epa.gov"*. For those without regular access to an e-mail system, electronic comments on this notice may be filed online at many public libraries.

All public comments should reference the LPDES Program Revision and may be in either paper or electronic format. If submitting comments in paper format, please submit the original and three copies of your comments and enclosures (including references). To ensure that EPA can read, understand, and properly respond to comments, EPA would prefer that comments be typed or legibly written and that commentors cite the paragraph(s) or section(s) in the notice or supporting documents to which each comment refers. Commentors who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope.

Electronic comments must be submitted as an ASCII file or in WordPerfect 6/7/8/9.0 format, avoiding the use of special characters and forms of encryption. Electronic comments should be identified as pertaining to the LPDES Program Revision. EPA requests that electronic comments also include the commentor's postal mailing address. No Confidential Business Information (CBI) should be submitted through e-mail. Comments and data will also be accepted on disks in WordPerfect 67/8/9.0 format or ASCII file format.

**FOR FURTHER INFORMATION CONTACT:** Diane Smith at the EPA address listed above or by calling (214) 665–2145 or FAX (214) 665–7373.

**SUPPLEMENTARY INFORMATION:** Pursuant to an October 9, 2001, petition from numerous environmental groups in Louisiana requesting EPA withdraw LDEQ's authorization to administer the LPDES program and EPA program reviews of the water permitting and enforcement programs, EPA delineated seven performance measures for LDEQ in a letter dated February 14, 2003, from Tracy Mehan, former EPA Assistant Administrator for Water, and John Peter Suarez, former EPA Assistant Administrator for Enforcement and Compliance Assurance, to former Governor M. J. Foster. Former Governor Foster replied in a letter dated March 27, 2003, with the commitment of LDEQ and the State of Louisiana to complete the seven performance measures. With the submission of the revision to the LPDES program, LDEQ completed the last of the seven performance measures. Regional Administrator Richard Greene notified Governor Kathleen Blanco of the completion of the performance measures in a letter dated May 13, 2004. After evaluation of the comments and other information related to this **Federal Register** notice regarding the revision to the LPDES program authorization, EPA will make a determination on the petition.

Section 402 of the Clean Water Act (CWA) created the National Pollutant Discharge Elimination System (NPDES) program under which EPA may issue permits for the point source discharge of pollutants to waters of the United States under conditions required by the Act. Section 402(b) requires EPA to authorize a state to administer an equivalent state program, upon the Governor's request, provided the state has appropriate legal authority and a program sufficient to meet the Act's requirements.

The regulatory requirements for state program approval are set forth in 40 CFR Part 123. This **Federal Register** notice only addresses issues raised in the performance measures previously discussed and the revisions to the program made by LDEQ since its initial program approval on August 26, 1996. EPA will not make a final decision on the LPDES program revision until all public comments provided during the public comment period and at any public hearing have been considered or responded to. When EPA takes final action on the proposed revisions to the LPDES program, the Regional Administrator will notify the State, sign the final MOA, and publish notice of the action in the **Federal Register**.

### Addresses for Viewing/Obtaining Copies of Documents

Copies of Louisiana's LPDES program documents (referred to throughout this notice as "the revised program documents") and all other documents in the official record are available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, at EPA Region 6, 12th Floor Library, 1445 Ross Ave., Dallas, Texas 75202.

Copies of the revised program documents are also available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding state holidays, at LDEQ, Galvez Building, 602 North Fifth Street, Baton Rouge, Louisiana, 70802, LDEQ Public Records Center, Room 127.

The revised program documents can also be found at *http://www.epa.gov/region6/water/lpdes*. Part or all of the revised program documents (which comprises approximately 2096 pages) may be copied at the LDEQ office in Baton Rouge, or EPA's office in Dallas, at a minimal cost per page or in electronic format. The revised documents include the following:

MOA Between LDEQ and EPA

LPDES Program Description and Appendices

- Appendix A—List of Acronyms and Abbreviations
- Appendix B—LDEQ Organizational Structure
- Appendix C—Deadlines for Rulemaking Activities
- Appendix D—Policy Number 0003–88, Rule Development Procedure
- Appendix E—LPDES Permit Applications
- Appendix F—Policy Number 0005–90, Public Records Requests Procedures
- Appendix G—Standard Operating Procedures (SOPs) for the Office of Environmental Compliance, Surveillance Division Supporting LPDES
- Appendix H—SOPs for the Office of Environmental Compliance, Enforcement Division Supporting LPDES
- Appendix I—SOPs for the Office of Environmental Services, Assistance Division Supporting LPDES
- Appendix J—SOPs for the Office of Environmental Services, Permits Division Attorney General's Statements

### Summary of the Proposed Revisions to the LPDES Program

#### Memorandum of Agreement

*Section II. Program Responsibilities*

II.A. LDEQ Program Responsibilities

II.A.4. This section has been amended to include a reference to the Enforcement SOPs as the documents that outline the process for maintaining the enforcement program in addition to State laws and regulations.

II.A.5. This section has been amended to list the following additional documents that are maintained for public access: appeals and stay of enforcement actions, penalty worksheets for penalty actions, and justification memos for settlement agreements. The section has been also revised to include language to address the accessibility of LPDES documents based on new legislation relating to data security due to terrorism concerns.

II.A.9. This section has been revised to clarify that in addition to penalties being assessed and collected in accordance with State laws, regulations and CWA, penalties will also be assessed and collected in accordance with federal NPDES requirements.

II.A.10. This section has been revised to clarify that Water Enforcement National Database (WENDB) data will be entered into the National Permit Compliance System (PCS) for majors, 92–500 minors and Significant Minor facilities and that the Significant Minor universe will be identified and mutually agreed upon by EPA and LDEQ and included in the Annual State Program Grant.

II.A.13. This section has been added to clarify that LDEQ will bear in mind EPA policies and guidance documents

and draw on those policies and guidance documents in its operation of all aspects of the LPDES program.

II.B. EPA Responsibilities

II.B.2.e. Language has been added to this section to include managers in the LDEQ staff for which training will be provided by EPA.

II.C. Jurisdiction Over Permits

II.C.1.b. Language has been revised to clarify the circumstances under which enforcement lead over permittees will be retained by EPA and the process and time frame requirements for transfer of this lead to LDEQ.

*Section III. Permit Review and Issuance*

III.C. Application Review and Permit Development

III.C.1. Language has been added to clarify that LDEQ will enter WENDB data elements identified in the Permit Compliance Unit (PCU) SOP.

III.D. Permit Reissuance

This section has been revised to state that LDEQ will reissue all expiring permits as close as possible to their expiration date and to reiterate that in no event will permits that have been administratively continued beyond their expiration date be modified. The section further states that LDEQ will utilize EPA's August 15, 2003, Permitting for Environmental Results Initiative and yearly updated Permit Issuance Strategy to account for and prioritize backlogged facilities and to reflect ongoing permit issuance goals.

III.E.1. Consultation With Federal and State Agencies

To eliminate possible confusion concerning whether an Endangered Species Act consultation is required for permit issuance and to clarify both the required and non-mandatory actions for which LDEQ coordinates with other federal and State agencies, new sections III.E.1.b and III.E.1.d. were added. The remaining parts of this section were either renumbered or struck from the document.

III.E.2.a. Transmittal of Preliminary Draft

III.E.2.a.iii. The term "master general permit", along with a definition of that term, has been added.

III.H. EPA Public Hearings

Language has been added to this section to specify the time frame in which LDEQ may request a public hearing be held by EPA after EPA has sent an objection to a draft or proposed permit.

III. M. Issuance of Permit or Notice of Intent To Deny

III.M.2. The substance of this section is covered in Section VI and, therefore, this section has been removed.

*Section IV. Enforcement*

IV.B. Compliance Monitoring

Language has been added to specify that LDEQ will enter WENDB data elements identified in the Enforcement Division's PCU SOP and in accordance with EPA's letter of September 4, 2003.

IV.B.2. Compliance Inspection

IV.B.2.a. This section has been revised to specify that LDEQ will submit the Louisiana Compliance Monitoring Strategy, which will be used to identify major and minor permits to be the subject of State compliance inspections, to EPA annually.

*Section V. Pretreatment*

V.A. General

V.A.5. Language has been added as follows: LDEQ will propose a plan for establishing and evaluating the universe of significant industrial users (SIUs), outside of approved pretreatment programs, for which LDEQ is the Control Authority. As part of its plan, LDEQ will develop and implement a strategy for updating the list of categorical industrial users (CIUs) for which it is the Control Authority. LDEQ will pursue compliance through the appropriate control mechanisms in a timely and efficient manner. Details on implementation of this plan and strategy will be included in the Performance Partnership Grant (PPG) and/or SOPs.

*Section VI. Reporting and Transmittal of Information*

VI.A. LDEQ Reporting and Transmittals

Portions of this section have been renumbered.

VI.A.5. This section, requiring the submission of monthly productivity reports, has been added.

VI.A.7. Language has been added to this section detailing what is included in a Compliance Monitoring Strategy.

VI.A.11. Language has been added to this section stating that LDEQ will provide inspection reports and letters to EPA for significant minor dischargers.

VI.A.17. This section has been revised to specify when comments on the draft of the consolidated EPA review of the LPDES program are due.

VI.A.18. This section has been added to indicate that LDEQ will submit a list of all appealed LPDES enforcement actions and status during mid-year and end-of-year enforcement program reviews.

VI.B. EPA Reporting and Transmittals

VI.B.6. This section has been revised to state that EPA will provide draft comments on its review of the LPDES program in a consolidated document when possible.

*Section VII. Program Review*

VII.A.2.a. This section has been separated into VII.A.2.a and VII A.2.b to delineate the different requirements for EPA Enforcement and EPA Permitting program reviews.

VII.A.3. Language has been added to this section to include the commitment for LDEQ to respond within 45 days of receipt of a draft audit from EPA and for EPA to issue a final report on its review within 120 days of the audit.

VII.H. A new section has been added to clarify that LDEQ will provide EPA with the opportunity for meaningful involvement as a partner in program development activities and program initiatives, and with the opportunity for input into new or revised LPDES statutes, regulations, forms, procedures, or priorities.

VII.I. A new section has been added to clarify the commitment that LDEQ will ensure that new federal NPDES regulations are incorporated into State regulations within one year of federal promulgation or within two years if a State statute must first be enacted.

*Section X. Modification*

X.A. The language in this section has been revised to state that the MOA shall be reviewed jointly and revised as needed.

**LPDES Program Description**

Changes in the LPDES Program Description are due mainly to changes in the organization structure of LDEQ and the change to the SOP structure. All SOPs contained in the LPDES program revision are new documents which outline specific procedures LDEQ uses in its implementation of the LPDES program and take the place of the Enforcement Management System document previously used.

5.1. Surveillance Division

This section has been revised to include language stating that all inspections and/or investigations that result in findings of areas of concern are referred to the Enforcement Division within 30 working days after all inspection information is received. The language also states that inspection reports that are required for submission to EPA Region 6 will be sent within 60 days of report completion.

5.2. Enforcement Division

The section also includes language that clarifies additional responsibilities of the LDEQ PCU in updating PCS and for ensuring quality of the data, including providing information for reports.

5.2.1. Administrative and Judicial Review of Administrative Enforcement

This section has been expanded to discuss in more detail the hearing and appeal processes and to specify the time frames and responsible parties.

5.2.2. Job Duties and Responsibilities of the Enforcement and PCU Staff

This section has been expanded due to the changes in organizational structure to include detailed descriptions of the general duties of the personnel who perform the enforcement and data management activities.

9.6.3. Appellate Review

This section has been revised to include a definition of "aggrieved person."

*10.0. Pretreatment Program*

Language has been added to this section to specify that LDEQ will propose a plan for establishing and evaluating the universe of SIUs, outside of approved pretreatment programs, for which LDEQ is the Control Authority. As part of its plan, LDEQ will develop and implement a strategy for updating the list of CIUs for which it is the Control Authority. LDEQ will pursue compliance through the appropriate control mechanisms in a timely and efficient manner. Details on implementation of this plan and strategy will be included in the PPG and/or SOPs.

**Attorney General's Statement**

1.a. Authority To Issue Permits

Language has been added to this section to clarify that the definition of "person" under the State's Environmental Quality Act includes the United States and any agent or subdivision thereof.

1.b. Disposal Into Wells

This section has been revised to include a discussion of subsection G to La. R.S. 30:2193, which was added to the statute pursuant to Acts 1997, No. 548. New subsection G provides that La. R.S. 30:2193's general prohibition against the land disposal of hazardous waste does not apply to injection by well provided certain requirements are met, *i.e.*, the land disposal has been exempted by EPA, a permit has been issued under the Safe Drinking Water Act, and LDEQ has determined there are no "economically reasonable and environmentally sound alternatives."

*4. Authority To Limit Permit Duration*

This section has been revised to reflect changes to LAC 33:IX.2301.D, which was amended subsequent to authorization of the LPDES program. The amendment to LAC 33:IX.2301.D clarifies that for facilities with both a valid NPDES permit and a valid LWDPS permit, the NPDES permit becomes the LPDES permit. However, the LWDPS also remains in effect and enforceable until it expires or is terminated. For facilities with valid LWDPS permits only, the LWDPS permits remains in effect and enforceable until it expires or is terminated and an LPDES permit is issued.

*7. Authority To Issue Notices, Transmit Data, and Provide Opportunity for Public Hearing*

A sentence has been added to this section stating that Acts 1995, No. 1007 added a provision to La. R.S. 30:2022(A) specifying LDEQ must provide notice of receipt of a permit application to those persons entitled to notice within 30 days of LDEQ's receipt of the application.

This section has also been revised to add "permits" to the list of items submitted to LDEQ under the NPDES program for which no claim of confidentiality may be granted under the State's confidentiality statute, La. R.S. 30:2030(A).

A sentence has also been added noting that pursuant to La. R.S. 30:2018, when requested, public hearings must be held in connection with environmental assessment statements submitted by a permit applicant.

The section has also been revised to clarify that, for public notice purposes, individual permits for major facilities and general permits are required to be published in a daily or weekly newspaper within the area affected by the facility or activity.

*8. Authority To Provide Public Access to Information*

Language has been added to this section discussing recent State legislation exempting certain security related information, *e.g.*, material containing security procedures, criminal intelligence information pertaining to terrorist-related activity, or threat or vulnerability assessments created, collected, or obtained in the prevention of terrorist-related activity, from disclosure under the Louisiana Public Records Law, La. R.S. 44:3.1. The new language confirms that LDEQ will remain in compliance with federal right to know statutes and the Clean Water Act.

*10. Authority To Enforce the Permit and the Permit Program*

This section has been revised to clarify that when a request for adjudicatory hearing has been granted by LDEQ, written public comments regarding a proposed compliance order or penalty assessment may be filed with the agency prior to the hearing.

The section has also been revised to include a discussion of Acts 1995, No. 739, which created the Division of Administrative Law. If LDEQ grants a request for an adjudicatory hearing, the hearing is held by the Division of Administrative Law in accordance with the Administrative Procedure Act.

**Supplemental Statement**

By letter dated September 3, 2003, the Louisiana Attorney General supplemented the Attorney General's Statement to provide a discussion of Article 12, Section 10 of the Louisiana Constitution, which provides in pertinent part that no public property or public funds shall be subject to seizure in a suit against the state, a state agency, or a political subdivision, and that "no judgment against the state, a state agency, or a political subdivision shall be exigible, payable, or paid except from funds appropriated therefor by the legislature or by the political subdivision against which the judgement is rendered." The September 3rd letter from the Attorney General's Office attached a legal opinion from LDEQ's General Counsel, explaining that Article 12, Section 10 of the Louisiana Constitution imposes no legal impediment to the successful operation of the LPDES program. The Attorney General concurs in the reasoning and conclusion of the LDEQ opinion.

**Attorney General's Statement for NPDES Pretreatment Program Authority**

*8. Authority To Issue Notices, Transmit Data, and Provide Opportunity for Public Hearings and Public Access to Information*

A sentence has been added to this section stating that Acts 1995, No. 1007 added a provision to La. R.S. 30:2022(A) specifying LDEQ must provide notice of receipt of a permit application to those persons entitled to notice within 30 days of LDEQ's receipt of the application.

This section has also been revised to add "permits" to the list of items

submitted to LDEQ under the NPDES program for which no claim of confidentiality may be granted under the State's confidentiality statute, La. R.S. 30:2030(A).

The section has also been revised to clarify that, for public notice purposes, individual permits for major facilities and general permits are required to be published in a daily or weekly newspaper within the area affected by the facility or activity.

*9. Authority To Enforce Against Violations of Pretreatment Standards and Requirements*

This section has been revised to clarify that when a request for adjudicatory hearing has been granted by LDEQ, written public comments regarding a proposed compliance order or penalty assessment may be filed with the agency prior to the hearing.

I hereby provide public notice of the update by the State of Louisiana for approval to administer, in accordance with 40 CFR part 123, the LPDES program.

Dated: August 5, 2004.

**Richard E. Greene,**

*Regional Administrator, EPA Region 6.*

[FR Doc. 04–18578 Filed 8–12–04; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the following information collection systems described below.

1. *Type of review:* Renewal of a currently approved collection.

*Title:* Application for Waiver of Prohibition on Acceptance of Brokered Deposits by Adequately Capitalized Insured Institutions.

*OMB Number:* 3064–0099.

*Frequency of Response:* On occasion.

*Affected Public:* Any insured depository institution seeking a waiver to the prohibition on the acceptance of brokered deposits.

*Annual Burden:*

Estimated annual number of respondents: 30.

Estimated time per response: 6 hours.

Total annual burden hours: 180 hours.

*Expiration Date of OMB Clearance:* October 31, 2004.

**SUPPLEMENTARY INFORMATION:** Section 29 of the Federal Deposit Insurance Act prohibits undercapitalized insured depository institutions from accepting, renewing, or rolling over any brokered deposits. Adequately capitalized institutions may do so with a waiver from the FDIC, while well-capitalized institutions may accept, renew, or roll over brokered deposits without restriction.

2. *Type of Review:* Renewal of a currently approved collection.

*Title:* Real Estate Lending Standards.

*OMB Number:* 3064–0112.

*Frequency of Response:* On occasion.

*Affected Public:* Any financial institution engaging in real estate lending.

*Annual Burden:*

Estimated annual number of respondents: 5,300.

Estimated time per response: 20 hours.

Total annual burden hours: 106,000.

*Expiration Date of OMB Clearance:* October 31, 2004.

**SUPPLEMENTARY INFORMATION:** Institutions will use real estate lending policies to guide their lending operations in a manner that is consistent with safe and sound banking practices and appropriate to their size, nature, and scope of their operations. These policies should address certain lending considerations, including loan-to-value limits, loan administration policies, portfolio diversification standards, and documentation, approval and reporting requirements.

3. *Type of Review:* Renewal of a currently approved collection.

*Title:* Management Official Interlocks.

*OMB Number:* 3064–0118.

*Frequency of Response:* On occasion.

*Affected Public:* Management officials of insured nonmember banks and their affiliates.

*Annual Burden:*

Estimated annual number of respondents: 2.

Estimated time per response: 4 hours.

Total annual burden hours: 8 hours.

*Expiration Date of OMB Clearance:* October 31, 2004.

**SUPPLEMENTARY INFORMATION:** The collection is associated with the FDIC's Management Official Interlocks regulation, 12 CFR Part 348, which implements the Depository Institution Management Interlocks Act (DIMIA). DIMIA generally prohibits bank management officials from serving simultaneously with two unaffiliated depository institutions or their holding companies but allows the FDIC to grant exemptions in appropriate circumstances.

*OMB Reviewer:* Joseph F. Lackey, Jr., Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

*FDIC Contact:* Leibella A. Unciano, (202) 898–3738, Legal Division, Room MB–3064, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

*Comments:* Comments on these collections of information are welcome and should be submitted on or before September 13, 2004 to both the OMB reviewer and the FDIC contact listed above.

**ADDRESSES:** Information about this submission, including copies of the proposed collection of information, may be obtained by calling or writing the FDIC contact listed above.

Dated in Washington, DC, on August 9, 2004.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 04–18520 Filed 8–12–04; 8:45 am]

BILLING CODE 6714–01–P

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### Sunshine Act Notice

**TIME AND DATE:** 10 a.m.(EDT), August 23, 2004.

**PLACE:** 4th Floor Conference Room, 1250 H Street, NW., Washington, DC.

**STATUS:** Parts will be open to the public and parts closed to the public.

**MATTERS TO BE CONSIDERED:**

**Parts Open to the Public**

1. Approval of the minutes of the July 19, 2004, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of KPMG audit report on Post-Implementation Review of the New Thrift Savings Plan Record Keeping System.

**Parts Closed to the Public**

4. Litigation.
5. Personnel matters.

**CONTACT PERSON FOR MORE INFORMATION:** Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: August 11, 2004.

**Thomas K. Emswiler,**

*Associate General Counsel, Federal Retirement Thrift Investment Board.*

[FR Doc. 04–18680 Filed 8–11–04; 2:13 pm]

BILLING CODE 6760–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Agency for Healthcare Research and Quality, HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request the Office of Management and Budget (OMB) to allow the proposed information collection project: "Voluntary Customer Surveys Generic Clearance for the Agency for Healthcare Research and Quality" (formerly known as Voluntary Customer Satisfaction Survey Generic Clearance for the Agency for Healthcare Research and Quality). In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), AHRQ invites the public to comment on this proposed information collection request to allow AHRQ to conduct customers surveys. This proposed information collection was previously published in the **Federal Register** on July 13, 2004 and allowed 60 Days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 Days for public comment.

**DATES:** Comments on this notice must be received by September 13, 2004.

**ADDRESSES:** Written comments should be submitted to: John Kraemer, at the Office of Information and Regulatory Affairs, OMB at the following email address *John Kraemer@omb.eop.gov* and the fax number is (202) 395–6974.

**FOR FURTHER INFORMATION CONTACT:** Cynthia D. McMichael, AHRQ, Reports Clearance Officer, (301) 427–1651.

**SUPPLEMENTARY INFORMATION:**

**Proposed Project: "Voluntary Customer Surveys Generic Clearance for the Agency for Healthcare Research and Quality"**

In response to Executive Order 12862, the Agency for Healthcare Research and Quality (AHRQ) plans to conduct voluntary customer surveys to assess strengths and weaknesses in agency program services. Customer surveys to be conducted by AHRQ may include readership surveys from individuals using AHRQ automated and electronic technology databases to determine satisfaction with the information provided or surveys to assess effects of the grants streamlining efforts.

Results of these surveys will be used in future program planning iniatives and to redirect resources and efforts, as needed, to improve AHRQ program services. The current clearance will expire September 30, 2004. This is a request for a generic approval from OMB to conduct customer surveys over the next three years.

**Method of Collection**

The data will be collected using a combination of methodologies appropriate to each survey. These methodologies include:

- Evaluation forms;
- Mail surveys;
- Focus groups;
- Automated and electronic technology (*e.g.*, email, web-based surveys, instant fax, AHRQ Publications Clearinghouse customer feedback) and,
- Telephone surveys.

ESTIMATED ANNUAL RESPONDENT BURDEN

| Type of survey | No. of respondents | Average burden/response | Total hours of burden |
|---|---|---|---|
| Mail/Telephone Surveys | 51,200 | .15 | 7,680 |
| Automated/Web-based | 52,000 | .163 | 8,476 |
| Focus Groups | 200 | 1.0 | 200 |
| Totals | 103,400 | NA | 16,356 |

**Request for Comments**

In accordance with the above cited Paperwork Reduction Act legislation, comments on the AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of functions of AHRQ, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden (including hours and costs) 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 the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: August 6, 2004.

**Carolyn M. Clancy,**

*Director.*

[FR Doc. 04–18653 Filed 8–12–04; 8:45 am]

BILLING CODE 4160–90–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Toxic Substances and Disease Registry

**[ATSDR–203]**

### Public Health Assessments Completed

**AGENCY:** Agency for Toxic Substances and Disease Registry(ATSDR), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** This notice announces those sites for which ATSDR has completed public health assessments from April through June 2004. This notice also includes sites for which ATSDR completed public health assessments during September 2003 through March

2004 that were erroneously omitted from previous submitted notices. This list includes sites that are on or proposed for inclusion on the National Priorities List (NPL) and includes sites for which assessments were prepared in response to requests from the public.

**FOR FURTHER INFORMATION CONTACT:** William Cibulas, Jr., Ph.D.,Acting Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–32, Atlanta, Georgia 30333, telephone (404) 498–0140.

**SUPPLEMENTARY INFORMATION:** The most recent list of completed public health assessments was published in the **Federal Register** on July 9, 2004 [69 FR 41489]. This announcement is the responsibility of ATSDR under the regulation, Public Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities [42 CFR Part 90]. This rule sets forth ATSDR's procedures for the conduct of public health assessments under section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) [42 U.S.C. 9604(i)].

**Availability**

The completed public health assessments are available for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Century Center Building, 1825 Century Boulevard, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday, except legal holidays. The completed public health assessments are also available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (800) 553–6847. NTIS charges for copies of public health assessments. The NTIS order numbers are listed in parentheses following the site names.

**Public Health Assessments Completed or Issued**

During April 1–June 30, 2004, public health assessments were issued for the sites listed below. This list also includes public health assessments issued from September 1, 2003, through March 31, 2004, that were previously omitted:

**NPL and Proposed NPL Sites**

*Alaska*

Fort Wainwright—(PB2004–105052)

*Arkansas*

Ouachita Nevada Wood Treater—(PB2004–105043)

*California*

Cooper Drum Company—(PB2004–105854)
Laboratory for Energy-Related Health Research (U.S. DOE)[a/k/a Old Campus Landfill (University of California, Davis)]—(PB2004–105883)

*Connecticut*

Hamden Middle School (a/k/a Newhall Street Field)—(PB2004–105048)

*Delaware*

Dover Air Force Base—(PB2004–105065)
Metachem Products, LLC (a/k/a Standard Chlorine of Delaware, Incorporated)—(PB2004–105616)

*Guam*

Agana Power Plant—(PB2004–105063)

*Idaho*

Idaho National Engineering and Environmental Laboratory (U.S. DOE)—(PB2004–105066)
St. Maries Creosote—(PB2004–105617)

*Illinois*

Beloit Corporation—(PB2004–105605)
Koppers Wood Treating Company (a/k/a Galesburg/Koppers Company)—(PB2004–105604)
Sauget Area 1—Dead Creek, Sauget Area 1—Dead Creek Area G (Sauget I), and Sauget Area 1—Dead Creek Segment A—(PB2004–105040)
Sauget Area 2 Landfill (a/k/a Sauget WWTP)—(PB2004–105046)
Sauget Area 2 Landfill (a/k/a Sauget and County Landfill (Site Q)—(PB2004–105041)

*Iowa*

Railroad Avenue Groundwater Contamination—(PB2004–105055)

*Louisiana*

Delatte Metals—(PB2004–105609)

*Maine*

Eastland Woolen Mill—(PB2004–105062)

*Massachusetts*

General Electric Site—East Street Area II—(PB2004–105038)
General Electric Site—Hill 78 Area—(PB2004–105037)
Hanscom Field/Hanscom Air Force Base—(PB2004–105608)

*Minnesota*

Gopher State Ethanol (a/k/a Minnesota Brewing Co.)—(PB2004–105067)

*Missouri*

Oak Grove Village Well—(PB2004–105036)
Riverfront (a/k/a New Haven Public Water Supply)—(PB2004–105048)

*Montana*

Barker-Hughesville Mining District Site—(PB2004–105061)
Carpenter Snow Creek Mining District—(PB2004–105045)

*New York*

Consolidated Iron and Metal—(PB2004–105828)
Diaz Chemical C/O FMC—(PB2004–105039)

*North Carolina*

Reasor Chemical Company NPL Site—(PB2004–105057)

*Ohio*

Bison Corporation—(PB2004–105042)

*Oregon*

Taylor Lumber and Treating, Incorporated—(PB2004–105059)

*Pennsylvania*

Watson Johnson Landfill—(PB2004–105880)

*Puerto Rico*

Scorpio Recycling, Incorporated, Candelaria—(PB2004–105877)

*South Carolina*

MaCalloy Corporation—(PB2004–105054)

*Tennessee*

Oak Ridge Reservation—(PB2004–105053)

*Texas*

Falcon Refinery—(PB2004–105056)
Gulfco Marine Maintenance—(PB2004–105606)
R & H Oil Company and Tropicana Energy Company—(PB2004–105044)

*Utah*

Intermountain Waste Oil Refinery—(PB2004–105060)

*Virginia*

Former Nansemond Ordnance Depot—(PB2004–105047)
Marine Corps Combat Development Command—(PB2004–10614)
Naval Amphibious Base Little Creek—(PB2004–105064)
Norfolk Naval Shipyard—(PB2004–105050)
St. Juliens Creek Annex (U.S. Navy)—(PB2004–105611)

*Washington*

Lower Duwamish Waterway—(PB2004–105051)

*Wisconsin*

Ashland/Northern States Power Lakefront—(PB2004–105035)

**Non-NPL Petitioned Sites**

*California*

Waste Disposal, Incorporated, Group—(PB2004–105613)

*Minnesota*

Valadco Confined Livestock Operation (a/k/a Valadco Sites)—(PB2004–105049)

*Missouri*

Amoco-Sugar Creek (a/k/a Amoco Oil Company)—(PB2004–105610)

*New York*

Al Turi Landfill—(PB2004–105612)

*Washington*

Northport Area—(PB2004–105906)
Rayonier Incorporated, Port Angeles Mill—(PB2004–105607)

Dated: August 6, 2004.

**Georgi Jones,**

*Director, Office of Policy, Planning, and Evaluation, National Center for Environmental Health, Agency for Toxic Substances and Disease Registry.*

[FR Doc. 04–18586 Filed 8–12–04; 8:45 am]

BILLING CODE 4163–70–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2004N–0046]**

### Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Orphan Drug Products

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Orphan Drug Products" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of May 27, 2004 (69 FR 30314), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0167. The approval expires on July 31, 2007. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: August 6, 2004.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 04–18489 Filed 8–12–04; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2003N–0525]**

### Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Hazard Analysis and Critical Control Point; Procedures for the Safe and Sanitary Processing and Importing of Juice

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Hazard Analysis and Critical Control Point; Procedures for the Safe and Sanitary Processing and Importing of Juice" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of April 21, 2004 (69 FR 21549), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0466. The approval expires on July 31, 2007. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: August 5, 2004.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 04–18490 Filed 8–12–04; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Center for Substance Abuse Treatment; Notice of Meeting

Pursuant to Pubic Law 92–463, notice is hereby given that the 40th meeting of the Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) National Advisory Council will be held in September 2004.

A portion of the meeting will be open and include discussion of the Center's policy issues, current administrative, legislative, and program developments. The meeting will also include the review, discussion, and evaluation of individual grant applications. Therefore a portion of the meeting will be closed to the public as determined by the SAMHSA Administrator, in accordance with Title 5 U.S.C. 552b(c) and (6) and 5 U.S.C. App. 2, § 10(d).

SAMHSA/CSAT welcomes the attendance of the public at its advisory council meetings, and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please inform the contact person by August 23.

Substantive program information, a summary of the meeting, transcript of the open session, and a roster of Council members may be obtained by accessing the SAMHSA Advisory Committee Web site *(http://www.samhsa.gov),* or by communicating with the contact whose name and telephone number are listed below.

*Committee Name:* SAMHSA's Center for Substance Abuse Treatment, National Advisory Council.

*Meeting Dates:* September 1—8:30 a.m.–4:30 p.m., September 2—8:30 a.m.–4:30 p.m.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro, Bethesda, Maryland 20814.

*Type: Open:* September 1—8:30 a.m.–4:30 p.m., *Closed:* September 2—8:30 a.m.–4:30 p.m.

*Contact:* Cynthia Graham, Executive Secretary, SAMHSA/CSAT National Advisory Council, 5600 Fishers Lane, RW II, Ste 619, Rockville, MD 20857, Telephone: (301) 443–8923, FAX: (301) 480–6077, E-mail: *cgraham@samhsa.gov.*

Dated: August 11, 2004.

**Toian Vaughn,**

*Committee Management Officer, Substance Abuse and Mental Health Services Administration.*

[FR Doc. 04–18652 Filed 8–11–04; 11:31 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1535–DR]**

### Kansas; Major Disaster and Related Determinations

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

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Kansas (FEMA–1535–DR), dated August 3, 2004, and related determinations.

**EFFECTIVE DATE:** August 3, 2004.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated August 3, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Kansas, resulting from severe storms, flooding, and tornadoes beginning on June 12, 2004, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Kansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Direct Federal Assistance is authorized, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Philip Parr, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Kansas to have been affected adversely by this declared major disaster:

Geary, Shawnee, and Wyandotte Counties for Public Assistance. Direct Federal assistance is authorized, if warranted.

All counties within the State of Kansas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 04–18508 Filed 8–12–04; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1534–DR]**

### New York; Major Disaster and Related Determinations

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

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of New York (FEMA–1534–DR), dated August 3, 2004, and related determinations.

**EFFECTIVE DATE:** August 3, 2004.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated August 3, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of New York, resulting from severe storms and flooding on May 13–June 17, 2004, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the

Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Theodore Monette, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New York to have been affected adversely by this declared major disaster:

Allegany, Cattaraugus, Chautauqua, Delaware, Erie, Herkimer, Ontario, Saratoga, Schoharie, Steuben, Ulster, Washington, and Yates Counties for Public Assistance.

Allegany, Cattaraugus, Chautauqua, Delaware, Erie, Herkimer, Monroe, Oneida, Ontario, Saratoga, Schoharie, Steuben, Ulster, Washington, and Yates Counties in the State of New York are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 04–18507 Filed 8–12–04; 8:45 am]

BILLING CODE 9110–10–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4901–N–33]**

### Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**DATES:** *Effective Date:* August 13, 2004.

**FOR FURTHER INFORMATION CONTACT:** Kathy Burruss, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

**SUPPLEMENTARY INFORMATION:** In accordance with the December 12, 1988, court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: August 5, 2004.

**Mark R. Johnston,**

*Director, Office of Special Needs Assistance Programs.*

[FR Doc. 04–18302 Filed 8–12–04; 8:45 am]

BILLING CODE 4210–29–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4728–N–04]**

### Notice of Certain Operating Cost Adjustment Factors for 2005

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Publication of the 2005 Operating Cost Adjustment Factors (OCAFs) for Section 8 rent adjustments at contract renewal under section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA), as amended by the Preserving Affordable Housing for Senior Citizens and Families into the 21st Century Act of 1999, and under the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA) Projects assisted with Section 8 Housing Assistance Payments.

**SUMMARY:** This notice establishes annual factors used in calculating rent adjustments under section 524 of MAHRA as amended by the Preserving Affordable Housing for Senior Citizens and Families into the 21st Century Act of 1999, and under LIHPRHA.

**EFFECTIVE DATE:** February 11, 2005.

**FOR FURTHER INFORMATION CONTACT:** Regina Aleksiewicz, Housing Project Manager, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, Office of Multifamily Housing, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone (202) 708–3000; extension 2600 (This is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

#### I. Operating Cost Adjustment Factors (OCAFs)

Section 514(e)(2) of the FY 1998 HUD Appropriations Act, requires HUD to establish guidelines for rent adjustments based on an operating cost adjustment factor (OCAF). The legislation requiring HUD to establish OCAFs for LIHPRHA projects and projects with contract renewals under section 524 of MAHRA is similar in wording and intent. HUD has therefore developed a single factor to be applied uniformly to all projects utilizing OCAFs as the method by which rents are adjusted.

Additionally, section 524 of the Act gives HUD broad discretion in setting OCAFs—referring simply to "operating cost factors established by the Secretary." The sole exception to this grant of authority is a specific requirement that application of an OCAF shall not result in a negative rent adjustment. OCAFs are to be applied uniformly to all projects utilizing OCAFs as the method by which rents are adjusted upon expiration of the term of the contract. OCAFs are applied to project contract rent less debt service.

An analysis of cost data for FHA-insured projects showed that their operating expenses could be grouped into nine categories: wages, employee benefits, property taxes, insurance, supplies and equipment, fuel oil, electricity, natural gas, and water and sewer. Based on an analysis of these data, HUD derived estimates of the percentage of routine operating costs that were attributable to each of these nine expense categories. Data for projects with unusually high or low expenses due to unusual circumstances were deleted from analysis.

States are the lowest level of geographical aggregation at which there are enough projects to permit statistical analysis. Additionally, no data were available for the Western Pacific Islands. Data for Hawaii was therefore used to generate OCAFs for these areas.

The best current measures of cost changes for the nine cost categories were selected. The only categories for which current data are available at the state level are for fuel oil, electricity, and natural gas. Current price change indices for the other six categories are only available at the national level. The Department had the choice of using

dated state-level data or relatively current national data. It opted to use national data rather than data that would be two or more years older (*e.g.*, the most current local wage data are for 2002). The data sources for the nine cost indicators selected were as follows:

*Labor Costs*—3/03 to 3/04 Bureau of Labor Statistics (BLS), Employment Cost Index, Private Sector Wages and Salaries Component at the National Level.

*Employment Benefit Costs*—3/03 to 3/04 BLS Employment Cost Index, Employee Benefits at the National Level.

*Property Taxes*—3/03 to 3/04 BLS Consumer Price Index, All Items Index.

*Goods, Supplies, Equipment*—3/03 to 3/04 BLS Producer Price Index, Finished Goods Less Food and Energy.

*Insurance*—3/03 to 3/04 BLS Consumer Price Index, Tenant and Household Residential Insurance Index.

*Fuel Oil*—Energy Information Agency, consumption-weighted 2002 to 2003 year-end annual average state prices for #2 distillate residential fuel oil (U.S. average change was used for states with too little fuel oil consumption to have values).

*Electricity*—Energy Information Agency, consumption-weighted 2002 to 2003 year-end annual average residential electric prices per Kilowatt-hour.

*Natural Gas*—Energy Information Agency, consumption-weighted 2002 to 2003 year-end annual average natural gas prices.

*Water and Sewer*—3/03 to 3/04 BLS Consumer Price Index Detailed Report.

The sum of the nine cost components equals 100 percent of operating costs for purposes of OCAF calculations. To calculate the OCAFs, the selected inflation factors are multiplied by the relevant state-level operating cost percentages derived from the previously referenced analysis of FHA insured projects. For instance, if wages in Virginia comprised 50 percent of total operating cost expenses and wages increased by 4 percent from June 2003 to June 2004, the wage increase component of the Virginia OCAF for 2005 would be 2.0 percent (4% × 50%). This 2.0 percent would then be added to the increases for the other eight expense categories to calculate the 2005 OCAF for Virginia. These types of calculations were made for each state for each of the nine cost components, and are included as the Appendix to this notice.

## II. MAHRA and LIHPRHA OCAF Procedures

MAHRA (Title V of Pub. L. 105–65, approved October 7, 1997; 42 U.S.C. 1437f note) as amended by the Preserving Affordable Housing for Senior Citizens and Families into the 21st Century Act of 1999, created the Mark-to-Market Program to reduce the cost of federal housing assistance, enhance HUD's administration of such assistance, and ensure the continued affordability of units in certain multifamily housing projects. Section 524 of MAHRA authorizes renewal of Section 8 project-based assistance contracts for projects without Restructuring Plans under the Mark-to-Market Program, including renewals that are not eligible for Plans and those for which the owner does not request Plans. Renewals must be at rents not exceeding comparable market rents except for certain projects. For Section 8 Moderate Rehabilitation projects, other than single room occupancy projects (SROs) under the Stewart B. McKinney Homeless Assistance Act (McKinney Act, 42 U.S.C. 11301 *et seq.*), that are eligible for renewal under section 524(b)(3) of MAHRA, the renewal rents are required to be set at the lesser of: (1) The existing rents under the expiring contract, as adjusted by the OCAF; (2) fair market rents (less any amounts allowed for tenant-purchased utilities); or (3) comparable market rents for the market area.

LIHPRHA (see, in particular, section 222(a)(2)(G)(i) of LIHPRHA, 12 U.S.C. 4112(a)(2)(G)(i) and the regulations at 24 CFR 248.145(a)(9)(i)) requires that future rent adjustments for LIHPRHA projects be made by applying an annual factor to be determined by the Secretary to the portion of project rent attributable to operating expenses for the project and, where the owner is a priority purchaser, to the portion of project rent attributable to project oversight costs.

## III. Findings and Certifications

### *Environmental Impact*

This issuance sets forth rate determinations and related external administrative requirements and procedures that do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

### Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for this program is 14.187.

Dated: August 3, 2004.

**John C. Weicher,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

OPERATING COST ADJUSTMENT FACTORS FOR 2005

| | Percent |
|---|---|
| Alabama | 2.6 |
| Alaska | 4.1 |
| Arizona | 2.0 |
| Arkansas | 2.9 |
| California | 2.7 |
| Colorado | 3.5 |
| Connecticut | 4.3 |
| Delaware | 2.5 |
| Dist. of Columbia | 3.3 |
| Florida | 3.1 |
| Georgia | 3.1 |
| Hawaii | 3.2 |
| Idaho | 1.9 |
| Illinois | 3.8 |
| Indiana | 3.0 |
| Iowa | 3.7 |
| Kansas | 3.3 |
| Kentucky | 3.2 |
| Louisiana | 3.9 |
| Maine | 3.6 |
| Maryland | 2.9 |
| Massachusetts | 4.0 |
| Michigan | 3.2 |
| Minnesota | 3.9 |
| Mississippi | 2.8 |
| Missouri | 2.8 |
| Montana | 4.5 |
| Nebraska | 3.1 |
| Nevada | 1.9 |
| New Hampshire | 3.5 |
| New Jersey | 3.7 |
| New Mexico | 2.7 |
| New York | 3.7 |
| N. Carolina | 2.4 |
| N. Dakota | 3.6 |
| Ohio | 3.0 |
| Oklahoma | 3.6 |
| Oregon | 2.2 |
| Pennsylvania | 2.8 |
| Rhode Island | 3.7 |
| S. Carolina | 2.6 |
| S. Dakota | 3.8 |
| Tennessee | 2.6 |
| Texas | 4.5 |
| Utah | 2.6 |
| Vermont | 2.5 |
| Virginia | 3.1 |
| Washington | 2.4 |
| W. Virginia | 2.3 |
| Wisconsin | 3.3 |
| Wyoming | 3.3 |
| Pacific Islands | 3.4 |
| Puerto Rico | 2.6 |
| Virgin Islands | 2.7 |
| U.S. Average | 3.3 |

[FR Doc. 04–18502 Filed 8–12–04; 8:45 am]

BILLING CODE 4210–27–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Indian Gaming

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of approved Class III Gaming Compact.

**SUMMARY:** This notice publishes the extension to an approved Class III Gaming Compact between the Crow Tribe and the State of Montana. Under the Indian Gaming Regulatory Act of 1988, the Secretary of the Interior is required to publish notice in the **Federal Register** approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands.

**EFFECTIVE DATE:** August 13, 2004.

**FOR FURTHER INFORMATION CONTACT:** George T. Skibine, Director, Office of Indian Gaming Management, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

**SUPPLEMENTARY INFORMATION:** Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA) Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands.

The Crow Tribe and the State of Montana have agreed to an extension of the existing agreement and will extend the compact until July 5, 2005. The Principal Deputy Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, is publishing notice that the Fifth Amendment to and Extension of the Agreement for Class III gaming between the Crow Tribe and the State of Montana is in effect.

Dated: July 23, 2004.

**Aurene M. Martin,**

*Principal Deputy Assistant Secretary—Indian Affairs.*

[FR Doc. 04–18491 Filed 8–12–04; 8:45 am]

BILLING CODE 4310–4N–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NM091–9941–EK–HE931; OMB Control Number 1004–0180]**

### Information Collection Submitted to The Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has sent a request to extend the current information collection to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). On March 7, 2003, the BLM published a notice in the **Federal Register** (68 FR 11123) requesting comment on this information collection. The comment period ended on May 6, 2003. BLM received no comments. You may obtain copies of the collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB must respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirements should be directed within 30 days to the Office of Management and Budget, Interior Department Desk Officer (1004–0180), at OMB–OIRA via facsimile to (202) 395–6566 or e-mail to *OIRA_DOCKET@omb.eop.gov*. Please provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO–630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

*Nature of Comments:* We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

3. Ways to enhance the quality, utility and clarity of the information we collect; and

4. Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

*Title:* Gas Well Data Survey of Helium-Bearing Natural Gas.

*OMB Control Number:* 1004–0180.

*Bureau Form Number(s):* 3100–12.

*Abstract:* the Bureau of Land Management (BLM) collects and uses the information to evaluate the helium resources of the United States. Respondents are owners and operators of the helium-bearing natural gas wells and transmission lines.

*Frequency:* Annually.

*Description of Respondents:* Owners and operators of the helium-bearing gas wells and transmission lines.

*Estimated Completion Time:* 15 minutes.

*Annual Responses:* 200.

*Application Fee Per Response:* 0.

*Annual Burden Hours:* 50.

*Bureau Clearance Officer:* Michael Schwartz, (202) 452–5033.

Dated: May 5, 2004.

**Michael H. Schwartz,**

*Bureau of Land Management, Information Collection Clearance Officer.*

[FR Doc. 04–18572 Filed 8–12–04; 8:45 am]

BILLING CODE 4310–84–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### Notice of Availability of the Andrews Management Unit/Steens Mountain Cooperative Management and Protection Area Proposed Resource Management Plan and Final Environmental Impact Statement and the Steens Mountain Wilderness and Wild and Scenic Rivers Plan

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act (FLPMA) of 1976, the National Environmental Policy Act (NEPA) of 1969, and the Steens Mountain Cooperative Management and Protection Act of 2000 (Steens Act), the Bureau of Land Management (BLM) has prepared a Proposed Resource Management Plan (PRMP) and Final Environmental Impact Statement (FEIS) for the Andrews Management Unit (AMU)/ Steens Mountain Cooperative Management and Protection Area (CMPA) and has also prepared the Steens Mountain Wilderness and Wild and Scenic Rivers Plan.

**DATES:** BLM Planning Regulations (43 CFR 1610.5–2) state that any person who participated in the planning process, and has an interest that may be adversely affected, may protest. The protest must be filed within 30 days of the date that the Environmental Protection Agency publishes this notice

in the **Federal Register**. Instructions for filing of protests are described in the "Dear Interested Party" letter of the AMU/Steens Mountain CMPA PRMP/FEIS and included in the **SUPPLEMENTARY INFORMATION** section of this Notice.

Written comments on the Steens Mountain Wilderness and Wild and Scenic Rivers Plan will be accepted for 30 days following publication of the Environmental Protection Agency's Notice of Availability (NOA) for the PRMP/FEIS in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Gary Foulkes, Project Manager, Bureau of Land Management, 28910 Highway 20 West, Hines, Oregon, 97738, telephone (541–573–4400), fax (541–573–4411), or e-mail (*OR_Burns_RMP@or.blm.gov*).

**SUPPLEMENTARY INFORMATION:** This planning activity encompasses approximately 1,649,470 acres of public land consisting of the 1,221,314-acre Andrews Management Unit (public land in the Andrews Resource Area outside of the CMPA) and public land in the 428,156-acre CMPA established by the Steens Act. The CMPA includes the 170,084-acre Steens Mountain Wilderness and 105 miles of Wild and Scenic Rivers. These lands are managed by the Andrews Resource Area, Burns District, and are located primarily in Harney County in southeastern Oregon. In addition, 53,436 acres of the Three Rivers Resource Area, falling within the CMPA, are also included in this planning effort. The BLM has and will continue to work closely with all interested parties to identify management decisions that are best suited to the needs of the public. Final decisions will supercede the Andrews Management Framework Plan (1982), subsequent amendments, and the Donner Und Blitzen Wild and Scenic Rivers Plan (1993), and will amend the Three Rivers RMP for those lands within the CMPA while providing direction for management of these public lands for approximately 20 years.

This land use plan focuses on the principles of multiple use management and sustained yield as prescribed by Section 202 of the FLPMA. The PRMP/FEIS considers and analyzes five alternatives. These alternatives were developed based on internal BLM formulation and extensive public input following scoping (February 2002), review of the Summary of the Analysis of the Management Situation (April 2002), newsletter (July 2002), review and comment on the Draft RMP/EIS (October 2003–January 2004), and numerous meetings with local governments, Burns Paiute Tribe, cooperating agencies, Southeast Oregon Resource Advisory Council, and the Steens Mountain Advisory Council (SMAC).

The SMAC consists of 12 members representing various interests and one nonvoting member who is a liaison to the Governor of Oregon. The SMAC was established by the Secretary of the Interior as mandated by the Steens Act to advise the Secretary in preparation and implementation of a management plan for the CMPA including the Steens Mountain Wilderness. The SMAC has held 18 public meetings in various locations since its creation, has taken an in-depth look at management of the CMPA, and has provided specific advice on the Steens Mountain Wilderness and Wild and Scenic Rivers Plan as well as the RMP.

The alternatives detailed in the PRMP/FEIS provide for a wide array of land use allocations and management direction as well as variable levels of resource protection, commodity production, and authorized land and resource uses. Alternative D, the BLM preferred alternative, (as modified by public comment on the Draft RMP/EIS) is now the Proposed RMP providing a balance of resource uses, such as livestock grazing and various forms of recreation, while protecting wilderness characteristics, Wild and Scenic Rivers and Areas of Critical Environmental Concern. The Proposed Plan will help BLM achieve the purpose of the CMPA which is to conserve, protect, and manage the long-term ecological integrity of the area. Approved RMPs/Records of Decision (one for the CMPA and one for the AMU) will be made available for the public following resolution of any protests.

The proposed alternatives for the Steens Mountain Wilderness and Wild and Scenic Rivers plan were developed during the RMP process and have had the same level of public involvement. The Steens Mountain Wilderness and Wild and Scenic Rivers plan will be a stand-alone implementation plan and an Appendix to the PRMP/FEIS.

Copies of the AMU/Steens Mountain CMPA PRMP/FEIS have been sent to affected Federal, State, and Local Government agencies and to interested parties. The PRMP/FEIS is available for public inspection at the Burns District Office in Hines, Oregon, during regular business hours (7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays). Interested persons may also review the PRMP/FEIS on the internet at *http://www.or.blm.gov/Burns*. Comments on the Draft RMP/EIS received from the public and internal BLM review comments were incorporated into the proposed plan where appropriate. Public comments resulted in the addition of clarifying text, but did not significantly change proposed land use decisions.

Instructions for filing a protest with the Director of the BLM regarding the PRMP/FEIS may be found at 43 CFR 1610.5. A protest may only raise those issues that were submitted for the record during the planning process. E-mail and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions, BLM will consider the e-mail or faxed protest as an advance copy and it will receive full consideration. If you wish to provide BLM with such advance notification, please direct faxed protests to the attention of the BLM protest coordinator at 202–452–5112 and e-mails to *Brenda_Hudgens-Williams@blm.gov*. Please direct the follow-up letter to the appropriate address provided below. To be considered complete, your protest must contain (at a minimum) the following information:

(1) Name, mailing address, telephone number and the affected interest of the person filing the protest(s).

(2) A statement of the part or parts of the proposed plan being protested. To the extent possible, reference specific pages, paragraphs, and sections of the document.

(3) A copy of all your documents addressing the issue or issues which were discussed with the BLM for the record.

(4) A concise statement explaining why the proposed decision is believed to be incorrect. This is a critical part of your protest. Document all relevant facts, as much as possible. A protest merely expressing disagreement with the State Director's proposed decision without providing any supporting data will not be considered a valid protest.

All protests must be in writing and mailed to the following address: Regular Mail, Director, WO–210/LS–1075, Bureau of Land Management, Attn: Brenda Hudgens-Williams, Department of the Interior, P.O. Box 66538, Washington DC, 20240.

Overnight Mail, Director, WO–210/LS–1075, Bureau of Land Management, Attn: Brenda Hudgens-Williams, Department of the Interior, 1620 L Street NW., Suite 1075, Washington, DC 20036.

To be considered timely, your protest must be postmarked no later than the last day of the protest period. Though not a requirement, we suggest you send

your protest by certified mail, return receipt requested. You are also encouraged, but not required, to forward a copy of your protest to the Project Manager at the address listed below. This may allow us to resolve the protest through clarification of intent or alternative dispute resolution methods.

The Director will promptly render a decision on the protest. This decision will be in writing and will be sent to the protesting party by certified mail, return receipt requested. The decision of the Director shall be the final decision of the Department of the Interior.

Comments on the Steens Mountain Wilderness and Wild and Scenic Rivers Plan should be mailed to Gary Foulkes, Project Manager, Bureau of Land Management, 28910 Highway 20 West, Hines, Oregon, 97738, faxed to 541–573–4411, or e-mailed to *OR_Burns_RMP@or.blm.gov*.

Please note that comments, including names and street addresses, are available for public review and/or release under the Freedom of Information Act (FOIA). Individual respondents may request confidentiality. Respondents who wish to withhold name and/or street address from public review or from disclosure under FOIA, must state this prominently at the beginning of the written comment. Such request will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or official organizations or business, will be made available for public inspection in their entirety.

**Elaine M. Brong,**

*State Director, Oregon/Washington.*

[FR Doc. 04–18256 Filed 8–12–04; 8:45 am]

BILLING CODE 4310–AG–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[MT–920–04–1310–FI–P; (MTM 84947)]**

### Notice of Proposed Reinstatement of Terminated Oil and Gas Lease MTM 84947

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Per 30 U.S.C. 188(d), the lessee timely filed a petition for reinstatement of oil and gas lease MTM 84947, Stillwater County, Montana. The lessee paid the required rental accruing from the date of termination.

No leases were issued that affect these lands. The lessee agrees to new lease terms for rentals and royalties of $10 per acre and 16⅔ percent or 4 percentages above the existing competitive royalty rate. The lessee paid the $500 administration fee for the reinstatement of the lease and $155 cost for publishing this notice.

The lessee met the requirements for reinstatement of the lease per sec. 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). We are proposing to reinstate the lease, effective the date of termination subject to:

- The original terms and conditions of the lease;
- The increased rental of $10 per acre;
- The increased royalty of 16⅔ percent or 4 percentages above the existing competitive royalty rate; and
- The $155 cost of publishing this notice.

**FOR FURTHER INFORMATION CONTACT:** Karen L. Johnson, Chief, Fluids Adjudication Section, BLM Montana State Office, PO Box 36800, Billings, Montana 59107, 406–896–5098.

Dated: July 27, 2004.

**Karen L. Johnson,**

*Chief; Fluids Adjudication Section.*

[FR Doc. 04–18566 Filed 8–12–04; 8:45 am]

BILLING CODE 4310–$$–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management.

**[UTU80585]**

### Notice of Proposed Reinstatement of Terminated Oil and Gas Lease, Utah

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease UTU80585 for lands in Grand County, Utah, was timely filed, and required rentals accruing from March 1, 2004, the date of termination, have been paid.

**FOR FURTHER INFORMATION CONTACT:** Teresa Catlin, Acting Chief, Branch of Fluid Minerals at (801) 539–4122.

**SUPPLEMENTARY INFORMATION:** The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The $500 administrative fee for the lease has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate lease UTU80585, effective March 1, 2004, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: July 16, 2004.

**Teresa Catlin,**

*Acting Chief, Branch of Fluid Minerals.*

[FR Doc. 04–18568 Filed 8–12–04; 8:45 am]

BILLING CODE 4310–$$–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[OR–958–1430–FN; HAG 04–0204; WAOR–19795]**

### Opening of Public Land Subject to Section 24 of the Federal Power Act; Washington

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice opens to disposal by land exchange approximately 4.5 acres of public land, withdrawn for Power Project No. 2149 by Federal Power Commission Order dated July 12, 1962, subject to the provisions of Section 24 of the Federal Power Act.

**EFFECTIVE DATE:** August 13, 2004.

**FOR FURTHER INFORMATION CONTACT:** Ralph Kuhns, BLM Oregon/Washington State Office, PO Box 2965, Portland, Oregon 97208, 503–808–6163.

**SUPPLEMENTARY INFORMATION:** The Federal Energy Regulatory Commission has determined that the power value of the public land described below will not be injured or destroyed for the purposes of power development by its conveyance to the licensee for Power Project No. 2149, subject to and with the reservation of the right of the United States or its licensee to enter upon, occupy and use any or all of the land for power purposes. Any use not authorized by the license for the hydropower project or by the Federal Energy Regulatory Commission will continue to be prohibited.

By virtue of the authority vested in the Secretary of the Interior by the Act of June 10, 1920, Section 24, as amended, 16 U.S.C. 818, and pursuant to the determination by the Federal Energy Regulatory Commission in DVWA–288, dated April 1, 2004, it is ordered as follows:

At 8:30 a.m. on August 13, 2004, the following described land, withdrawn by the Federal Power Commission Order

dated July 12, 1962, for Power Project No. 2149, is hereby made available for exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716, subject to the provisions of Section 24 of the Federal Power Act:

**Willamette Meridian**

T. 30 N., R. 24 E.,
Sec. 13, lot 2 (that portion within the boundary of Power Project No. 2149).
T. 30 N., R. 25 E.,
Sec. 18, lots 1 and 2 (that portion within the boundary of Power Project No. 2149).

The area described contains approximately 4.5 acres in Okanogan County.

Dated: July 14, 2004.

**Sherrie L. Reid,**

*Acting Chief, Branch of Realty and Record Services.*

[FR Doc. 04–18569 Filed 8–12–04; 8:45 am]

BILLING CODE 4310–33–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[MT–06417–1430–ET; MTM 40614]**

### Public Land Order No. 7611; Partial Revocation of Bureau of Land Management Order Dated March 30, 1950; Montana

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order partially revokes a Bureau of Land Management Order insofar as it affects 40 acres of public land withdrawn for the Bureau of Reclamation's Lower Marias River Reclamation Project. The land is no longer needed for reclamation purposes.

**EFFECTIVE DATE:** September 13, 2004.

**FOR FURTHER INFORMATION CONTACT:** Brandi Hecker, BLM Havre Field Station, P.O. Box 911, Havre, Montana 59501, 406–262–2829 or Sandra Ward, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107–6800, 406–896–5052.

**SUPPLEMENTARY INFORMATION:** The Bureau of Reclamation has determined that a withdrawal is no longer needed on the land described in this order and has requested a partial revocation. The land will not be opened to surface entry and non-metalliferous mining until completion of a planning review and analysis to determine the best use of the land for management of natural resources and future land adjustment actions.

**Order**

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

The Bureau of Land Management Order dated March 30, 1950, which withdrew public land for the Bureau of Reclamation's Lower Marias River Reclamation Project, is hereby revoked insofar as it affects the following described land:

**Principal Meridian, Montana**

T. 29 N., R 9 E.,
sec. 31, NW¼SE¼.

The area described contains 40 acres in Chouteau County.

Dated: August 2, 2004.

**Rebecca W. Watson,**

*Assistant Secretary—Land and Minerals Management.*

[FR Doc. 04–18570 Filed 8–12–04; 8:45 am]

BILLING CODE 4310–DN–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[MTM 56312]**

### Public Land Order No. 7610; Extension of Public Land Order No. 6560; Montana

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order extends Public Land Order No. 6560 for an additional 20-year period. This extension is necessary to continue protection of the facilities and capital improvements within the Wisdom Administrative Site.

**EFFECTIVE DATE:** August 6, 2004.

**FOR FURTHER INFORMATION CONTACT:** Sandra Ward, Bureau of Land Management, Montana State Office, P.O. Box 36800, Billings, Montana 59107–6800, 406–896–5052.

**Order**

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

(1) Public Land Order No. 6560 (49 FR 32068, August 10, 1985) which withdrew 59.99 acres of National Forest System land in the Beaverhead-Deerlodge National Forest from surface entry and mining to protect the Wisdom Administrative Site, is hereby extended for an additional 20-year period.

(2) Public Land Order No. 6560 will expire on August 5, 2024, unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (2000), the Secretary determines that the withdrawal shall be extended.

Dated: August 2, 2004.

**Rebecca W. Watson,**

*Assistant Secretary—Land and Minerals Management.*

[FR Doc. 04–18571 Filed 8–12–04; 8:45 am]

BILLING CODE 3410–11–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

**[INT–DES–04–3]**

### Platte River Recovery Implementation Program

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Extension of review and comment period for draft environmental impact statement (DEIS).

**SUMMARY:** The notice of availability for the DEIS was published in the **Federal Register** on January 26, 2004 (69 FR 3600), with the public review and comment period originally scheduled to end April 2, 2004. At the request of the State of Colorado, the public review and comment period is being extended to September 20, 2004.

**DATES:** Submit comments on the DEIS on or before September 20, 2004.

**ADDRESSES:** Written comments on, or requests for copies of, the DEIS should be addressed to the Platte River EIS Office (PL–100), PO Box 25007, Denver, Colorado, 80225–0007, telephone 303–445–2096, or by sending an email to *platte@prs.usbr.gov*. A copy of the DEIS Summary, and/or technical reports or appendices may also be obtained by calling 303–445–2096. The DEIS and Summary is also accessible at *http://www.platteriver.org*.

**FOR FURTHER INFORMATION CONTACT:** Lynn Holt, Platte River EIS Office 303–445–2096, or by sending an email to *platte@prs.usbr.gov*.

**SUPPLEMENTARY INFORMATION:** Reclamation and the Fish and Wildlife Service (Service) have prepared this DEIS to analyze the impacts of the First Increment (13 years) of a proposed Recovery Implementation Program (Program) to benefit the target species (whooping crane, interior least tern, piping plover, and pallid sturgeon) and their habitat in the Platte River Basin and to provide compliance with the Endangered Species Act (ESA) for

certain historic and future water uses in the Platte River Basin in Colorado, Nebraska, and Wyoming. The habitat objectives of the proposed Program include: improving flows in the Central Platte River through water re-regulation and conservation/supply projects; and protecting, restoring, and maintaining at least 10,000 acres of habitat in the Central Platte River area between Lexington and Chapman, Nebraska. The DEIS analyzes the impacts of four alternatives to implement the Program.

The programmatic DEIS focuses on impacts that the Program may have on hydrology, water quality, land, target species and their habitat, other species, hydropower, recreation, economics, and social and cultural resources. Subsequent National Environmental Policy Act and ESA documents required for implementation of specific Program actions will be tiered off of this document.

**Public Disclosure Statement**

Comments received in response to this notice will become part of the administrative record for this project and are subject to public inspection. Comments, including names and home addresses of respondents, will be available for public review. Individual respondents may request that Reclamation withhold their home address from public disclosure, which will be honored to the extent allowable by law. There also may be circumstances in which Reclamation would withhold a respondent's identity from public disclosure, as allowable by law. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comment. Reclamation will make all submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses available for public disclosure in their entirety.

Dated: July 29, 2004.

**Mary Josie Blanchard,**

*Deputy Director, Environmental Policy & Compliance.*

[FR Doc. 04–18558 Filed 8–12–04; 8:45 am]

**BILLING CODE 4310–MN–P**

## INTERNATIONAL TRADE COMMISSION

**[Inv. No. 337–TA–492]**

### In the Matter of Certain Plastic Grocery and Retail Bags; Notice of Issuance of General Exclusion Order; Termination of the Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission, having previously determined not to review the final initial determination (ID) issued by the presiding administrative law judge (ALJ) finding a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the above-captioned investigation, has issued a general exclusion order, and terminated the investigation.

**FOR FURTHER INFORMATION CONTACT:** Andrea Casson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3105. Copies of 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. 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*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on May 2, 2003, based on a complaint filed by Superbag Corp. ("Superbag") of Houston, Texas, against four respondents. 68 FR 24755 (May 8, 2003). These respondents were Thai Plastic Bags Company, Ltd. of Thailand; Hmong Industries, Inc. of St. Paul, Minnesota; Spectrum Plastics, Inc. ("Spectrum") of Cerritos, California; and Pan Pacific Plastics Mfg., Inc. ("Pan Pacific") of Union City, California. Subsequently, the Commission granted Superbag's motion to amend the complaint to add six additional respondents to the investigation—Advance Polybag, Inc. ("API") of Metarie, Louisiana; Universal Polybag Co., Ltd. ("Universal") of Thailand; Prime Source International LLC ("Prime Source") of Westerville, Ohio; Nantong Huasheng Plastic Products Co. ("Nantong") of China; Bee Lian Plastic Marketing PTE Ltd. ("Bee Lian") of Singapore; and Polson Products Limited of Hong Kong. 68 FR 54740 (Sept. 18, 2003).

Superbag's complaint alleges violations of section 337 of the Tariff Act of 1930 in the importation into the United States, sale for importation, and/or sale within the United States after importation of certain T-styled plastic grocery and retail bags that infringe one or more of claims 1–8 and 15–19 of Superbag's U.S. Patent No. 5,188,235 ("the '235 patent").

Prior to the hearing before the ALJ, the Commission terminated the investigation as to respondents Spectrum and Prime Source on the basis of consent orders, and as to respondents API, Universal, and Pan Pacific on the basis of settlement agreements. The Commission also found respondents Nantong and Bee Lian in default.

On March 30, 2004, the ALJ issued his final ID and recommended determination on remedy and bonding, finding that there is a violation of section 337 and recommending that the Commission issue a general exclusion order. He also recommended that the bond permitting temporary importation during the Presidential review period be set at 80 percent of the entered value.

On May 28, 2004, the Commission issued notice that it had determined not to review the ID, and requested written submissions on remedy, the public interest, and bonding. 69 FR 31638 (June 4, 2004). Superbag and the Commission investigative attorney timely filed submissions that addressed the form of remedy, if any, that should be ordered, the effect of a remedy on the public interest, and the amount of the bond that should be imposed during the 60-day Presidential review period.

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission determined that the appropriate form of relief is a general exclusion order prohibiting the unlicensed entry for consumption of plastic grocery and retail bags that infringe one or more of claims 1–8 and 15–19 of the '235 patent. The Commission also determined that the public interest factors enumerated in subsection (d) of section 337 do not preclude the issuance of the aforementioned general exclusion order, and that the bond during the Presidential review period shall be in

the amount of 80 percent of the entered value of the articles in question.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and §§ 210.49–210.51 of the Commission's Rules of Practice and Procedure, 19 CFR 210.49–210.51.

By order of the Commission.

Issued: August 10, 2004.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 04–18521 Filed 8–12–04; 8:45 am]

BILLING CODE 7020–02–P

## DEPARTMENT OF JUSTICE

### Foreign Claims Settlement Commission; Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 60-Day notice of information collection under review: Claims of U.S. National Against Albania

The Department of Justice (DOJ), Foreign Claims Settlement Commission (FCSC), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public. Comments are encouraged and will be accepted for "sixty days" until October 12, 2004. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact David Bradley, Chief Counsel, FCSC, 600 E St., NW., Suite 6002, Washington, DC 20579.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

*Overview of this information collection:*

(1) *Type of Information Collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* Claims of U.S. Nationals Against Albania.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number FCSC 1–04, Foreign Claims Settlement Commission.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Others: Not-for-profit institutions. The information collected will be used as the basis for determining entitlement of claimants to awards payable by the Department of the Treasury out of Albania Compensation Fund in claims of U.S. nationals against the Albanian government for expropriation of property.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 100 one-time annual respondents who will complete the for form within approximately 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total annual burden hours associated with this collection is 200.

If additional information is required, contact: Brenda E. Dyer, Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: August 10, 2004.

**Brenda E. Dyer,**

*Clearance Officer, Department of Justice.*

[FR Doc. 04–18560 Filed 8–12–04; 8:45 am]

BILLING CODE 4410–BA–P

## DEPARTMENT OF LABOR

### Employment Standards Administration; Wage and Hour Division

### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used

in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

**Modification to General Wage Determination Decisions**

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

*Volume I*

Massachusetts
MA 030001 (Jun. 13, 2003)
MA 030002 (Jun. 13, 2003)
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MA 030007 (Jun. 13, 2003)
MA 030009 (Jun. 13, 2003)
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MA 030017 (Jun. 13, 2003)
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New Jersey
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**General Wage Determination Publication**

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 5th day of August, 2004.

**John Frank,**

*Acting Chief, Branch of Construction Wage Determination.*

[FR Doc. 04–18303 Filed 8–12–04; 8:45 am]

BILLING CODE 4510–27–M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–341]**

### Detroit Edison Company; Fermi 2; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–43, issued to the Detroit Edison Company (the licensee), for operation of Fermi 2 located in Monroe County, Michigan.

The proposed amendment would (1) add License Condition 2.C.(22) requiring an integrated tracer gas test of the control room envelope using methods described in American Society for Testing and Materials E741–00, "Standard Test Method for Determining Air Change in a Single Zone by Means of a Tracer Gas Dilution," and (2) delete Surveillance Requirement (SR) 3.7.3.6, which requires verification that unfiltered inleakage from control room emergency filtration system duct work outside the control room envelope is within limits. The proposed amendment was submitted by application dated July 30, 2004.

The July 30, 2004, application supersedes the licensee's previous application dated March 31, 2003, in its entirety. The March 31, 2003, application was previously noticed in the **Federal Register** on May 27, 2003 (68 FR 28848).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the CODE OF FEDERAL REGULATIONS (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change is to add a License Condition for tracer gas testing and eliminate SR 3.7.3.6. The Control Room Emergency Filtration (CREF) system provides a configuration for mitigating radiological consequences of accidents; however, it is not considered an initiator of any previously analyzed accident. Therefore, the proposed change cannot increase the probability of any previously evaluated accident.

The CREF system provides a radiologically controlled environment from which the plant can be safely operated following a radiological accident. The current TS surveillance (SR 3.7.3.6) measures inleakage from four sections of CREF system duct work outside the Control Room Envelope (CRE) that are at negative pressure during accident conditions. Performance of tracer gas testing will provide essentially the same degree of assurance that CRE integrity is being maintained as before. Therefore, the proposed change does not significantly increase the radiological consequences of any previously analyzed accident.

Based on the above, the proposed change does not significantly increase the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to add a License Condition for tracer gas testing and to eliminate SR 3.7.3.6 does not alter the design or function of the system involved, nor does it introduce any new modes of plant or CREF system operation. Therefore, the proposed change does not create the potential for a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The proposed change to add a License Condition for tracer gas testing and to eliminate SR 3.7.3.6 will not affect the radiological release from a design basis accident. The postulated dose to the control room occupants as a result of an accident will remain approximately the same. Therefore, the proposed changes will not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or

copied for a fee, at the NRC's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license 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. 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, 2.304, and 2.305 which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing and petition for leave to intervene is filed by the above date, 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 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.

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. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestors/petitioner's interest. The petition must also identify 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 petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

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.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

A request for a hearing and 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, or 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, 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 request for hearing and petition for leave to intervene filed by e-mail or facsimile transmission need not comply with the requirements of 10 CFR 2.304 (b)(c) and (d) if an original and two (2) copies otherwise comply with the requirements of Section 2.304 are mailed within two (2) days, of the filing by e-mail or facsimile transmission to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff. A copy of the request for hearing and petition for leave to intervene should 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 facsimile transmission to 301–415–3725 or by email to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to Peter Marquardt, Legal Department, 688 WCB, Detroit Edison Company, 2000 2nd Avenue, Detroit, Michigan 48226–1279, the attorney for the licensee.

For further details with respect to this action, see the application for amendment dated July 30, 2004, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *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 PDR

Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 6th day of August 2004.

For the Nuclear Regulatory Commission.

**David P. Beaulieu,**

*Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 04–18510 Filed 8–12–04; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[NUREG–1600]**

## NRC Enforcement Policy; Alternative Dispute Resolution

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Policy statement: revision.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC or Commission) is publishing a revision to its Enforcement Policy (NUREG–1600, "General Statement of Policy and Procedures for NRC Enforcement Action) to include an interim enforcement policy regarding the use of Alternative Dispute Resolution (ADR) in the enforcement program for discrimination and other wrongdoing cases.

The Commission published a proposed pilot program to address the use of ADR in the enforcement program in the **Federal Register** (69 FR 21166) on April 20, 2004. The Commission received input from the public, in response to 69 FR 21166, expressing their support for the pilot program and providing comments.

**DATES:** The ADR process will be implemented in a phased approach. Because only the licensee and the NRC are involved in ADR after an OI investigation is complete, the staff will begin offering the opportunity to engage in ADR during the post investigation enforcement process upon issuance in the **Federal Register**. The staff will begin offering early ADR to whistleblowers who have established a *prima facie* case of discrimination approximately 30 days after the issuance of the **Federal Register** notice. The additional delay will allow the staff to complete the development of a brochure providing additional information regarding ADR in general and the NRC's program in particular. Comments on this revision to the Enforcement Policy may be submitted on or before September 13, 2004.

**ADDRESSES:** Submit written comments to: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m., Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, Room O1F21, 11555 Rockville Pike, Rockville, MD. You may also e-mail comments to *nrcrep@nrc.gov*.

**FOR FURTHER INFORMATION CONTACT:** Nick Hilton, Senior Enforcement Specialist, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, (301) 415–3055, e-mail *ndh@nrc.gov*.

**SUPPLEMENTARY INFORMATION:** The NRC received 11 sets of comments in response to the proposed pilot program published in the **Federal Register** on April 20, 2004. All of the commentors were either power reactor licensees or representatives of power reactor licensees. All commentors supported the pilot program with most offering that the comments provided either clarification opportunities or thoughts for future consideration after the pilot has operated for a period of time. The comments are available in their entirety on the Office of Enforcement's ADR Web page at *http://www.nrc.gov/what-we-do/regulatory/enforcement/adr.html#comments*.

The following is a synopsis of stakeholder comments received regarding the proposed ADR pilot program and the NRC response to the suggested changes.

*Comment:* The NRC should reconsider the treatment of an ADR settlement occurring after a formal enforcement action is taken (*e.g.*, a notice of violation (NOV) is issued) as a factor in determining a future escalated enforcement (civil penalty) amount. The proposed Interim Enforcement Policy on the use of ADR stated that settlements occurring after a formal enforcement action is taken will count as an enforcement case for purposes of determining whether identification credit is considered when assessing the amount of a civil penalty.

*Response:* The NRC would allow the status of a particular case being mediated to be negotiated during the dispute resolution session. Therefore, to allow greater flexibility, the NRC revised Section IV.A of the interim policy to state that, "settlements under the enforcement ADR program occurring after a formal enforcement action is taken (*e.g.* an NOV is issued) may count as an enforcement case for purposes of determining whether identification credit is considered" (emphasis added).

*Comment:* A press release should not be issued for those cases where an agreed upon settlement is reached through ADR after the Office of Investigations (OI) completes its investigation given that a confirmatory order is made public for such cases.

*Response:* A press release is standard agency practice when issuing an order. In many cases, the public may be aware of the issue through previous news articles for cases that had a proposed civil penalty, documents contained in ADAMS, the **Federal Register**, or OE Web page. The press release will serve to publically close out the issue, and increase the acceptance and public confidence in the ADR process.

*Comment:* The policy should be flexible enough to allow for a cooling off period prior to attempting to resolve the dispute through ADR without impacting the 90-day time frame for Early ADR.

*Response:* The process of notifying the NRC, establishing a *prima facie* case, agreeing to mediate, choosing a mediator, and scheduling the mediation session should be of sufficient duration to allow both parties an ample cooling off period. One purpose of the NRC program is to achieve a timely resolution. A delay in the implementation of the process may also put undue pressure on the employee due to the Department of Labor (DOL) timeliness requirements, lengthen potential unemployment time, *etc.*

*Comment:* An OI investigation or enforcement action should not be initiated if a settlement between the parties has been reached in principle.

*Response:* In Early ADR, the case is not referred to OI until after the neutral returns the case back to the NRC. However, a settlement is expected to be reached and signed within 90 days from when the parties agree to attempt ADR. The NRC may allow a small extension to the 90-day limit to allow for completion of a settlement agreement.

*Comment:* The NRC should monitor the ADR process to ensure it is not abused by employees since the process could create an artificial incentive for employee's to seek ADR for a claim of discrimination during the pilot program.

*Response:* Prior to entering into ADR, an employee must articulate, and an Allegation Review Board must then determine that, a prima facie case exists. In addition, a licensee's involvement in ADR is voluntary. If a licensee believes that the other party is attempting to abuse the ADR process, they do not have to agree to participate. The NRC

will also periodically assess the program in order to correct any problems such as abuse.

*Comment:* The policy should be explicit in that a settlement reached among the parties without the aid of a neutral will have the same effect as a settlement reached with the help of a neutral. Further, no OI investigation or enforcement should occur in any cases where a settlement or resolution has been reached through ADR.

*Response:* A minor change was made to the interim policy to reflect that notification to the NRC that a settlement has been reached must be made prior to initiation of an investigation. This was implicit in the proposed policy. Section III.A states that "If notified of the settlement, the NRC will review the settlement for restrictive agreements * * * assuming no such restrictive agreements exist, the NRC will not investigate or take enforcement action."

However, for those cases where a settlement agreement between the whistleblower and the licensee or contractor is reached after the initiation of an OI investigation or late in the DOL process enforcement action will be considered. If the NRC believes enforcement is appropriate, the licensee or contractor would be able to request ADR with the NRC to discuss the appropriate enforcement sanctions and corrective actions.

*Comment:* Settlement documents submitted to the NRC for review need not include names of individuals, numerical financial terms, or other information that would reveal specific personnel information and actions. Further, an unsigned, proposed settlement agreement constitutes a draft document, and should be withheld from public disclosure under the same confidentiality provisions that govern the ADR process in general.

*Response:* As part of the Early ADR portion of the program, signed and completed settlement documents are to be submitted to the NRC in their final form for review. As noted in the proposed interim policy, these documents are treated consistent with the allegation program procedures. As such, the settlement agreements will not routinely be made public. If requested under the Freedom of Information Act, a settlement agreement would be redacted as appropriate. The program does not contemplate that draft agreements will be submitted to the NRC in early ADR.

*Comment:* OI reports should be provided to licensees in other wrongdoing cases in additional to discrimination cases.

*Response:* This issue is outside of the ADR pilot program. The staff requirements memorandum (SRM) for SECY 02–0166, dated March 26, 2003, directed the NRC staff (staff) to release OI reports prior to a predecisional enforcement conference (PEC) for cases involving discrimination. This SRM does not apply to other wrongdoing cases. However, as the NRC gains experience with the release of OI reports for discrimination cases, the staff may consider recommending to the Commission that OI reports be released for other wrongdoing cases.

*Comment:* DOL should inform complainants of NRC's Early ADR process to ensure that such individuals, who may not have contacted the NRC, are made aware of the Early ADR process.

*Response:* The NRC has no authority over the DOL process. Requesting the DOL to discuss the NRC's ADR program could suggest that the NRC does not support employee's use of the DOL process. Also, experience indicates that individuals are more likely to come to the NRC and DOL, or the NRC alone, than they are to go to the DOL alone.

The staff has had informal discussions with the Occupational Safety and Health Administration (OSHA), and plans to have additional discussions with OSHA management regarding the NRC's Enforcement Policy in more detail. This will include discussions regarding the option for whistleblowers to enter into the NRC's Early ADR process.

In addition, individuals will be made aware of the availability of the ADR process through various means including the **Federal Register** and the NRC public web site. Other means of publicizing the process are also being considered. In addition, licensees are free to settle with individuals using licensee sponsored programs to resolve NRC or DOL issues.

*Staff comment:* While preparing to implement the pilot program, the NRC staff identified that additional flexibility is needed regarding who performs administrative or intake neutral functions.

*Response:* Section II.A of the interim policy was revised to allow flexibility for the staff to use Office Allegation Coordinators or a third party organization to serve as intake neutrals who would assist the parties in resolving the dispute. As a result of this revision, conforming changes were also made to Sections II.A, II.B.5, and II.B.6.

**Paperwork Reduction Act**

This policy statement does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) Existing requirements were approved by the Office of Management and Budget (OMB), approval number 3150–0136. The approved information collection requirements contained in this policy statement appear in Section VII.C.

**Public Protection Notification**

The NRC may not conduct or sponsor, and a person in not required to respond to, collection of information unless it displays a currently valid OMB control number.

**Small Business Regulatory Enforcement Fairness Act**

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC had determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

Accordingly, the NRC Enforcement Policy amended by including the Interim Enforcement Policy Regarding the use of Alternate Dispute Resolution in the Enforcement Program reads as follows:

**General Statement of Policy and Procedure for NRC Enforcement Actions**

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**Interim Enforcement Policies**

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Interim Enforcement Policy Regarding Enforcement Discretion for Certain Fire Protection Issues (10 CFR 50.48)

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**Interim Enforcement Policy Regarding the Use of Alternative Dispute Resolution**

**I. Introduction**

*A. Background*

This section sets forth the interim enforcement policy that the NRC will follow to undertake a pilot program testing the use of Alternative Dispute Resolution (ADR) in the enforcement program.

*B. Scope*

The pilot program scope consists of the trial use of ADR for cases involving: (1) alleged discrimination for engaging in protected activity prior to an NRC investigation; and (2) both discrimination and other wrongdoing cases after the Office of Investigations has competed an investigation. Specific points in the enforcement process where ADR may be requested are specified below. Mediation will be the form of ADR typically utilized. Certain cases may only require facilitation, a process where the neutral's function is primarily to support the communication process rather than focusing on the parties reaching a settlement.

**Note:** Although the NRC's ADR program may cause the parties to negotiate issues which may also form the basis for a claim under section 211 of the Energy Reorganization Act of 1974, as amended, the Department of Labor's (DOL) timeliness requirements for filing a claim are in no way altered by the NRC's program.

In cases involving an allegation of discrimination, any underlying technical issue will be treated as a separate issue, or concern, within the allegation program. The allegation program will be used to resolve concerns (typically safety concerns) and issues other than the discrimination complaint.

**II. General**

*A. Responsibilities and Program Administration*

The Director, OE, is responsible for the overall program. In addition, the Director, OE, will serve as the lead NRC negotiator for cases involving discrimination after OI completes an investigation. The Director, OE, may also designate the Deputy Director, OE, to act as the lead negotiator.

Regional Administrators are designated as the lead NRC negotiator for cases involving wrongdoing other than discrimination. The Regional Administrator may designate the Deputy Regional Administrator to act as the lead negotiator or the Director or Deputy Director, OE, may also serve as the lead negotiator for other wrongdoing cases.

The Program Administrator will provide program oversight and support for each region and headquarters program offices. Program and neutral evaluations will be provided to the Program Administrator. The Program Administrator may serve as the intake neutral for post investigation ADR. An "intake neutral" develops information and processes information for mediation. As an intake neutral, the confidentiality provisions discussed below will apply.

The Office Allegation Coordinators (OACs) are normally a complainant's first substantive contact when a concern regarding discrimination is raised. As such, the OACs may serve as an intake neutral who develops information and processes the necessary information for mediation under Early ADR. The OAC has the option to refer the whistleblower to the third party neutral to process the necessary information for mediation under Early ADR. The confidentiality provisions in Section II.B.7 will apply to the OAC, third party intake neutral, and Program Administrator. The OAC will also process documentation necessary to operate the program.

*B. General Rules/Principles*

Unless specifically addressed in a subsequent section, the rules described in this section apply generally throughout the ADR program, regardless of where in the overall enforcement process the ADR sessions occur.

1. *Voluntary.* Use of the NRC ADR program is voluntary, and any participant may end the mediation at any time. The goal is to obtain an agreement satisfactory to all participants on issues in controversy.

2. *Neutral qualification.* Generally, a neutral should be knowledgeable and experienced with nuclear matters or labor and employment law. However, any neutral that is satisfactory to the parties is acceptable.

3. *Roster of neutrals.* OE will maintain a list of organizations from which services of neutrals could be obtained. The parties may select a mediator from any of these organizations; however, the parties are not required to use the organizations provided and any neutral mutually agreeable to the parties is acceptable.

4. *Mediator selection.* If the parties have not selected a mediator within fourteen days, the Program Administrator or OAC may propose a mediator for the parties' consideration.

5. *Neutrality.* Mediators are neutral. The role of the mediator is to provide an environment where all participants will have an opportunity to resolve their differences. The parties should each consult an attorney or other professional if any question of law, content of a proposed agreement on issues in controversy, or other issues exists.

For Early ADR, the OAC or third party neutral will serve as an intake neutral. Should any party seek to discuss the NRC's enforcement ADR process in detail, the party should be referred to the OAC or third party neutral. The OAC will initiate discussion of the option to mediate and process the necessary documentation. Subsequently, for post investigation ADR, the program administrator or third party neutral will serve as the intake neutral. Due to the nature of conversations that typically occur between an intake neutral and the parties, these conversations will also be considered confidential.

6. *Mediation sessions.* Once selected by the parties and contracted by the OAC or third party intake neutral, the mediator will promptly contact each of the parties to discuss the mediation process under the Program, reconfirm party interest in proceeding, establish a date and location for the mediation session and obtain any other information s/he believes likely to be useful. The mediator will preside over all mediation sessions, and will be expected to complete the mediation within 90 days after referral unless the parties, and the NRC if not a party, agree otherwise. At the conclusion of the mediation, parties will be asked to fill out and submit an evaluation form for the mediator that will be sent to the Program Administrator.

Normally, a settlement is expected to be reached and signed within 90 days from when the parties agree to attempt ADR. A principal reason for Early ADR is the quick resolution of the claim, thereby improving the safety conscious work environment (SCWE). If the parties cannot agree to a settlement within 90 days, the NRC must assume a settlement will not be reached and continue with the investigation and enforcement process. Where good cause is shown and all parties agree, the NRC may allow a small extension to the 90 day limit to allow for completion of a settlement agreement.

Settlement agreements in Early ADR will not be final until 3 days after the agreement has been signed. Either party may reconsider the settlement agreement during the 3 day period. Subsequent concerns regarding implementation of the settlement agreement should be directed to the neutral, or if necessary, the OAC.

7. *Confidentiality.* The mediator will specifically inform all parties and other attendees that all mediation activities under the Program are subject to the confidentiality provisions of the Administrative Dispute Resolution Act, 5 U.S.C. 574; the Federal ADR Council's guidance document entitled "Confidentiality in Federal ADR Programs;" and the explicit confidentiality terms set forth in the Agreement to Begin Voluntary Mediation signed by the parties. The mediator will explain these

confidentiality terms and offer to answer questions regarding them.

8. *Good Faith.* All participants will participate in good faith in the mediation process and explore potentially feasible options that could lead to the management or resolution of issues in controversy.

9. *Not legal representation.* A mediator is not a legal representative or legal counsel. The mediator will not represent any party in the instant case or any future proceeding or matter relating to the issues in controversy in this case. The mediator is not either party's lawyer and no party should rely on the mediator for legal advice.

10. *Mediator Fees.* If Early ADR (defined below) is utilized, the NRC, subject to the availability of funds, will pay the mediator's entire fee. For cases where a licensee requests ADR subsequent to the completion of an OI report, the licensee requesting ADR will pay half of the mediator's fee and the NRC, subject to the availability of funds, will pay half. The NRC will recover the mediator fees it pays through annual fees assessed to licensees under 10 CFR Part 171.

11. *Exceptions.* The only exception to the offering of Early ADR by the NRC will be abuse of the program, *e.g.*, a large number of repetitive requests for ADR by a particular facility, contractor, or whistleblower. Should the NRC believe the ADR program has been abused in some manner by one of the parties potentially involved, the Director, OE will be notified.

To maximize the potential use of the ADR pilot program, for cases after an OI investigation is completed, the NRC will at least consider negotiating a settlement with a licensee for any wrongdoing case if requested. However, there may be certain circumstances where it may not be appropriate for the NRC to engage in ADR.

12. *Number of settlement attempts.* Each case will be afforded a maximum of two attempts to reach a settlement on the same underlying issue through the use of ADR. An "attempt" is defined as one or more mediated sessions conducted at a specific point in the NRC's enforcement process (generally within a 90 day period). However, in general, settlement at any time without the use of a neutral is not precluded by the ADR program.

13. *Finality.* Cases that reach a settlement (and are acceptable to the NRC), either in Early ADR or after an OI investigation is complete, constitute a final enforcement decision on the case by the NRC.

## III. ADR Opportunities

### *A. Licensee Sponsored Programs*

Licensees are encouraged to develop ADR programs of their own for use in conjunction with an employee concerns type program. If an employee who alleges retaliation for engaging in protected activity utilizes a licensee's program to settle the discrimination concern, either before or after contacting the NRC, the licensee may voluntarily report the settlement to the NRC as a settlement within the NRC's jurisdiction. If notified of the settlement prior to initiation of an investigation, the NRC will review the settlement for restrictive agreements potentially in violation of 10 CFR 50.7(f), or other, similar regulations. Assuming no such restrictive agreements exist, the NRC will not investigate or take enforcement action.

### *B. Early ADR*

The term "Early ADR" refers to the use of ADR prior to an OI investigation. The parties to Early ADR will normally be the complainant and the licensee. If the complainant is an employee of a licensee contractor, the parties will be the complainant and the contractor. Generally, the Early ADR process will parallel and work in conjunction with the NRC allegation program.

The allegation process will be used through the determination of a prima facie case. If an Allegation Review Board (ARB) determines a prima facie case exists, the ARB will normally recommend the parties be offered the opportunity to use Early ADR. Exceptions to such a recommendation should be rare and be based solely on an identified and articulated abuse of the ADR process by a party who would be involved in the case under consideration. Exceptions will be approved by the Director, OE, prior to initiating an investigation based on denial of ADR.

Early ADR cases will be tracked in the Allegation Management System (AMS). However, the allegation process timeliness measurement will be stayed once the ARB determines that ADR should be offered until the point in time ADR is declined by either party or the case is settled.

When an agreement is reached, the mediator will record the terms of that agreement. The parties may sign the agreement at the mediation session, or any party may review the agreement with his/her attorney before the document is placed in final form and signed. However, as noted above, settlement agreements in Early ADR will not be final until at least 3 days after the agreement has been signed. No participant will hold the NRC liable for the results of the mediation, whether or not a resolution is reached.

A settlement agreement between the parties will be reviewed by the NRC. OE will coordinate the review with the Office of the General Counsel (OGC). The review will ensure that no restrictive agreements in violation of 10 CFR 50.7(f) or other NRC regulations are contained in the settlement and will normally be completed within 5 working days of receipt. Given an acceptable settlement, the NRC will not investigate or take enforcement action.

The NRC expects that parties to Early ADR will agree to some form of confidentiality. However, that agreement cannot extend to the reporting of any safety concerns potentially discussed during the ADR sessions if one of the parties desires to report the concern. Either party may report safety concerns discussed during ADR sessions to the NRC without regard to confidentiality agreements. Safety concerns and their disposition may be discussed between the parties if desired. In cases where an Early ADR negotiation is between a licensee contractor and the contractor's employee, the NRC expects the contractor to ensure the licensee is aware of any safety issues discussed during the negotiations.

In addition to the settlement agreement, the licensee should provide the NRC with any planned or completed actions relevant to the safety conscious work environment that the licensee has determined to be appropriate.

Generally no press release or other public announcement will be made by the NRC for cases settled by early ADR. However, all documents, including the proposed settlement agreement, submitted to the NRC will be official agency records, and while not generally publicly available, still subject to the Freedom of Information Act (FOIA).

Documents associated with processing an Early ADR case will not generally be publicly available, consistent with the allegation program. However, documents may be subject to the FOIA and may be released, subject to redaction, pursuant to an FOIA request.

Some negotiations may fail to settle the case. When a settlement is not reached, the appropriate intake neutral will be notified, typically by the mediator, and an ARB will determine the appropriate action in accordance with the allegation program.

### *C. Post-Investigation ADR*

Post-investigation ADR refers to the use of ADR anytime after an OI

investigation is complete and an enforcement panel concludes that pursuit of an enforcement action appears warranted. Generally, post-investigation ADR processes will parallel and work in conjunction with the NRC enforcement program.

After an investigation is complete, there are generally three issues that can be resolved using ADR; whether a violation occurred, the appropriate enforcement action, and the appropriate corrective actions for the violation(s). If the parties agree, any or all three may be considered in an ADR session.

Two different types of enforcement cases will be eligible for ADR after an investigation is complete, discrimination and other wrongdoing cases. ADR will normally be considered at three places in the enforcement process after OI has completed an investigation: (1) After an enforcement panel has concluded there is the need to continue pursuing potential enforcement action based on an OI case and prior to the conduct of a predecisional enforcement conference (PEC); (2) after the initial enforcement action is taken, typically a Notice of Violation (NOV) and potentially a proposed civil penalty; and (3) after imposition of a civil penalty and prior to a hearing request.

The parties to an ADR session after an OI investigation is complete will be the licensee and the NRC. Fees associated with the neutral will typically be divided between the NRC and the licensee, with each paying half of the total cost.

Settlement discussions are expected to be complete within 90 days of initiating ADR prior to a PEC. The NRC may withdraw from settlement discussions if negotiations have not been completed in a timely manner.

The terms of a settlement agreement will normally be confirmed by order. Typically, the specific terms of settlement will be agreed to during the negotiation. The staff will then incorporate appropriate terms into a confirmatory order, a draft of which will then be agreed to by the licensee prior to issuance.

If an attempt to resolve a case using ADR prior to the conduct of a PEC fails, a predecisional enforcement conference will normally be offered to the licensee. The PEC will be conducted as described in the Enforcement Policy.

For cases within the scope of the pilot program, after a panel concludes that a case warrants continuation of the enforcement process, the responsible region or office will contact the licensee and offer either a PEC or ADR. Consistent with the Enforcement Policy, a written response could be offered at the staff's discretion.

Public notification of the settlement will normally be a press release and the confirmatory order will be published in the **Federal Register**.

Confidentiality with the NRC as a party will be determined by the parties as allowed by the ADR Act.

1. Discrimination Cases

Consistent with centralization of the discrimination enforcement process, the Director, Office of Enforcement, will normally negotiate for the NRC.

Normally the NRC will coordinate participation of the complainant. While the complainant will not be a party to the ADR process after OI issues an investigation report, the NRC will typically seek the complainant's input to the process. Normally, the NRC will at least seek input from the complainant regarding suggested corrective actions aimed at improving the safety conscious work environment.

OI reports (not including exhibits) will normally be provided to the licensee when the choice of ADR or a PEC is offered.

A licensee may request ADR for discrimination violations based solely on a finding by DOL. However, the staff will not negotiate the finding by DOL. The appropriate enforcement sanction and corrective actions will be the typical focus of settlement discussions.

2. Other Than Discrimination Wrongdoing

The regional administrator will normally be the principal negotiator for the NRC in ADR sessions on other wrongdoing cases. After imposition of a civil penalty or other order, the Director, Office of Enforcement and applicable regional administrator may determine that the Director would be the appropriate negotiator.

Typically, an enforcement panel will be conducted to discuss the NRC's specific interests in the case prior to the regional administrator attending the settlement discussions. A limited review of the settlement terms may be conducted in conjunction with the preparation of the confirmatory order.

The OI report will not routinely be offered to the licensee prior to ADR. However, the OI report may be provided, as necessary, during the negotiations with the licensee.

**IV. Integration With Traditional Enforcement Policy**

*A. Potential Future Enforcement Actions Civil Penalty Assessments*

Section VI.C.2 of the Enforcement Policy provides the method for determination of a civil penalty amount. One aspect of the determination uses enforcement history as a factor. If the staff considers a civil penalty for a future escalated enforcement action, settlements under the enforcement ADR program occurring after a formal enforcement action is taken (*e.g.* an NOV is issued) may count as an enforcement case for purposes of determining whether identification credit is considered. Settlements occurring prior to an OI investigation will not count as previous enforcement. The status of settlement agreements occurring after an investigation is completed but prior to an NOV being issued will be established as part of the negotiation between the parties.

Dated at Rockville, Maryland, this 6th day of August, 2004.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 04–18509 Filed 8–12–04; 8:45 am]

BILLING CODE 7590–01–P

## PENSION BENEFIT GUARANTY CORPORATION

### Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of interest rates and assumptions.

**SUMMARY:** This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site (*http://www.pbgc.gov*).

**DATES:** The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in August 2004. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in September 2004.

**FOR FURTHER INFORMATION CONTACT:** Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users

may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

**SUPPLEMENTARY INFORMATION:**

### Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the "required interest rate") in determining a single-employer plan's variable-rate premium. Pursuant to the Pension Funding Equity Act of 2004, for premium payment years beginning in 2004 or 2005, the required interest rate is the "applicable percentage" (currently 85 percent) of the annual rate of interest determined by the Secretary of the Treasury on amounts invested conservatively in long-term investment grade corporate bonds for the month preceding the beginning of the plan year for which premiums are being paid. Thus, the required interest rate to be used in determining variable-rate premiums for premium payment years beginning in August 2004 is 5.10 percent (*i.e.*, 85 percent of the 6.00 percent composite corporate bond rate for July 2004 as determined by the Treasury).

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between September 2003 and August 2004. Note that the required interest rates for premium payment years beginning in September through December 2003 were determined under the Job Creation and Worker Assistance Act of 2002, and that the required interest rates for premium payment years beginning in January through August 2004 were determined under the Pension Funding Equity Act of 2004.

| For premium payment years beginning in: | The required interest rate is: |
|---|---|
| September 2003 [1] | 5.31 |
| October 2003 [1] | 5.14 |
| November 2003 [1] | 5.16 |
| December 2003 [1] | 5.12 |
| January 2004 [2] | 4.94 |
| February 2004 [2] | 4.83 |
| March 2004 [2] | 4.79 |
| April 2004 [2] | 4.62 |
| May 2004 [2] | 4.98 |
| June 2004 [2] | 5.26 |
| July 2004 [2] | 5.25 |
| August 2004 [2] | 5.10 |

[1] The required interest rates for premium payment years beginning in September through December 2003 were determined under the Job Creation and Worker Assistance Act of 2002.

[2] The required interest rates for premium payment years beginning in January through August 2004 were determined under the Pension Funding Equity Act of 2004.

### Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in September 2004 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 10th day of August 2004.

**Joseph H. Grant,**

*Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.*

[FR Doc. 04–18537 Filed 8–12–04; 8:45 am]

**BILLING CODE 7708–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 26528 ; 812–13107]**

## Fixed Income Securities, L.P., et al.; Notice of Application

August 9, 2004.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 ("Act") for an exemption from sections 12(d)(1)(A), (B), and (C) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

*Summary of the Application:* Fixed Income Securities, L.P. ("FIS"), Advisor's Disciplined Trust ("ADT"), and any registered unit investment trusts ("UITs") organized in the future and sponsored by FIS, or an entity controlling, controlled by or under common control with FIS (each, a "Depositor"), and their respective series (together with the ADT, the "Trusts", and each series of the Trusts, a "Series"), request an order to permit the Trusts to acquire shares of registered management investment companies and UITs both within and outside the same group of investment companies.

*Applicants:* FIS and ADT.

*Filing Dates:* The application was filed on July 14, 2004, and amended on August 5, 2004. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 2, 2004, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, 18925 Base Camp Road, Monument, Colorado 80132.

**FOR FURTHER INFORMATION CONTACT:** Bruce MacNeil, Senior Counsel, at (202) 942–0634, or Annette Capretta, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102, (202) 942–8090.

### Applicants' Representations

1. ADT is a UIT registered under the Act. Each Series will be a series of a Trust, each a UIT which is or will be registered under the Act. FIS, a Texas limited partnership, is registered under the Securities Exchange Act of 1934 as a broker-dealer.

2. Applicants request relief to permit the Series to invest in (a) registered investment companies that are part of the same "group of investment companies" (as that term is defined in section 12(d)(1)(G) of the Act) as the Trust ("Affiliated Funds"), and (b) registered investment companies that are not part of the same group of investment companies as the Trust ("Unaffiliated Funds," together with the Affiliated Funds, the "Funds"). The Unaffiliated Funds may include UITs ("Unaffiliated Underlying Trusts") and

open-end or closed-end management investment companies ("Unaffiliated Underlying Funds"). Certain of the Unaffiliated Underlying Trusts or Unaffiliated Underlying Funds may be "exchange-traded funds" that are registered under the Act as UITs or open-end management investment companies and have received exemptive relief to sell their shares on a national securities exchange at negotiated prices.[1]

3. Applicants state that the requested relief will benefit unitholders by providing investors with a professionally selected, diversified portfolio of investment company shares through a single investment vehicle.

**Applicants' Legal Analysis**

*A. Section 12(d)(1)*

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally. Section 12(d)(1)(C) prohibits an investment company, other investment companies having the same investment adviser, and companies controlled by such investment companies, from acquiring more than 10% of the outstanding voting stock of a registered closed-end management investment company.

2. Section 12(d)(1)(G) provides, in relevant part, that section 12(d)(1) will not apply to securities of a registered open-end investment company or UIT acquired by a registered UIT if the acquired company and the acquiring company are part of the same group of investment companies, provided that certain other requirements contained in section 12(d)(1)(G) are met. Applicants state that they may not rely on section 12(d)(1)(G) because a Series will invest in Unaffiliated Funds in addition to Affiliated Funds.

3. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) to permit a Series to acquire shares of a Fund and to permit a Fund to sell shares to a Series beyond the limits set forth in sections 12(d)(1)(A), (B), and (C).

4. Applicants state that the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A), (B), and (C), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

5. Applicants state that the proposed arrangement will not result in undue influence by a Series or its affiliates over Funds. To limit the control that a Series may have over an Unaffiliated Fund, applicants propose a condition prohibiting the Depositor, the Series, and certain affiliates (individually or in the aggregate) from controlling an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. To limit further the potential for undue influence over Unaffiliated Funds, applicants propose conditions 2 through 6, stated below, to preclude a Series and its affiliated entities from taking advantage of an Unaffiliated Fund with respect to transactions between the entities and to ensure that transactions will be on an arm's length basis.

6. As an additional assurance that an Unaffiliated Underlying Fund understands the implications of an investment by a Series under the requested order, prior to a Series' investment in an Unaffiliated Underlying Fund in excess of the limit in Section 12(d)(1)(A)(i), the Series and Unaffiliated Underlying Fund will execute an agreement stating, without limitation, that the Depositor and Trustee and the board of directors or trustees to the Unaffiliated Underlying Fund and the investment adviser(s) to the Unaffiliated Underlying Fund, understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. Applicants note that an Unaffiliated Fund may choose to reject an investment from the Series.

7. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. Applicants state that a condition to the order would provide that any sales charges and/or service fees (as those terms are defined in Rule 2830 of the Conduct Rules of the NASD, Inc. ("NASD Conduct Rules")) charged with respect to Units of a Series will not exceed the limits applicable to a fund of funds as set forth in Rule 2830 of the NASD Conduct Rules. In addition, the trustee to a Series ("Trustee") or Depositor will waive fees otherwise payable by the Series in an amount at least equal to any compensation (including fees paid pursuant to a plan adopted by an Unaffiliated Underlying Fund under rule 12b–1 under the Act ("12b–1 Fees")) received from an Unaffiliated Fund by the Trustee or Depositor, or an affiliated person of the Trustee or Depositor, other than any advisory fees paid to the Trustee or Depositor or its affiliated person by an Unaffiliated Underlying Fund, in connection with the investment by a Series in the Unaffiliated Fund.

8. Applicants state that the proposed arrangement will not create an overly complex fund structure. Applicants note that a Fund will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A). Applicants also represent that a Series' prospectus and sales literature will contain concise, "plain English" disclosure designed to inform investors of the unique characteristics of the trust of funds structure, including, but not limited to, its expense structure and the additional expenses of investing in Funds.

*B. Section 17(a)*

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Applicants state that a Series and Affiliated Funds might be deemed to be under the common control of the

[1] All Trusts that currently intend to rely on the requested order are named as applicants. Any other Trust that relies on the order in the future will comply with the terms and conditions of the application.

Depositor or an entity controlling, controlled by, or under common control with the Depositor. Applicants also state that a Series and a Fund might become affiliated persons if the Series acquires more than 5% of the Fund's outstanding voting securities. In light of these possible affiliations, section 17(a) could prevent a Fund from selling shares to and redeeming shares from a Series.

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the proposed arrangement satisfies the standards for relief under sections 17(b) and 6(c) of the Act. Applicants state that the terms of the arrangement are fair and reasonable and do not involve overreaching. Applicants note that the consideration paid for the sale and redemption of shares of the Funds will be based on the net asset values of the Funds. Applicants state that the proposed arrangement will be consistent with the policies of each Series and Fund, and with the general purposes of the Act.

**Applicants' Conditions**

Applicants agree that the requested order will be subject to the following conditions:

1. (a) The Depositor, (b) any person controlling, controlled by, or under common control with the Depositor, and (c) any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act sponsored or advised by the Depositor, or any person controlling, controlled by, or under common control with the Depositor (collectively, the "Group") will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Unaffiliated Fund, the Group, in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of the Unaffiliated Fund, the Group will vote its shares of the Unaffiliated Fund in the same proportion as the vote of all other holders of the Unaffiliated Fund's shares.

2. No Series or its Depositor, promoter, principal underwriter, or any person controlling, controlled by, or under common control with any of those entities (each, a "Series Affiliate") will cause any existing or potential investment by the Series in an Unaffiliated Fund to influence the terms of any services or transactions between the Series or Series Affiliate and the Unaffiliated Fund or its investment adviser(s), sponsor, promoter, principal underwriter, or any person controlling, controlled by, or under common control with any of those entities.

3. Once an investment by a Series in the securities of an Unaffiliated Underlying Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the board of directors or trustees of the Unaffiliated Underlying Fund, including a majority of the disinterested board members, will determine that any consideration paid by the Unaffiliated Underlying Fund to the Series or Series Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Unaffiliated Underlying Fund; (b) is within the range of consideration that the Unaffiliated Underlying Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Unaffiliated Underlying Fund and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

4. The Trustee or Depositor will waive fees otherwise payable to it by the Series in an amount at least equal to any compensation (including 12b–1 fees) received from an Unaffiliated Fund by the Trustee or Depositor, or an affiliated person of the Trustee or Depositor, other than any advisory fees paid to the Trustee or Depositor or its affiliated person by an Unaffiliated Underlying Fund, in connection with the investment by a Series in the Unaffiliated Fund.

5. No Series or Series Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Underlying Fund or sponsor to an Unaffiliated Underlying Trust) will cause an Unaffiliated Fund to purchase a security in an offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is the Depositor or a person of which the Depositor is an affiliated person (each, an "Underwriting Affiliate," except any person whose relationship to the Unaffiliated Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate). An offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate is an "Affiliated Underwriting."

6. The board of an Unaffiliated Underlying Fund, including a majority of the disinterested board members, will adopt procedures reasonably designed to monitor any purchases of securities by the Unaffiliated Underlying Fund in an Affiliated Underwriting once an investment by a Series in the securities of the Unaffiliated Underlying Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The board of the Unaffiliated Underlying Fund will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Series in the Unaffiliated Underlying Fund. The board of the Unaffiliated Underlying Fund will consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Unaffiliated Underlying Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Unaffiliated Underlying Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The board of the Unaffiliated Underlying Fund will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interests of shareholders.

7. An Unaffiliated Underlying Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and

will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Series in the securities of the Unaffiliated Underlying Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the determinations of the board of the Unaffiliated Underlying Fund were made.

8. Before investing in an Unaffiliated Underlying Fund in excess of the limit in section 12(d)(1)(A)(i), each Series and the Unaffiliated Underlying Fund will execute an agreement stating, without limitation, that the Depositor and Trustee and the board of directors or trustees of the Unaffiliated Underlying Fund and the investment adviser(s) to the Unaffiliated Underlying Fund, understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Unaffiliated Underlying Fund in excess of the limit in section 12(d)(1)(A)(i), a Series will notify the Unaffiliated Underlying Fund of the investment. At such time, the Series also will transmit to the Unaffiliated Underlying Fund a list of the names of each Series Affiliate and Underwriting Affiliate. The Series will notify the Unaffiliated Underlying Fund of any changes to the list of names as soon as reasonably practicable after a change occurs. The Unaffiliated Underlying Fund and the Series will maintain and preserve a copy of the order, the agreement, and the list with any updated information for the duration of the investment, and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Any sales charges and/or service fees charged with respect to Units of a Series will not exceed the limits applicable to a fund of funds as set forth in Rule 2830 of the Conduct Rules of the NASD.

10. No Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–18531 Filed 8–12–04; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 26529; 812–13108]**

## Fixed Income Securities, L.P., et al.; Notice of Application

August 9, 2004.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application under (a) section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 2(a)(32), 2(a)(35), 14(a), 19(b), 22(d) and 26(a)(2)(C) of the Act and rules 19b–1 and rule 22c–1 thereunder; and (b) sections 11(a) and 11(c) of the Act for approval of certain exchange and rollover privileges.

**APPLICANTS:** Fixed Income Securities, L.P. ("FIS") and any entity controlling, controlled by or under common control with FIS (each, a "Depositor"); Advisor's Disciplined Trust ("ADT"); any future registered unit investment trusts sponsored by the Depositor (together with ADT, the "Trusts") and the future and existing series of each Trust (each a "Series").[1]

**SUMMARY OF APPLICATION:** Applicants request an order to permit certain unit investment trusts ("UITs") to: (a) Impose sales charges on a deferred basis and waive the deferred sales charge in certain cases; (b) offer unitholders certain exchange and rollover options; (c) publicly offer units without requiring the Depositor to take for its own account or place with others $100,000 worth of units; and (d) distribute capital gains resulting from the sale of portfolio securities within a reasonable time after receipt.

**FILING DATES:** The application was filed on July 15, 2004, and amended on August 5, 2004. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 2, 2004, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609; Applicants, 18925 Base Camp Road, Monument, CO 80132.

**FOR FURTHER INFORMATION CONTACT:** Bruce R. MacNeil, Senior Counsel, at (202) 942–0634 or Annette Capretta, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

### Applicants' Representations

1. ADT is a UIT registered under the Act. Each Series will be a series of a Trust, each a UIT which is or will be registered under the Act.[2] FIS, a Texas limited partnership, is registered under the Securities Exchange Act of 1934 as a broker-dealer and is the depositor of each Series. Each Series will be created by a trust indenture between the Depositor and a banking institution or trust company as trustee ("Trustee").

2. The Depositor acquires a portfolio of securities, which it deposits with the Trustee in exchange for certificates representing units of fractional undivided interest in the Series' portfolio ("Units"). The Units are offered to the public by the Depositor and dealers at a price which, during the initial offering period, is based upon the aggregate market value of the underlying securities plus a front-end sales charge. The Depositor may reduce the sales charge in compliance with rule 22d–1 under the Act in certain circumstances, which are disclosed in the prospectus.

3. The Depositor will maintain a secondary market for Units and

[1] Any future Series that relies on the requested order will comply with the terms and conditions of the application.

[2] All presently existing Trusts that currently intend to rely on the requested order have been named as applicants.

continually offer to purchase these Units at prices based upon the market value of the underlying securities. Investors may purchase Units on the secondary market at the current public offering price plus a front-end sales charge. If the Depositor discontinues maintaining such a market at any time for any Series, holders of the Units ("Unitholders") of that Series may redeem their Units through the Trustee.

*A. Deferred Sales Charge and Waiver of Deferred Sales Charge Under Certain Circumstances*

1. Applicants request an order to the extent necessary to permit one or more Series to impose a sales charge on a deferred basis ("deferred sales charge" or "DSC"). For each Series, the Depositor would set a maximum sales charge per Unit, a portion of which may be collected "up front" (*i.e.*, at the time an investor purchases the Units). The DSC would be collected subsequently in installments ("Installment Payments") as described in the application. The Depositor would not add any amount for interest or any similar or related charge to adjust for such deferral.

2. When a Unitholder redeems or sells Units, the Depositor intends to deduct any unpaid DSC from the redemption or sale proceeds. When calculating the amount due, the Depositor will assume that Units on which the DSC has been paid in full are redeemed or sold first. With respect to Units on which the DSC has not been paid in full, the Depositor will assume that the Units held for the longest time are redeemed or sold first. Applicants represent that the DSC collected at the time of redemption or sale, together with the Installment Payments and any amount collected up front, will not exceed the maximum sales charge per Unit. Under certain circumstances, the Depositor may waive the collection of any unpaid DSC in connection with redemptions or sales of Units. These circumstances will be disclosed in the prospectus for the relevant Series and implemented in accordance with rule 22d–1 under the Act.

3. Each Series offering Units subject to a DSC will state the maximum charge per Unit in its prospectus. In addition, the prospectus for such Series will include the table required by Form N–1A (modified as appropriate to reflect the difference between UITs and open-end management investment companies) and a schedule setting forth the number and date of each Installment Payment, along with the duration of the collection period. The prospectus also will disclose that portfolio securities may be sold to pay an Installment Payment if distribution income is insufficient, and that securities will be sold pro rata or a specific security will be designated for sale.

*B. Exchange Option and Rollover Option*

1. Applicants request an order to the extent necessary to permit Unitholders of a Series to exchange their Units for Units of another Series ("Exchange Option") and Unitholders of a Series that is terminating to exchange their Units for Units of a new Series of the same type ("Rollover Option"). The Exchange Option and Rollover Option would apply to all exchanges of Units sold with a front-end sales charge or DSC.

2. A Unitholder who purchases Units under the Exchange Option or Rollover Option would pay a lower sales charge than that which would be paid for the Units by a new investor. The reduced sales charge will be reasonably related to the expenses incurred in connection with the administration of the DSC program, which may include an amount that will fairly and adequately compensate the Depositor and participating underwriters and brokers for their services in providing the DSC program.

3. Pursuant to the Exchange Option, an adjustment would be made if Units of any Series are exchanged within five months of their acquisition for Units of a Series with a higher sales charge ("Five Months Adjustment"). An adjustment also would be made if Units on which a DSC is collected are exchanged for Units of a Series that imposes a front-end sales charge and the exchange occurs before the DSC collected (plus any amount collected up front on the exchanged Units) at least equals the per Unit sales charge on the acquired Units ("DSC Front-End Exchange Adjustment"). If an exchange involves either the Five Months Adjustment or the DSC Front-End Exchange Adjustment, the Unitholder would pay the greater of the reduced sales charge or an amount which, together with the sales charge already paid on the exchanged Units, equals the normal sales charge on the acquired Units on the date of the exchange. With appropriate disclosures, the Depositor may waive such payment. Further, the Depositor would reserve the right to vary the sales charge normally applicable to a Series and the charge applicable to exchanges, as well as to modify, suspend, or terminate the Exchange Option as set forth in the conditions to the application.

**Applicants' Legal Analysis**

*A. DSC and Waiver of DSC*

1. Section 4(2) of the Act defines a "unit investment trust" as an investment company that issues only redeemable securities. Section 2(a)(32) of the Act defines a "redeemable security" as a security that, upon its presentation to the issuer, entitles the holder to receive approximately his or her proportionate share of the issuer's current net assets or the cash equivalent of those assets. Rule 22c–1 under the Act requires that the price of a redeemable security issued by a registered investment company for purposes of sale, redemption or repurchase be based on the security's current net asset value ("NAV"). Because the collection of any unpaid DSC may cause a redeeming Unitholder to receive an amount less than the NAV of the redeemed Units, applicants request relief from section 2(a)(32) and rule 22c–1.

2. Section 22(d) of the Act and rule 22d–1 under the Act require a registered investment company and its principal underwriter and dealers to sell securities only at the current public offering price described in the investment company's prospectus, with the exception of sales of redeemable securities at prices that reflect scheduled variations in the sales load. Section 2(a)(35) of the Act defines the term "sales load" as the difference between the sales price and the portion of the proceeds invested by the depositor or trustee. Applicants request relief from section 2(a)(35) and section 22(d) to permit waivers, deferrals or other scheduled variations of the sales load.

3. Under section 6(c) of the Act, the Commission may exempt classes of transactions, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that their proposal meets the standards of section 6(c). Applicants state that the provisions of section 22(d) are intended to prevent (a) riskless trading in investment company securities due to backward pricing, (b) disruption of orderly distribution by dealers selling shares at a discount, and (c) discrimination among investors resulting from different prices charged to different investors. Applicants assert that the proposed DSC program will present none of these abuses. Applicants further state that all scheduled variations in the sales load will be disclosed in the prospectus of

each Series and applied uniformly to all investors, and that applicants will comply with all the conditions set forth in rule 22d–1.

4. Section 26(a)(2)(C) of the Act, in relevant part, prohibits a trustee or custodian of a UIT from collecting from the trust as an expense any payment to the trust's depositor or principal underwriter. Because the Trustee's payment of the DSC to the Depositor may be deemed to be an expense under section 26(a)(2)(C), applicants request relief under section 6(c) from section 26(a)(2)(C) to the extent necessary to permit the Trustee to collect Installment Payments and disburse them to the Depositor. Applicants submit that the relief is appropriate because the DSC is more properly characterized as a sales load.

*B. Exchange Option and Rollover Option*

1. Section 11(a) and (c) of the Act prohibit any offer of exchange by a UIT for the securities of another investment company unless the terms of the offer have been approved in advance by the Commission. Applicants request an order under sections 11(a) and 11(c) for Commission approval of the Exchange Option and the Rollover Option. Applicants state that the Five Months Adjustment and the DSC Front-End Exchange Adjustment in certain circumstances are appropriate to maintain the equitable treatment of various investors in each Series.

*C. Net Worth Requirement*

1. Section 14(a) of the Act requires that a registered investment company have $100,000 of net worth prior to making a public offering. Applicants state that each Series will comply with this requirement because the Depositor will deposit substantially more than $100,000 of debt and/or equity securities, depending on the objective of the particular Series. Applicants assert, however, that the Commission has interpreted section 14(a) as requiring that the initial capital investment in an investment company be made without any intention to dispose of the investment. Applicants state that, under this interpretation, a Series would not satisfy section 14(a) because of the Depositor's intention to sell all the Units of the Series.

2. Rule 14a–3 under the Act exempts UITs from section 14(a) if certain conditions are met, one of which is that the UIT invest only in "eligible trust securities," as defined in the rule. Applicants state that they may not rely on rule 14a–3 because certain future Series (collectively, "Equity Series") will invest all or a portion of their assets in equity securities or registered investment company securities pursuant to an exemptive order, which do not satisfy the definition of eligible trust securities.

3. Applicants request an exemption under section 6(c) of the Act to the extent necessary to exempt the Equity Series from the net worth requirement in section 14(a). Applicants state that the Series and the Depositor will comply in all respects with the requirements of rule 14a–3, except that the Equity Series will not restrict their portfolio investments to "eligible trust securities."

*D. Capital Gains Distribution*

1. Section 19(b) of the Act and rule 19b–1 under the Act provide that, except under limited circumstances, no registered investment company may distribute long-term gains more than once every twelve months. Rule 19b–1(c), under certain circumstances, exempts a UIT investing in eligible trust securities (as defined in rule 14a–3) from the requirements of rule 19b–1. Because the Equity Series do not limit their investments to eligible trust securities, however, the Equity Series will not qualify for the exemption in paragraph (c) of rule 19b–1. Applicants therefore request an exemption under section 6(c) from section 19(b) and rule 19b–1 to the extent necessary to permit capital gains earned in connection with the sale of portfolio securities to be distributed to Unitholders along with the Equity Series' regular distributions. In all other respects, applicants will comply with section 19(b) and rule 19b–1.

2. Applicants state that their proposal meets the standards of section 6(c). Applicants assert that any sale of portfolio securities would be triggered by the need to meet Series' expenses, Installment Payments, or by redemption requests, events over which the Depositor and the Equity Series do not have control. Applicants further state that, because principal distributions must be clearly indicated in accompanying reports to Unitholders as a return of principal and will be relatively small in comparison to normal dividend distributions, there is little danger of confusion from failure to differentiate among distributions.

**Applicants' Conditions**

Applicants agree that the order granting the requested relief will be subject to the following conditions:

*A. DSC and Exchange and Rollover Options*

1. Whenever the Exchange Option or the Rollover Option is to be terminated or its terms are to be amended materially, any holder of a security subject to that privilege will be given prominent notice of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment, provided that: (a) No such notice need be given if the only material effect of an amendment is to reduce or eliminate the sales charge payable at the time of an exchange, to add one or more new Series eligible for the Exchange Option or the Rollover Option, or to delete a Series which has terminated; and (b) no notice need be given if, under extraordinary circumstances, either (i) there is a suspension of the redemption of Units of the Series under section 22(e) of the Act and the rules and regulations promulgated thereunder, or (ii) a Series temporarily delays or ceases the sale of its Units because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies and restrictions.

2. An investor who purchases Units under the Exchange Option or the Rollover Option will pay a lower sales charge than that which would be paid for the Units by a new investor.

3. The prospectus of each Series offering exchanges or rollovers and any sales literature or advertising that mentions the existence of the Exchange Option or Rollover Option will disclose that the Exchange Option and the Rollover Option are subject to modification, termination or suspension without notice, except in certain limited cases.

4. Any DSC imposed on a Series' Units will comply with the requirements of subparagraphs (1), (2) and (3) of rule 6c–10(a) under the Act.

5. Each Series offering Units subject to a DSC will include in its prospectus the disclosure required in Form N–1A relating to deferred sales charges (modified as appropriate to reflect the differences between UITs and open-end management investment companies) and a schedule setting forth the number and date of each Installment Payment.

*B. Net Worth Requirement*

1. Applicants will comply in all respects with the requirements of rule 14a–3, except that the Equity Series will not restrict their portfolio investments to "eligible trust securities."

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–18532 Filed 8–12–04; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 35–27883]**

## Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

August 9, 2004.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 3, 2004, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After September 3, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

### Allegheny Energy, Inc. (70–10232)

Allegheny Energy, Inc. ("Allegheny"), 800 Cabin Hill Drive, Greensburg, PA 15601, a registered holding company under the Act has filed a declaration under sections 6(a) and 7 of the Act and rule 54 under the Act.

Allegheny is a diversified energy company, headquartered in Greensburg, Pennsylvania. Allegheny delivers electric energy to approximately 1.6 million customers in parts of Maryland, Ohio, Pennsylvania, Virginia, and West Virginia, and natural gas to approximately 230,000 customers in West Virginia through the following wholly-owned regulated public utility companies: West Penn Power Company, The Potomac Edison Company, Monongahela Power Company, and Mountaineer Gas Company.

Allegheny requests authority from the Commission to issue shares of common stock, $1.25 par value (the "Common Stock") in accordance with the terms of a Non-Employee Director Stock Plan (the "Plan"). Under the Plan, Allegheny proposes to issue up to 300,000 shares of Common Stock to its non-employee directors.[1] The Plan provides that, on March 31, 2004 and each March 31, June 30, September 30, and December 31 thereafter, Allegheny will issue a number of shares as determined by the Board, up to a maximum of 1,000 shares of Common Stock (the "Share Payment") to each person then serving as a non-employee director for services rendered during the quarter.[2] In addition, any director whose service terminates during the quarter due to death or disability will be issued the same Share Payment. For 2004, the Board has set the quarterly Share Payment to each non-employee director at 800 shares of Common Stock. The Share Payments are in addition to cash compensation that each non-employee director receives for Board service, but the Plan will supersede and replace Allegheny's prior policy of granting $12,000 worth of Common Stock annually to non-employee directors as part of his or her director compensation. The Plan has been approved by Allegheny's Board of Directors (the "Board") and by Allegheny's stockholders at the company's 2004 annual meeting of stockholders. No Share Payments will be made under the Plan, until Allegheny receives the Commission's authorization under the Act, which is the only regulatory approval required prior to making the Share Payment. Upon receipt of the Commission's authorization to issue the Common Stock under the Plan, Share Payments that were due under the Plan since March 31, 2004 will be made within 10 business days thereafter.

The Plan is intended to aid Allegheny in attracting and retaining non-employee directors by encouraging and enabling them to acquire a financial interest in Allegheny, and to align the economic interest of the participants with those of Allegheny's stockholders. The Board has determined that the compensation to be made to non-employee directors under the Plan is appropriate in type and amount and competitive with compensation paid to directors by other companies of similar size and in similar businesses.

The Plan will be administered by the Board, which will have authority to interpret the Plan's provisions, and adopt, amend, and rescind rules and regulations for the Plan. The Board, without further stockholder approval, may amend the Plan to conform the Plan to securities or other laws, rules, regulations, or requirements applicable to the Plan, and may generally amend the Plan. The Board, however, cannot, without prior stockholder approval, amend the Plan to: (1) Change the number of shares of Common Stock available for issuance under the Plan; or (2) Increase from 1,000 the maximum number of shares that can be issued each quarter to each non-employee director. The Board may also suspend or discontinue the Plan, in whole or in part, but any suspension or discontinuance will not affect any shares of Common Stock issued under the Plan prior to that action. Under the Plan, 300,000 shares of Common Stock will be available for payment to the participants.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–18496 Filed 8–12–04; 8:45 am

BILLING CODE 8010–01–P]

[1] The number of shares of Common Stock authorized under the Plan may be adjusted to reflect a stock split, combination of shares, recapitalization, stock dividend, or other similar changes in Allegheny's capital stock after the adoption of the Plan.

[2] Each non-employee director will have the right to defer Share Payments due under the Plan in accordance with the Allegheny Energy, Inc. Revised Plan for Deferral of Compensation of Directors or any successor plan.

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–50163; File No. SR–BSE–2004–28]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Its Boston Options Exchange Trading Rules Regarding Market Opening Procedures

August 6, 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 26, 2004, the Boston Stock Exchange, Inc.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

("BSE" 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 BSE. Pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] the BSE has designated this proposal as non-controversial, which renders the proposed rule change effective immediately upon filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The BSE proposes to extend the pilot program for a provision of its Boston Options Exchange ("BOX") trading rules regarding its market opening procedures for one year through August 6, 2005. The text of the proposed rule change is available at the Office of the Secretary, the BSE, 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 BSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The BSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to extend the pilot program ("Pilot Program") for a section of the Rules of the BOX (the "BOX Rules") relating to opening the market until August 6, 2005. Chapter V, Doing Business on BOX, Section 9, Opening the Market, establishes guidelines regarding market-opening procedures ("Market Opening Rules"). On February 4, 2004, the Commission approved these guidelines, as set forth in the BOX Rules, on a pilot basis through August 6, 2004.[5] The BSE now seeks to extend the pilot for one year, until August 6, 2005.

According to the BOX Market Opening Rules, for a period of at least one hour prior to the start of trading each day, the BOX Trading Host is in Pre-Opening Phase. During the Pre-Opening Phase Options Participants are able to enter, modify and cancel orders and quotes, and Limit Orders from previous trading sessions which are still valid (*e.g.*, Good "Till Cancelled orders) are automatically brought to the new Pre-Opening Phase and are available for modification and cancellation. A Theoretical Opening Price ("TOP"), which is the price which would be the opening price if the Opening Match were to occur at that moment, is calculated and broadcast continuously to all BOX Options Participants during the Pre-Opening Phase; however no orders are matched, nor trades executed until the primary market opens for each underlying security. At that point, an Opening Match is conducted and any orders or quotes remaining on the BOX Book after the Opening Match are accessible for modification or cancellation during regular trading.

2. Statutory Basis

The BSE believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[6] in general, and Section 6(b)(5)[7] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and is not designed to permit unfair discrimination between customers, brokers, or dealers, or to regulate by virtue of any authority matters not related to the administration of the Exchange.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The BSE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The BSE neither solicited nor received written comments with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The BSE filed the proposed rule change pursuant to Section 19(b)(3)(A)[8] of the Act and Rule 19b–4(f)(6)[9] thereunder. Because the proposal: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.

Under Rule 19b–4(f)(6)(iii) of the Act,[10] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest and the BSE is required to give the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. The BSE has requested that the Commission waive the five-day pre-filing notice requirement and accelerate the 30-day operative delay so that the Pilot Program may continue without interruption after it would have otherwise expired on August 6, 2004. The Commission believes that accelerating the 30-day operative period and waiving the five-day pre-filing requirement is consistent with the protection of investors and the public interest because it would allow the BSE to continue to provide standardized market open procedures for BOX that the BSE can surveil, enforce, and continue to evaluate without interruption after it would have otherwise expired on August 6, 2004.[11] For this reason, the Commission designates that the proposal become operative immediately.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 49192 (February 4, 2004), 69 FR 7051 (February 12, 2004) (SR–BSE–2004–05).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BSE–2004–28 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–BSE–2004–28. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2004–28 and should be submitted on or before September 3, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–18530 Filed 8–12–04; 8:45 am]

BILLING CODE 8010–01–P

## SOCIAL SECURITY ADMINISTRATION

### Privacy Act of 1974 as Amended; Computer Matching Program (SSA and State/Local Law Enforcement Agencies (SA)—Match Number 5001

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Notice of a renewal of a computer matching program.

**SUMMARY:** In accordance with the provisions of the Privacy Act, as amended, this notice announces a renewal of a computer matching program that SSA will conduct with SA.

**DATES:** SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

**ADDRESSES:** Interested parties may comment on this notice either by telefax to (410) 965–8582 or writing to the Associate Commissioner for Income Security Programs, 245 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

**FOR FURTHER INFORMATION CONTACT:** The Associate Commissioner for Income Security Programs as shown above.

**SUPPLEMENTARY INFORMATION:**

**A. General**

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the approval of the matching agreement by the Data Integrity Boards (DIB) of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating or denying an individual's benefits or payments.

**B. SSA Computer Matches Subject to the Privacy Act**

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: August 6, 2004.

**Martin H. Gerry,**

*Deputy Commissioner for Disability and Income Security Programs.*

**Notice of Computer Matching Program, Social Security Administration (SSA) With State/Local Law Enforcement Agencies (SA)**

*A. Participating Agencies*

SSA and SA.

*B. Purpose of the Matching Program*

The purpose of this matching program is to establish conditions under which SA agree to disclose fugitive felon, parole, or probation violator information to SSA. SSA will use this information to determine eligibility under Title II, Title VIII, and Title XVI of the Social Security Act and to select representative payees.

*C. Authority for Conducting the Matching Program*

This matching operation is carried out under the authority of sections 202(x)(1)(A)(iv) and (v), 202(x)(3), 205(j)(2), 804(a)(2), 807(b) and 1611(e)(4) and (5) of the Social Security Act.

[12] 17 CFR 200.30–3(a)(12).

*D. Categories of Records and Individuals Covered by the Matching Agreement*

SA will submit names and other identifying information of individuals who are fugitive felons or parole or probation violators. The Master Files of Social Security Number (SSN) Holders and SSN Applications (SSA/OEEAS 60–0058) contains the SSN's and identifying information for all SSN holders. The Master Beneficiary Record (SSA/ORSIS 60–0090) and the Supplemental Security Income Record/Special Veterans' Benefits (SSA/OEEAS 60–0103) contains beneficiary and payment information. The Master Representative Payee File (60–0222) contains information on individuals acting in a representative payee capacity. SSA will match data from these System of Records with data received from the SAs as a first step in detecting certain fugitive felons or probation or parole violators who should not be receiving RSDI, SSI and/or SVB.

*E. Inclusive Dates of the Match*

The matching agreement for this program shall become effective no sooner than 40 days after notice of the matching program is sent to Congress and the Office of Management and Budget (OMB) or 30 days after publication of this notice in the **Federal Register** whichever is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 04–18522 Filed 8–12–04; 8:45 am]
BILLING CODE 4191–02–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Meeting of the National Parks Overflights Advisory Group Aviation Rulemaking Committee

**ACTION:** Notice of meeting.

**SUMMARY:** The National Park Service (NPS) and Federal Aviation Administration (FAA), in accordance with the National Parks Air Tour Management Act of 2000, announce the next meeting of the National Parks Overflights Advisory Group Aviation Rulemaking Committee (NPOAG ARC). The meeting will take place on September 9 and 10, 2004, at the Wilderness Society, 1615 M Street, NW., Washington, DC. This notice informs the public of the date, location, and agenda for the meeting.

**DATES AND LOCATION:** The NPOAG ARC will meet September 9–10, 2004, at the Wilderness Society, 1615 M Street, NW., Washington, DC. The meeting will begin at 8:00 a.m. on Thursday, September 9, 2004.

**FOR FURTHER INFORMATION CONTACT:** Barry Brayer, Manager, Executive Resource Staff, Western Pacific Region, Federal Aviation Administration, 15000 Aviation Blvd., Hawthorne, CA 90250, telephone: (310) 725–3800, or *Barry.Brayer@faa.gov*, or Karen Trevino, National Park Service, Natural Sounds Program, 1201 Oakridge Dr., Suite 350, Ft. Collins, CO, 80525, telephone (970) 225–3563, or *Karen_Trevino@nps.gov*.

**SUPPLEMENTARY INFORMATION:**

**Background**

The National Parks Air Tour Management Act of 2000, enacted on April 5, 2000, as Public Law 106–181 (Pub. L. 106–181), required the establishment of a National Parks Overflights Advisory Group within 1 year after its enactment. The NPOAG was to be a balanced group representative of general aviation, commercial air tour operations, environmental concerns, and Indian tribes. The duties of the NPOAG included providing advice, information, and recommendations to the Director, NPS, and to the Administrator, FAA, on the implementation of Public Law 106–181, on quiet aircraft technology, on other measures that might accommodate interests to visitors to national parks, and, at the request of the Director and Administrator, on safety, environmental, and other issues related to commercial air tour operations over national parks or tribal lands.

On March 12, 2001, the FAA and NPS announced the establishment of the NPOAG (48 FR 14429). The advisory group has held four meetings: August 28–29, 2001, in Las Vegas, Nevada; October 4–5, 2002, in Tusayan, Arizona; October 20–21, 2003 in Jackson, Wyoming; and March 18–19, 2004, in Boulder City, NV.

On October 10, 2003, the Administrator signed Order No. 1110–138 establishing the NPOAG as an aviation rulemaking committee. The current members of the NPOAG ARC are Heidi Williams (general aviation), Richard Larew, Elling Halverson, and Alan Stephen (commercial air tour operations), Chip Dennerlein, Charles Maynard, Steve Bosak, and Susan Gunn (environmental interests), and Germaine White and Richard Deertrack (Indian tribes).

**Agenda for the September 9–10, 2004 Meeting**

The NPOAG ARC will review tribal issues, prevention and mitigation of significant adverse environmental impacts, modifications to interim operating authority, new entrant operators and increased operations of existing operators, and quiet technology. A final agenda will be available the day of the meeting.

**Attendance at the Meeting**

Although this is not a public meeting, interested persons may attend. Because seating is limited, if you plan to attend, please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT** so that meeting space may accommodate your attendance.

**Record of the Meeting**

If you cannot attend the meeting, a summary record of the meeting will be made available by the Office of Rulemaking (ARM), 800 Independence Ave., SW., Washington, DC 20591. Contact is Linda Williams, (202) 267–9685, or *linda.l.williams@faa.gov*.

Issued in Washington, DC, on August 6, 2004.

**James J. Ballough,**

*Director, Flight Standards Service.*

[FR Doc. 04–18488 Filed 8–12–04; 8:45 am]
BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement: Clark County, NV

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed freeway project in the cities of Las Vegas and Henderson, Clark County, Nevada.

**FOR FURTHER INFORMATION CONTACT:** Ted P. Bendure, Environmental Program Manager, Federal Highway Administration, 705 N. Plaza, Suite 220, Carson City, NV 89701, Telephone: 775–687–5322, e-mail: *ted.bendure@fhwa.dot.gov*.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Nevada Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to improve Interstate 515 (I–515) in the cities of Las Vegas and Henderson, Clark

County, Nevada and in that portion of unincorporated Clark County located between the two cities. The proposed project would involve improvements to the I–515 Corridor between the southern terminus of the present I–515 Freeway in the City of Henderson (MP56) and the northern terminus of I–515 in the City of Las Vegas (MP76). The proposed project covers a total distance of approximately 20 miles on the present route.

Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand resulting from the growth of interstate traffic and local commuter traffic in the southeast region of the Las Vegas Valley. Specifically, the project will evaluate improvements to I–515 to mitigate congestion along the freeway corridor, widening and upgrading the existing freeway, upgrading existing interchanges, providing new interchanges at F Street and Sahara Avenue, and realigning Bonanza Road at Las Vegas Boulevard. The EIS will consider the effects of the proposed project, the No Action alternative, and other alternatives to the proposed project.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this project. A public scoping meeting will be held September 14, 2004, and local notice will be provided. The Web site for the project is *http://www.i515study.com*. In addition, public information meetings will be held throughout the duration of the project and a public hearing will be held for the draft EIS. Public notices will be given announcing the time and place of the public meetings and the hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on August 9, 2004.

**Susan Klekar,**

*Nevada Division Administrator, Federal Highway Administration, Carson City, Nevada.*

[FR Doc. 04–18584 Filed 8–12–04; 8:45 am]

BILLING CODE 4910–22–M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[U.S. DOT Docket Number NHTSA–04–18816]**

### Reports, Forms, and Recordkeeping Requirements

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Request for public comment on proposed collection of information.

**SUMMARY:** Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

**DATES:** Comments must be received on or before October 12, 2004.

**ADDRESSES:** Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB Control Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Complete copies of each request for collection of information may be obtained at no charge from Christina Morgan, NHTSA,400 Seventh Street, SW., Room 5208, NPO–321, Washington, DC 20590. Ms. Morgan's telephone number is (202) 366–2562. Please identify the relevant collection of information by referring to its OMB Control Number.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) 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;

(ii) 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;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

*Title:* The Impact of LATCH on Child Restraint Use.

*OMB Control Number:* 2127—New.

*Affected Public:* Individuals.

*Form Number:* Not applicable.

*Abstract:* The data will provide information on the impact of Lower Anchor and Tethers for Children (LATCH) on child safety seat use. Specifically, NHTSA will find out if consumers are using the LATCH system to install child safety seats, if they are easy to install, and the percentage that are being installed correctly. The evaluation is required under Executive Order 12866.

*Estimated Annual Burden:* 832 hours.

*Number of Respondents:* 9,088.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information

on respondents, including the use of automated collection techniques or other forms of information technology.

**Noble Bowie,**

*Associate Administrator for Planning, Evaluation, and Budget.*

[FR Doc. 04–18536 Filed 8–12–04; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

August 9, 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 September 13, 2004 to be assured of consideration.

**Departmental Offices/International Portfolio Investment Data Systems**

*OMB Number:* New collection.

*Form Numbers:* International Capital Form D.

*Type of Review:* New collection.

*Title:* Treasury International Capital (TIC) Form D: Reporting of Holdings of, and Transactions in, Financial Derivatives Contracts with Foreign Residents.

*Description:* Form D is required by law and is designed to collect timely information on international portfolio capital movements, including U.S. residents' holding of, and transactions in, financial derivatives contracts with foreign residents. The information will be used in the computation of the U.S. balance of payments accounts and international investment position, as well as in the formulation of the U.S. international financial and monetary policies.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents:* 40.

*Estimated Burden Hours Per Respondent:* 30 hours.

*Frequency of Response:* Quarterly.

*Estimated Total Reporting Burden:* 4,800 hours.

*Clearance Officer:* Lois K. Holland, (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

*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. 04–18580 Filed 8–12–04; 8:45 am]

BILLING CODE 4811–16–P]

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

August 6, 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 September 13, 2004 to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–1243.

*Regulation Project Numbers:* PS–163–84 Final.

*Type of Review:* Extension.

*Title:* Treatment of Transaction between Partners and Partnerships.

*Description:* Section 707(a)(2) provides that if there is a transfer of money or property to a partnership, the transfer will be treated, in certain situations, as a disguised sale between the partner and the partnership. The regulations provide that the partner or the partnership should disclose the transfers and certain attendant facts in some situations.

*Respondents:* Business of other for-profit.

*Estimated Number of Respondents:* 7,500.

*Estimated Burden Hours Respondent:* 20 minutes.

*Frequency of Response:* Annually.

*Estimated Total Reporting Burden:* 2,500 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. 04–18579 Filed 8–12–04; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

August 6, 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 September 13, 2004 to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–0936.

*Form Number:* IRS Form 8453.

*Type of Review:* Extension.

*Title:* U.S. Individual Income Tax Declaration for an IRS e-file Return.

*Description:* This form will be used to secure taxpayers' signatures and declarations in conjunction with the Electronic Filing program. This form, together with the election transmission, will comprise the taxpayer's income tax return.

*Respondents:* Individuals or households.

*Estimated Number of Respondents/ Recordkeepers:* 12,300,000.

*Estimated Burden Hours Respondent/ Recordkeeper:* 15 minutes.

*Frequency of response:* Annually.

*Estimated Total Reporting/ Recordkeeping Burden:* 3,075,000 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. 04–18581 Filed 8–12–04; 8:45 am]

BILLING CODE 4830–01–P]

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Revenue Procedure 2004–47

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2004–47, Relief from Ruling Process for Making Late Reverse QTIP Election.

**DATES:** Written comments should be received on or before October 12, 2004 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the revenue procedure should be directed to Carol Savage at Internal Revenue Service, Room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the internet at *CAROL.A.SAVAGE@irs.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title:* Relief From Ruling Process For Making Late Reverse QTIP Election.

*OMB Number:* 1545–1898.

*Revenue Procedure Number:* Revenue Procedure 2004–47.

*Abstract:* Revenue Procedure 2004–47 provides alternative relief for taxpayers who failed to make a reverse QTIP election on an estate tax return. Instead of requesting a private letter ruling and paying the accompanying user fee the taxpayer may file certain documents with the Cincinnati Service Center directly to request relief.

*Current Actions:* There are no changes being made to the revenue procedure at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 6.

*Estimated Annual Average Time Per Respondent:* 9 hours.

*Estimated Total Annual Hours:* 54.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 9, 2004.

**Glenn P. Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 04–18562 Filed 8–12–04 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Revenue Procedure 2001–42

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2001–42, Modified Endowment Contract Correction Program Extension.

**DATES:** Written comments should be received on or before October 12, 2004 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the revenue procedure should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

**SUPPLEMENTARY INFORMATION:**

Title: Modified Endowment Contract Correction Program Extension.

*OMB Number:* 1545–1752.

*Revenue Procedure Number:* Revenue Procedure 2001–42.

*Abstract:* Revenue Procedure 2001–42 allows issuers of life insurance contracts whose contracts have failed to meet the tests provided in section 7702A of the Internal Revenue Code to cure these contracts that have inadvertently become modified endowment contracts.

*Current Actions:* There are no changes being made to the revenue procedure at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 10.

*Estimated Average Time Per Respondent:* 100 hours.

*Estimated Total Annual Reporting Hours:* 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material

in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 9, 2004.

**Glenn P. Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 04–18564 Filed 8–12–04; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Small Business/Self Employed—Payroll Committee of the Taxpayer Advocacy Panel

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Small Business/Self Employed–Payroll Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The TAP will be discussing issues pertaining to increasing compliance and lessening the burden for Small Business/Self Employed individuals. Recommendations for IRS systemic changes will be developed.

**DATES:** The meeting will be held Thursday, September 2, 2004.

**FOR FURTHER INFORMATION CONTACT:** Mary O'Brien at 1–888–912–1227, or 206 220–6096.

**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 Small Business/Self Employed—Payroll Committee of the Taxpayer Advocacy Panel will be held Thursday, September 2, 2004, from 3 p.m. e.d.t. to 4:30 p.m. e.d.t. via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Mary O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary O'Brien. Ms O'Brien can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: various IRS issues.

Dated: August 6, 2004.

**Bernard Coston,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 04–18563 Filed 8–12–04; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia and the District of Columbia)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted (via teleconference). 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 Tuesday, September 7, 2004, from 3 p.m. to 4:30 p.m. edt.

**FOR FURTHER INFORMATION CONTACT:** Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

**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 Area 2 Taxpayer Advocacy Panel will be held Tuesday, September 7, 2004 from 3 p.m. to 4:30 p.m. EDT via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include the following: Various IRS issues.

Dated: August 9, 2004.

**Bernard Coston,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 04–18573 Filed 8–12–04; 8:45 am]

BILLING CODE 4830–01–P


Federal Register

Friday,
August 13, 2004

Part II

# Department of Transportation

## Federal Aviation Administration

14 CFR Part 25

Safety Standards for Flight Guidance Systems and Proposed Revisions to Advisory Circular 25–1329–1A, Automatic Pilot Systems Approval; Proposed Rule and Notice

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 25**

**[Docket No. FAA–2004–18775; Notice No. 04–11]**

**RIN 2120–AI41**

## Safety Standards for Flight Guidance Systems

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The Federal Aviation Administration proposes to amend the airworthiness standards for transport category airplanes concerning flight guidance systems. The proposed standards address the performance, safety, failure protection, alerting, and basic annunciation of these systems. This proposed rule is necessary to address flight guidance system vulnerabilities and to consolidate and standardize regulations for functions within those systems. This proposed rule would also update the current regulations regarding the latest technology and functionality. Adopting this proposal would eliminate significant regulatory differences between the airworthiness standards of the U.S. and the Joint Aviation Authorities of Europe.

**DATES:** Send your comments on or before October 12, 2004.

**ADDRESSES:** You may send comments [Docket Number FAA–2004–18775] using any of the following methods:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Fax: 1–202–493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

*Privacy:* We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* To read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Gregg Bartley, FAA, Airplane and Flight Crew Interface Branch (ANM–111), Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2889; facsimile 425–227–1320; e-mail *gregg.bartley@faa.gov*.

**SUPPLEMENTARY INFORMATION:**

### How Do I Submit Comments to This NPRM?

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

*Privacy Act:* Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov*.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

### How Can I Obtain a Copy of This NPRM?

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm;* or

(3) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

### Background

*What Prompted This Proposed Rule?*

In response to several incidents and accidents that highlight difficulties for flightcrews interacting with the increasing automation of flight decks, the FAA formed a Human Factors Team (HFT). The team included representatives of the National Aeronautics and Space Administration (NASA) and the Joint Aviation Authority of Europe (JAA), as well as technical advisers from Ohio State University, the University of Illinois, and the University of Texas. The HFT evaluated flightcrew/flight deck automation interfaces for the current generation of transport category airplanes. They issued a report on June 18, 1996, titled "The Interfaces Between Flightcrews and Modern Flight Deck Systems." A copy of the HFT report is included in the official docket.

The main impetus for the HFT study was an accident in Nagoya, Japan, on April 26, 1994, involving an Airbus 300–600 operated by China Airlines. Contributing to that accident were conflicting actions taken by the

flightcrew and the airplane's autopilot. The flightcrew tried to correct the autopilot's directions. The combination of out-of-trim conditions, high engine thrust, and flaps that were retracted too far led to a stall, which resulted in an accident involving 264 fatalities. Although this particular accident involved an A300–600, other accidents, incidents, and safety indicators demonstrate that this problem is not confined to any one airplane type, manufacturer, operator, or geographic region. On November 12, 1995, an MD–80 operated by American Airlines descended below the minimum descent altitude, clipped some trees, and landed short of the runway, in what was very nearly a fatal accident. On July 13, 1996, a McDonnell Douglas MD–11 operated by American Airlines experienced an in-flight upset near Westerly, Rhode Island. When the airplane was cleared to descend to 24,000 feet, the first officer initiated a descent by means of the autopilot. With approximately 1,000 feet left in the descent, the captain became concerned that the airplane might not level off at the assigned altitude and instructed the first officer to slow the rate of descent. The first officer adjusted the pitch thumbwheel on the autopilot control panel. This maneuver proved ineffective. The captain then took manual control of the airplane, began applying back pressure to the control column, and disconnected the autopilot. Flight data recorder data show the airplane experienced an immediate 2.3 G pitch upset followed by more oscillations, resulting in four injuries.

The HFT identified issues that show vulnerabilities in flightcrew management of automation and situation awareness. Specifically, there were concerns about:

- *Pilot understanding of automation's capabilities, limitations, modes, and operating principles and techniques.* The HFT frequently heard about automation "surprises," where the automation behaved in ways the flightcrew did not expect. The flightcrews, from operational experience, commonly asked: "Why did it do that?" "What is it doing now?" and "What will it do next?'
- *Differing pilot decisions about the appropriate automation level to use or whether to turn the automation on or off when they get into unusual or non-normal situations.* This may also lead to potential mismatches with the manufacturer's assumptions about how the flightcrew will use the automation.

Flightcrew situation awareness issues included vulnerabilities in, for example:

- *Automation/mode awareness.* This was an area where the researchers heard a universal message of concern about each of the aircraft in the study.
- *Flight path awareness, including insufficient terrain awareness (sometimes involving loss of control or controlled flight into terrain) and energy awareness (especially low energy state).*

The team concluded that these vulnerabilities exist because of some interrelated deficiencies in the current aviation system:

- *Insufficient communication and coordination.* Examples include lack of communication about in-service experience within and between organizations; incompatibilities between the air traffic system and airplane capabilities; poor interfaces between organizations, and lack of coordination of research needs and results between the research community, designers, regulators, and operators.
- *Processes used for design, training, and regulatory functions that inadequately address human performance issues.* As a result, users can be surprised by subtle behavior or overwhelmed by the complexity embedded in systems within the current operating environment. Process improvements are needed to provide the framework for consistent application of principles and methods for removing vulnerabilities in design, training, and operations.
- *Insufficient criteria, methods, and tools for design, training, and evaluation.* Existing methods, data, and tools are inadequate to evaluate and resolve many of the important human performance issues. It is fairly easy to get agreement that automation should be human-centered, or that potentially hazardous situations should be avoided; it is much more difficult to get agreement on how to achieve these objectives.
- *Insufficient knowledge and skills.* Designers, pilots, operators, regulators, and researchers do not always have adequate knowledge and skills in certain areas related to human performance. The team was concerned that investments in necessary levels of human expertise were being reduced in response to economic pressures. For example, two-thirds to three-quarters of all accidents had flightcrew error cited (during the study) as a major factor.
- *Insufficient understanding and consideration of cultural differences in design, training, operations, and evaluation.* The aviation community has an inadequate understanding of the influence of culture and language on flightcrew/automation interaction. Cultural differences may reflect differences in the country of origin, philosophy of regulators, organizational philosophy, or other factors. There is a need to improve the aviation community's understanding and consideration of the implications of cultural influences on human performance.

Not all wide-reaching problems uncovered by the human factors team listed above can be corrected in one rulemaking project. The safety issues addressed in this proposal are the following:

- Insufficient crew awareness of flight guidance system (FGS) behavior and operation.
- Hazardous autopilot transients resulting from disengagement, including a manual pilot override of an engaged autopilot.
- FGS mode confusion resulting in crew errors (for instance, altitude violation).
- History of lack of awareness of unusual/hazardous attitudes during FGS operations (accidents and incidents).
- History of lack of speed awareness (accidents and incidents).
- Operation in icing conditions.

## Function of the Flight Guidance System

The FGS is intended to assist the flightcrew in the basic control and guidance of the airplane. The FGS provides workload relief to the flightcrew and a means to more accurately fly an intended flight path. The following functions make up the flight guidance system:

1. Autopilot—automated airplane maneuvering and handling capabilities.
2. Autothrust—automated propulsion control.
3. Flight Director—the display of steering commands that provide vertical and horizontal path guidance, whether displayed "heads down" or "heads up." A heads up display is a flight instrumentation that allows the pilot of an airplane to watch the instruments while looking ahead of the airplane for the approach lights or the runway.

Flight guidance systems functions also include the flight deck alerting, status, mode annunciations (instrument displays), and any situational information required by those functions displayed to the flightcrew. Also included are those functions necessary to provide guidance and control with an approach and landing system, such as:

- Instrument landing system (ILS).
- Microwave landing system (MLS) (an instrument landing system operating in the microwave spectrum that provides lateral and vertical guidance to airplanes having compatible avionics equipment).

• Global navigation satellite system landing system (GLS).

The FGS definition does not include flight planning, flight path construction, or any other function normally associated with a Flight Management System (FMS).

Statement of the Problem

Several NTSB safety recommendations, as well as the FAA study discussed above, have highlighted flight guidance system vulnerabilities. The current regulations (§ 25.1329) regarding flight guidance systems address only the autopilot system, except for one specific regulation regarding the flight director switch position (§ 25.1335). Not addressed is the autothrust system, and how it relates to flight guidance. Therefore, there is a need to consolidate and standardize regulations for all flight guidance system functionality (autopilot, autothrust, and flight director).

Also needed is an updating of existing regulations to match technology advances. Current regulations do not fully address the latest technology or new functionality available. In addition, proposed and recent rulemaking activity, such as the interaction of systems and structure, flight test, and human factors, will make certain aspects of the existing flight guidance systems regulations redundant, in conflict with other regulations, or confusing and difficult to understand.

Finally, there is a need to harmonize regulations between the FAA and the Joint Aviation Authorities (JAA) that would not only benefit the aviation industry economically, but also maintain the necessary high level of aviation safety.

NTSB Recommendations

Safety recommendations issued by the NTSB in recent years that highlight vulnerabilities in the flight guidance systems of today's transport airplanes are listed below:

• NTSB Safety Recommendation A–92–035: "Revise Advisory Circular 25.1329–1A to add guidance regarding autopilot failures that can result in changes in attitude at rates that may be imperceptible to the flightcrew and thus remain undetected until the airplane reaches significant attitude deviations."

• NTSB Safety Recommendation A–98–098: "Require all manufacturers of transport-category airplanes to incorporate logic into all new and existing transport-category airplanes that have autopilots installed to provide a cockpit aural warning to alert pilots when the airplane's bank and/or pitch exceeds the autopilot's maximum bank and/or pitch command limits."

• NTSB Safety Recommendation A–99–043: "Require all new transport category airplane autopilot systems to be designed to prevent upsets when manual inputs to the flight controls are made."

**What Are the Relevant Airworthiness Standards in the United States?**

In the United States, the airworthiness standards for type certification of transport category airplanes are contained in Title 14, Code of Federal Regulations (CFR) part 25. Manufacturers of transport category airplanes must show that each airplane they produce of a different type design complies with the appropriate part 25 standards. These standards apply to:

• Airplanes manufactured within the U.S., and

• Airplanes manufactured in other countries and imported to the U.S. under a bilateral airworthiness agreement.

**What Are the Relevant Airworthiness Standards in Europe?**

In Europe, the airworthiness standards for type certification of transport category airplanes are contained in Joint Aviation Requirements (JAR)–25, which are based on part 25. These were developed by the Joint Aviation Authorities (JAA) of Europe to provide a common set of airworthiness standards within the European aviation community. Thirty-seven European countries accept airplanes type certificated to the JAR–25 standards, including airplanes manufactured in the U.S. that are type certificated to JAR–25 standards for export to Europe.

**What Is "Harmonization" and How Did It Start?**

Although part 25 and JAR–25 are very similar, they are not identical in every respect. When airplanes are type certificated to both sets of standards, the differences between part 25 and JAR–25 can result in substantial added costs to manufacturers and operators. These added costs, however, often do not bring about an increase in safety. Often, part 25 and JAR–25 may contain different requirements to accomplish the same safety intent. Consequently, manufacturers are usually burdened with meeting the requirements of both sets of standards without a corresponding increase in the level of safety.

Recognizing that a common set of standards would not only benefit the aviation industry economically, but also maintain the necessary high level of safety, the FAA and the JAA began an effort in 1988 to "harmonize" their respective aviation standards. The goal of the harmonization effort is to ensure that:

• Where possible, standards do not require domestic and foreign parties to manufacture or operate to different standards for each country involved; and

• The standards adopted are mutually acceptable to the FAA and the foreign aviation authorities.

The FAA and JAA have identified many significant regulatory differences (SRD) between the wording of part 25 and JAR–25. Both the FAA and the JAA consider "harmonization" of the two sets of standards a high priority.

**What Is the European Aviation Safety Authority?**

The new European Aviation Safety Authority (EASA) was established and formally came into being on September 28, 2003. The JAA worked with the European Commission (EC) to develop a plan to ensure a smooth transition from JAA to EASA. As part of the transition, the EASA will absorb all functions and activities of the JAA, including its efforts to harmonize JAA regulations with those of the U.S. This rule is a result of the FAA and JAA harmonization rulemaking activities. These JAR standards have already been incorporated into the EASA "Certification Specifications for Large Aeroplanes" CS–25, in similar if not identical language. The EASA CS–25 became effective October 17, 2003.

**What Is ARAC and What Role Does It Play in Harmonization?**

After initiating the first steps towards harmonization, the FAA and JAA soon realized that traditional methods of rulemaking and accommodating different administrative procedures was neither sufficient nor adequate to make appreciable progress towards fulfilling the harmonization goal. The FAA identified the Aviation Rulemaking Advisory Committee (ARAC) as an ideal resource for assisting in resolving harmonization issues, and, in 1992, the FAA tasked ARAC to undertake the entire harmonization effort.

The FAA had formally established ARAC in 1991 (56 FR 2190, January 22, 1991), to provide advice and recommendations concerning the full range of the FAA's safety-related rulemaking activity. The FAA sought this advice to develop better rules in less overall time and using fewer FAA resources than previously needed. The committee provides the FAA firsthand

information and insight from interested parties regarding potential new rules or revisions of existing rules.

There are 74 member organizations on the committee representing a wide range of interests within the aviation community. Meetings of the committee are open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act.

The ARAC establishes working groups to develop recommendations for resolving specific airworthiness issues. Tasks assigned to working groups are published in the **Federal Register**. Although working group meetings are not generally open to the public, the FAA solicits participation in working groups from interested members of the public who possess knowledge or experience in the task areas. Working groups report directly to the ARAC, and the ARAC must accept a working group proposal before ARAC presents the proposal to the FAA as an advisory committee recommendation.

The activities of the ARAC will not, however, circumvent the public rulemaking procedures; nor is the FAA limited to the rule language "recommended" by ARAC. If the FAA accepts an ARAC recommendation, the agency proceeds with the normal public rulemaking procedures. Any ARAC participation in a rulemaking package is fully disclosed in the public docket.

This rulemaking has been identified as a "fast track" project. Further details on the Fast Track Program can be found in the tasking statement (64 FR 66522, November 26, 1999) and the first NPRM published under this program, Fire Protection Requirements for Powerplant Installations on Transport Category Airplanes (65 FR 36978, June 12, 2000).

## What Are the Current 14 CFR and JAR Standards, Certification Specifications for Large Airplanes?

The current text of 14 CFR 25.1329 (amendment 25–46) is:

**§ 25.1329 Automatic pilot system.**

(a) Each automatic pilot system must be approved and must be designed so that the automatic pilot can be quickly and positively disengaged by the pilots to prevent it from interfering with their control of the airplane.

(b) Unless there is automatic synchronization, each system must have a means to readily indicate to the pilot the alignment of the actuating device in relation to the control system it operates.

(c) Each manually operated control for the system must be readily accessible to the pilots.

(d) Quick release (emergency) controls must be on both control wheels, on the side of each wheel opposite the throttles.

(e) Attitude controls must operate in the plane and sense of motion specified in §§ 25.777(b) and 25.779(a) for cockpit controls. The direction of motion must be plainly indicated on, or adjacent to, each control.

(f) The system must be designed and adjusted so that, within the range of adjustment available to the human pilot, it cannot produce hazardous loads on the airplane, or create hazardous deviations in the flight path, under any condition of flight appropriate to its use either during normal operation, or in the event of a malfunction, assuming that corrective action begins within a reasonable period of time.

(g) If the automatic pilot integrates signals from auxiliary controls or furnishes signals for operation of other equipment, there must be positive interlocks and sequencing of engagement to prevent improper operation. Protection against adverse interaction of integrated components, resulting from a malfunction, is also required.

(h) If the automatic pilot system can be coupled to airborne navigation equipment, means must be provided to indicate to the flight crew the current mode of operation. Selector switch position is not acceptable as a means of indication.

The current text of 14 CFR 25.1335 (amendment 25–41) is:

**§ 25.1335 Flight director systems.**

If a flight director system is installed, means must be provided to indicate to the flight crew its current mode of operation. Selector switch position is not acceptable as a means of indication.

The current text of JAR 25.1329 (Change 15) is:

**JAR 25.1329 Automatic Pilot System.**

(a) Each automatic pilot system must be approved and must be designed so that the automatic pilot can be quickly and positively disengaged by the pilots to prevent it from interfering with their control of the aeroplane.

(b) Unless there is automatic synchronization, each system must have a means to readily indicate to the pilot the alignment of the actuating device in relation to the control system it operates.

(c) Each manually operated control for the system must be readily accessible to the pilots.

(d) Quick release (emergency) controls must be on both control wheels, on the side of each wheel opposite the throttles.

(e) Attitude controls must operate in the plane and sense of motion specified in JAR 25.777(b) and JAR 25.779(a) for cockpit controls. The direction of motion must be plainly indicated on, or adjacent to, each control.

(f) The system must be designed and adjusted so that, within the range of adjustment available to the human pilot, it cannot produce hazardous loads on the aeroplane, or create hazardous deviations in the flight path, under any condition of flight appropriate to its use, either during normal operation, or in the event of a malfunction, assuming that corrective action begins within a reasonable period of time.

(g) If the automatic pilot integrates signals from auxiliary controls or furnishes signals for operation of other equipment, there must be positive interlocks and sequencing of engagement to prevent improper operation. Protection against adverse interaction of integrated components, resulting from a malfunction, is also required.

(h) Means must be provided to indicate to the flight crew the current mode of operation and any modes armed by the pilot. Selector switch position is not acceptable as a means of indication.

(i) A warning must be provided to each pilot in the event of automatic or manual disengagement of the automatic pilot. (See JAR 25.1322 and its AMJ.)

The current text of JAR 25.1335 (Change 15) is:

**JAR 25.1335 Flight Director Systems.**

Means must be provided to indicate to the flight crew the current mode of operation and any modes armed by the pilot. Selector switch position is not acceptable as a means of indication.

## What Are the Differences in the Standards and What Do Those Differences Result In?

The only appreciable difference between the U.S. and European rules is that the JAR requires a warning to each pilot in the event of automatic or manual disengagement of the automatic pilot. This requirement does not appear in 14 CFR 25.1329. American manufacturers have been providing such a warning, however, as part of compliance with 14 CFR 25.1309, which requires that warning information be provided to alert the crew to unsafe operating conditions. There is a minor difference in the sounding period of the warning provided in American- and European-manufactured airplanes that has resulted from differences in advisory materials and accepted practice, and that difference does affect certification. The harmonization of this rule (and accompanying advisory material) would remove that difference.

## What, if Any, Are the Differences in the Means of Compliance?

Compliance with the § 25.1329 rule has largely followed the advisory material found in FAA AC 25.1329–1A, dated July 8, 1968, or in JAA Advisory Circular Joint (ACJ) 25.1329. Advances in autopilot technology have outpaced both the FAA guidance and the more current JAA ACJ 25.1329 material. Autopilot-related issue papers and interim policy have been used to fill these gaps in the regulatory and acceptable means of compliance material.

The regulations are applied in certification and validation of products. To market American-manufactured airplanes in Europe, the applicant must meet the requirements of part 25 and

JAR–25. As a result, the certification is typically done to the more stringent JAR–25 requirement.

**Related Activity**

Under the ARAC rulemaking process, the FAA provides ARAC with an opportunity to review, discuss, and comment on the FAA's draft NPRM. For this rulemaking, ARAC recommended several changes to the NPRM. (A more detailed discussion of this process appears later in this document.) The FAA agrees with some of those recommendations and has revised the NPRM accordingly. However, we disagree with others, and those recommendations, and our reasons for disagreeing are described below in the Discussion of the Proposal section.

**Discussion of the Proposal**

*What Is the General Scope of the Proposal?*

The proposed change would revise, reorganize, and add additional material to § 25.1329. This change would address the autopilot, autothrust, and flight director in a single section. It would change the name of § 25.1329 from "Automatic pilot system" to "Flight guidance system" to reflect the inclusion of autothrust and flight director. This proposed rule would cover the portion of the Heads Up Display (HUD) that contains flight-guidance information displayed to the pilot while manually flying the airplane. Other aspects of HUDs are covered by various regulations that govern flight deck displays and navigation information. This ensures consistency between the Heads Up and Heads Down flight-guidance information displayed in the flight deck.

The proposed change would incorporate new requirements specifically to target potential pilot confusion about automatic mode reversions, hazardous disengagement transients, speed protection, and potential hazards during an autopilot override. The proposed change would remove § 25.1335, "Flight director systems," and would amend § 25.1329 to add a new paragraph (i).

How Does the Changed Product Rule (CPR) (§ 21.101—Designation of Applicable Regulations) Relate to This Change?

The CPR must be considered when updating or adding a flight guidance system. If a proposed change to a flight guidance system is part of a significant product change, then § 21.101(a) is applicable unless one of the other exceptions of § 21.101(b) applies. Section 21.101(a) states that "An applicant for a change must show that the changed product complies with the airworthiness requirements applicable to the category of the product in effect on the date of the application for the change and with parts 34 and 36 of this chapter." If a flight guidance system change is categorized as (or is part of) a product change that is not significant, then the applicable regulation would be § 21.101(b), which states that "an applicant may show that the changed product complies with an earlier amendment of a regulation required by paragraph (a) of this section." The operative question used to determine whether a change is significant or not is, "Does the change invalidate the original design and certification assumptions at the product level?" If the answer is "yes," an applicant must comply with the latest regulations, in accordance with § 21.101(a) unless one of the other exceptions of § 21.101(b) applies. If the answer is "no," an applicant may show that the product meets an earlier amendment of the regulation, provided the earlier amendment has been determined by the FAA to be adequate.

Advisory Circular 21.101–1, Change 1, further discusses how to evaluate whether a change made to a previously certified product is significant or not significant. Appendix 1 gives several examples involving autopilot systems for part 23 and part 25 aircraft. (The reference to part 23 aircraft is helpful in making a determination of significance because the examples given in AC 21.101–1 for autopilots in that section are much more descriptive than those provided in the part 25 examples.)

The FAA's position on the Changed Product Rule is documented in § 21.101 and AC 21.101–1. The only time a change may be considered a "significant change" is when a substantially new function is included to an already certified product. The AC gives the initial addition of an autoland system as an example of a significant change. That addition invalidates the original design assumptions and certification basis for that airplane. Therefore, for the changed system, an applicant would be required to comply with the regulations in effect on the date of the application. If, on the other hand, an applicant is updating an airplane by replacing an old, analog-based technology autopilot system with a new digital technology autopilot, that change, by itself is considered not significant. The original configuration of the airplane has not been changed and the certification assumptions remain valid. In that case, representative of a change made under a supplemental type certificate (STC), the applicant may choose to use a previous amendment of the regulations, as it applies to the autopilot system. The applicant cannot use an amendment level in effect any earlier than the time of the original certification of the product, but it can use one earlier than the ones in effect at the time of application for the STC.

An exception would be when making a change to the autopilot system as part of a larger change, such as an update of the flight deck from analog "steam gauges" to a modern flight deck with large displays, an addition of a flight management system, for example. The overall change to the airplane may be, in total, categorized as a significant change. In that case, the regulations in effect on the date of application would apply to the flight guidance system, as well as to the rest of the flight deck upgrade.

The FAA provided this guidance to help clarify when a flight guidance system change may be considered significant for addressing the Changed Product Rule (§ 21.101). However, the FAA did not consider those potential certification projects in the economic evaluation for this proposed rule. While a change may be determined significant under § 21.101, one of the additional exceptions in that rule is that the applicant may show that complying with the latest requirement is impractical (§ 21.101(b)(3)). One method to show that complying with the latest requirement is impractical is to show that applying the latest amendment of the rule would result in added resource requirements that are not commensurate with safety benefits. That method is further discussed in paragraph 8c(2)(b) and Appendix 2 of AC 21.101–1.

The FAA assumes that those applicants proposing significant changes would not use the latest amendment of the flight guidance system rule if it was determined to be impractical. So, all such applications of the latest amendment will occur only if it is cost beneficial. Therefore, the final conclusions from the economic evaluation of this proposed rule would not be affected by considering the economic impact of flight guidance system changes. The applicant and the FAA may consider the question of whether or not complying with the latest amendment of the rule is impractical during the certification of a changed product.

What Are the Specific Proposed Changes?

This action would change the name of § 25.1329 and remove § 25.1335. It would revise paragraphs (a) through (h),

and add new paragraphs (i) through (m) of § 25.1329.

Proposed § 25.1329(a)

Paragraph (a) would be revised to contain the requirements relative to quick disengagement controls and their placement on both control wheels for easy accessibility [currently contained in paragraphs (a), (c) and (d)]. Requirements for quick and easily accessible disengagement controls for the automatic thrust systems would be added. These requirements would meet the recognized need for the pilot to be able to disengage the autothrust system during a high workload condition without moving his or her hands from the primary controls and throttle levers, a situation that would hinder task performance. The phrase "or equivalent" would be added after the reference to the control wheel. This is because some FGS designs would feature flight deck controls other than the traditional control wheels as the pilot's primary control mechanism.

Proposed § 25.1329(b)

Paragraph (b) would be revised to add a new requirement that would address the specific failure of the disconnect switch(es). Paragraph (b) would mandate that designers and manufacturers must assess what would happen if a system fails to disengage the autopilot or autothrust when the pilot manually commands them. That failure would then have to be addressed in relation to § 25.1309 which requires that a warning be provided to alert the crew to unsafe system operating conditions, and to enable them to take appropriate corrective action. The entire FGS must be evaluated to show compliance with § 25.1309. If the § 25.1309 assessment asserts that the aircraft can be landed manually with the autopilot or autothrust system engaged, then this should be demonstrated during a flight test.

Proposed § 25.1329(c), (d), and (e)

Current paragraphs (c), (d) and (e) would be revised to provide updated standards for transients for FGS engagement, switching, and normal and other-than-normal (rare normal and non-normal) disengagements. The current paragraph (b) addresses the need to limit transients during engagement, disengagement, and mode changes of the autopilot system. Current paragraph (b) is technically obsolete and does not have any bearing on modern autopilot systems. The intent of the current paragraph (b) regulation would be encompassed in revised paragraphs (c), (d), and (e).

Use the following definitions when determining compliance with proposed paragraphs (c), (d), and (e). The definitions of minor and significant transients are part of the proposed rule text. They are included here for completeness and understandability.

*Transient*: A disturbance in the control or flight path of the airplane that is not consistent with response to flight crew inputs or current environmental conditions.

*Minor transient*: A transient that would not significantly reduce safety margins, and which involves flightcrew actions that are well within their capabilities involving a slight increase in flightcrew workload or some physical discomfort to passengers or cabin crew.

*Significant transient*: A transient that would lead to a significant reduction in safety margins, a significant increase in flightcrew workload, discomfort to the flightcrew, or physical distress to passengers or cabin crew, possibly including non-fatal injuries. The flightcrew are able to respond to any significant transient without:

1. Exceptional piloting skill, alertness, or strength,
2. Forces greater than those given in § 25.143(c), and
3. Accelerations or attitudes in the airplane that might result in further hazard to secured or non-secured occupants.

The definition of a "minor transient" correlates to the definition provided in Advisory Circular 25.1309–1A of a "minor failure condition." Section 25.1309 addresses failure conditions. Therefore, the term "minor transient" used in § 25.1329 cannot be directly related to the hazard classification used in § 25.1309, as the transients may or may not have anything to do with failure conditions. However, the concept for a result of a minor transient can be correlated to a failure condition that result in a minor hazard in § 25.1309. Similarly, the definition of a "significant transient" correlates to the definition of a "major failure condition" defined in the same AC. A transient larger than significant corresponds to a hazardous or catastrophic failure condition. In this way, the transient response of the flight guidance system can be correlated to well-understood hazard classifications provided by § 25.1309 and AC 25.1309–1A.

The terms "minor transient" and "significant transient," are not absolute, that is, there is not always an unequivocally "correct/incorrect" or "yes/no" answer to each item being evaluated. They are dependent on the specific airplane type being evaluated. An example of this might be acceleration levels (also known as "g" forces) experienced by the cabin occupants inside a small commuter airplane during a transient. This transient, based on the criteria above, is determined to be significant. The "g" forces during this transient were measured to be a certain value. However, an identical "g" force value experienced by a jumbo transport category airplane during a transient does not necessarily mean that this transient must also be categorized as a significant transient. Other possible mitigating factors, such as those listed in the definition of "significant transient" above, should also be included in the evaluation. As with other terms used in § 25.1329, each case must be assessed individually, with consideration given to factors considered appropriate for that specific case.

Proposed paragraphs (c), (d), and (e) have been revised from the original ARAC proposal. The original proposed paragraphs read as follows:

(c) Engagement or switching of the flight guidance system, a mode, or a sensor must not produce a significant transient response affecting the control or flight path of the airplane.

(d) Under normal conditions, the disengagement of any automatic control functions of a flight guidance system must not produce any significant transient response affecting the control or flight path of the airplane, nor require a significant force to be applied by the pilot to maintain the desired flight path.

(e) Under other than normal conditions, transients affecting the control or flight path of the airplane resulting from the disengagement of any automatic control functions of a flight guidance system must not require exceptional piloting skill or strength to remain within, or recover to, the normal flight envelope.

The FAA has revised the ARAC report for proposed paragraphs (c), (d), and (e) of § 25.1329. The ARAC proposed paragraphs (c) and (d) did not allow a significant transient. There was no distinction made between the lesser transients allowed by proposed paragraphs (c) and (d) and the more substantial transient allowed by proposed paragraph (e). Therefore, proposed paragraphs (c) and (d) are revised to not allow anything more than a minor transient. The definition of "minor transient" is contained in proposed paragraph (c). Proposed paragraph (e) is revised to refer to the significant transient, and that term is then defined. These changes allow proposed rule paragraphs (c) and (d) to be independent of proposed rule paragraph (e).

Another change that was made to the original ARAC recommendation was to include the definitions for "minor transient" and "significant transient" in the rule text. The ARAC preferred to have these definitions included in the advisory material, rather than attempt to define very complicated technical terms in a way that can be included in a rule paragraph. An FAA advisory circular describes an acceptable means for showing compliance with the requirements. The guidance is neither mandatory nor regulatory in nature. The AC may explain or define what specific rule language means. One option would be to put these definitions in the preamble. This may be acceptable from a legal standpoint, as the preamble can be used to interpret or explain the rule language. However, for these particular rule paragraphs, the FAA finds that the rule will be more clear and effective if these definitions are included in the rule text. These concepts are difficult to grasp and do not have universally understood definitions. The FAA considers that an applicant is better served to have these terms defined within the rule text, rather than have an applicant research these terms.

Also, the original proposal for paragraph (e) referred to "other than normal conditions." This is revised for clarity to "rare normal and non-normal conditions." The ARAC discussed and accepted these proposed changes.

Proposed paragraphs (c), (d), and (e) use the terms "normal conditions," "rare normal conditions," and "non-normal conditions." "Rare normal" refers to challenging environmental operating conditions that are not normally encountered during routine service of the airplane. The proposed terms "normal" and "rare normal" are not intended to imply a specific probability of these events occurring. "Rare normal" is within the normal operating envelope of the airplane and encompasses all foreseeable operating conditions. "Rare normal" is intended to make a distinction regarding the severity of the environmental and operational conditions encountered, not the probability of encountering those conditions, from those contained in the "normal" conditions. The proposed term "non-normal conditions" refers to failure conditions, both of the FGS and of other airplane systems. Note that with these definitions, "rare normal conditions" and "non-normal conditions" are two different concepts. That is, "rare normal" is not a subset of "non-normal" conditions. They can both be grouped under the term "other than normal conditions."

The following table gives examples of what constitutes "normal," "non-normal" and "rare normal" conditions. It does not fully define every condition that may be encountered during an airplane's life and clearly categorize that condition. Rather, the table is intended to explain the intent of the rule language. There will always be, by the nature of the phenomena involved, some subjectivity to these categorizations. In addition, the same conditions may affect different airplane models in very different ways. These differences should be considered in determining how to characterize the severity of the conditions discussed below.

The three categories of operating conditions as discussed in this proposed rule are the following:

| | |
|---|---|
| **Normal Conditions** | |
| No failure conditions | All airplane systems that are associated with airplane performance are fully operational. Failures of those systems could impair the flight guidance system's ability to perform its functions. |
| Light to moderate winds | Constant wind in a specific direction that may cause a slight deviation in intended flight path or a small difference between airspeed and groundspeed. |
| Light to moderate wind gradients | Variation in wind velocity as a function of altitude, position, or time, which may cause slight erratic or unpredictable changes in intended flight path. |
| Light to moderate gusts | Non-repetitive momentary changes in wind velocity that can cause changes in altitude and/or attitude to occur, but the aircraft remains in positive control at all times. |
| Light turbulence | Turbulence that momentarily causes slight, erratic changes in altitude and/or attitude (pitch, roll, or yaw). |
| Moderate turbulence | Similar to light turbulence but of greater intensity. Changes in altitude and/or attitude occur but the aircraft remains in positive control at all times. |
| Light chop | Turbulence that causes slight, rapid, and somewhat rhythmic bumpiness without appreciable changes in altitude or attitude. |
| Moderate chop | Similar to light chop but of greater intensity. It causes rapid bumps or jolts without appreciable changes in aircraft altitude or attitude. |
| Icing | All icing conditions covered by 14 CFR Part 25, Appendix C, with the exception of "asymmetric icing" discussed under "Rare Normal Conditions" below. |
| **Rare Normal Conditions** | |
| Significant winds | Constant wind in a specific direction that may cause a large change in intended flight path or groundspeed, or cause a large difference between airspeed and groundspeed. |
| Significant wind gradients | Variation in wind velocity as a function of altitude, position, or time, which may cause large changes in intended flight path. |
| Windshear/microburst | A wind gradient of such magnitude that it may cause damage to the aircraft. |
| Large gusts | Non-repetitive momentary changes in wind velocity that can cause large changes in altitude and/or attitude to occur. Aircraft may be momentarily out of control. |
| Severe turbulence | Turbulence that causes large, abrupt changes in altitude or attitude. It usually causes large variations in indicated airspeed. Aircraft may be momentarily out of control. |
| Asymmetric icing | Icing conditions that result in ice accumulations that cause the flight guidance system, if engaged, to counter the aerodynamic effect of the icing conditions with a sustained pitch, roll, or yaw command that approaches its maximum authority. |
| **Non-Normal Conditions** | |
| Significant fuel imbalance | Large variation of the amount of fuel between the two wing tanks (and center and tail tanks, if so equipped) that causes the flight guidance system, if engaged, to counter the aerodynamic effect of the fuel imbalance with a pitch, roll, or yaw command that is approaching maximum system authority. |

| | |
|---|---|
| Asymmetric lift or drag | Asymmetric lift between the left and right wings due to high lift or primary flight control system failures, or damage to the aerodynamic surfaces on wing or tail. |
| Inoperative engine(s) | Loss of one or more engines that causes the flight guidance system, if engaged, to counter the aerodynamic effect of the difference in thrust with a pitch, roll, or yaw command that is approaching maximum system authority. |
| Loss of one or more hydraulic systems. | Loss of one or more hydraulic systems, down to the minimum amount of remaining operational systems that the FGS is certified to operate. |
| Inoperative ice detection/protection system. | Loss of ice detection/protection system on an airplane so equipped, in a situation where the FGS is certified for operation in icing conditions with that failure present. |

The intent of these proposed paragraphs is that all FGS function disconnects, both manual and automatic, result in the least disturbance to the flight path of the airplane possible. Under more adverse operating conditions, a larger transient may be impossible for the FGS by itself to prevent. Proposed paragraph (e) recognizes that the FGS will not be able to cope as well in these adverse conditions as they might in the relatively benign, no-failure conditions defined in proposed paragraph (d). Therefore, the proposed requirement for the allowable transient upon autopilot disengagement has been relaxed for these more adverse conditions.

Unless the FGS design uses a specific flight deck alert to let the flightcrew know of a significant/sustained out-of-trim condition, compliance with these proposed paragraphs should be assessed with an assumption of a reasonable response to the upset event by the pilot. The pilot should be "hands off" at the point of autopilot disengagement. Appropriate time delays for pilot recognition of and reaction to the failure or anomalous airplane behavior must be added to the upset recovery maneuver. The time for pilot recognition of an upset is normally less than one second. Reaction time varies with the phase of flight. In cruise, climb, descent, and holding, the pilot should not initiate the recovery action until at least three seconds after the recognition point. During approach, since the pilot is actively engaged in monitoring the progress of the airplane, an assumed reaction time of one second is appropriate.

A flight deck alert (sometimes referred to as "bark before bite") may be used to prompt the flightcrew to mitigate transients and therefore would be used to show compliance with these proposed paragraphs. The flight deck alert would notify the crew that an out-of-trim condition exists that would, if a disconnect were to occur at that time, cause a significant transient or more. The crew procedure would be, in response to this alert, to firmly grasp the controls, manually disconnect the autopilot, and retrim the flight control system as necessary. Having been alerted, the pilot is aware of the possibility of a transient and is expecting to counter it when the autopilot releases control. None of the failure recognition or reaction times discussed above need be applied during the recovery maneuver if the airplane is equipped with such an alert.

These proposed paragraphs would cover transients resulting from engagement, switching, and automatic and manual disengagements of the flight guidance system. A subset of automatic autopilot disengagement is when an autopilot disengages because of pilot override. An override occurs when the pilot or co-pilot applies input to the flight deck controls without first manually disengaging the autopilot. Autopilot systems have not always been designed to safely deal with this situation. Designers assumed the pilot would always manually disengage the autopilot before making inputs into the flight deck controls if he or she was not satisfied with the performance of the autopilot. These proposed regulations have been developed to address the accidents and incidents that have occurred involving this specific scenario. The proposed § 25.1329(d) would include transients occurring from autopilot disconnect caused by pilot override and specifies that under normal conditions autopilot override must not result in a significant transient. An automatic autopilot disconnect that results from a pilot override is a normal event. The system is to be designed for this occurrence, and should react in a safe, predictable manner. This is not intended to mean that a pilot override is the normal or preferred method of disengaging an engaged autopilot. It is just intended to mean that a pilot override is not a non-normal event.

**Note:** For the situation involving either an autopilot override that does not result in automatic disengagement of the autopilot or the resultant airplane configuration that occurs prior to an automatic disengagement, see proposed paragraph § 25.1329(l).

Proposed § 25.1329(f)

The proposed paragraph (f) is adapted from the requirements in the current §§ 25.1329(e) and 25.777(b). Proposed paragraph (f) would state that attitude controls must operate relative to the sense of motion involved, including the motion effect of the controls and airplane operation. For cockpit controls, proposed paragraph (f) would state that the attitude controls must have the direction of motion plainly indicated on, or adjacent to, each control. The proposed paragraph (f) would extend the requirement beyond attitude controls to all command reference controls.

The increasing variety of flight guidance systems can lead to non-intuitive designs that may promote flightcrew error. Command reference controls, which are parameters the pilot can set for airspeed, vertical speed, flight path angle, heading, altitude, and so on, are considered vulnerable to crew error if the sense of motion and control marking and the resulting airplane response are not consistent. If a specific FGS mode is active, changing that particular control position may have an immediate impact on the heading, altitude, or speed of the airplane. If, however, the appropriate FGS mode is not active, then manipulation of this control may only set a referenced target (for example, selected altitude). That referenced target remains until the control is manipulated again, or the appropriate FGS mode becomes active. At this point, the FGS will then actively "seek" that target. The FAA chose the term "command reference controls" instead of "attitude controls," because the use of a term limited specifically to "attitude" might lead to confusion in the application of this rule.

Proposed paragraph (f) has been revised from the original ARAC recommendation. The original proposed paragraph read as follows:

(f) Command reference controls, such as heading select or vertical speed, must operate consistently with the criteria specified in §§ 25.777(b) and 25.779(a) for cockpit controls. The function and direction of motion of each control must be plainly indicated on, or adjacent to, each control if necessary to prevent inappropriate use or confusion.

After discussion of proposed paragraph (f) within ARAC, the proposed wording was revised to remove the first sentence. The ARAC

felt that this information was redundant. The FGS controls must already comply with § 25.777(b) without restating it in § 25.1329. Also, the reference to § 25.779(a) was incorrect, because that paragraph deals with trim tabs, primary controls, and flaps. This reference was therefore removed.

Proposed Changes to § 25.1329(g)

Proposed paragraph (g) would have the same requirement stated in current § 25.1329(f). This proposed requirement has been reworded and reformatted for clarity. It mandates that the system must be designed so it cannot produce hazardous loads on the airplane or create hazardous deviations in the flight path. This requirement applies during normal operation or in the event of a malfunction, assuming corrective action begins within a reasonable period. The phrase "within the range of adjustment available to the human pilot" contained in the original wording of § 25.1329(f) has been removed from proposed § 25.1329(g). This phrase adds little to the meaning of the regulation, as there is no real adjustment of the autopilot system available to the pilot that could affect airplane loads.

Proposed paragraph (g) has been revised from the original ARAC working group proposal. The original proposed paragraph read as follows:

(g) Under any condition of flight appropriate to its use, the Flight Guidance System must not:

- Produce unacceptable loads on the airplane (in accordance with § /JAR 25.302), or
- Create hazardous deviations in the flight path.

This applies to both fault-free operation and in the event of a malfunction, and assumes that the pilot begins corrective action within a reasonable period of time.

The first ARAC recommendation referred to proposed § 25.302 titled "Interaction of systems and structure." During the FGS Harmonization Working Group activities, the ARAC Structures Harmonization Working Group was developing proposed § 25.302. The FAA planned to issue and publish these two proposed rules (§§ 25.1329 and 25.302) concurrently in the **Federal Register**. The FAA has since placed proposed § 25.302 on hold because of other rulemaking priorities. Therefore, the working group revised their proposed paragraph (g) to remove the reference to proposed § 25.302. This change, with minor editing and reformatting, removes the current text of paragraph (f) and adds it to proposed paragraph (g).

This proposed change does not affect the harmonization effort between the FAA and JAA. The JAA version (which is the original ARAC working group proposal) references the new material in JAR 25.302, and it defines exactly how to assess what is an "unacceptable load." With the current § 25.1329(f), an assessment of compliance must actually come from the analyses and testing required by § 25.1309. This will also be true of proposed § 25.1329(g). Therefore, the intent of the JAA and proposed FAA rules remains identical. The FAA proposed § 25.1329(g) would depend upon compliance with § 25.1309 for evaluating the interaction of the FGS and the airplane structure.

One member of the working group expressed a concern that the FAA may assume a mandatory compliance method, and that flight testing would be the only method acceptable to show compliance with some proposed paragraphs of § 25.1329. Of particular concern is flight guidance system operation in icing conditions. Section 25.1329 proposed paragraphs (d), (e), and (g) do not specify a compliance method. They simply set forth design criteria. Proposed AC 25.1329–XX would provide guidance for one method of compliance. However, as with all advisory material, that proposed guidance would be one acceptable means, but not the only means for demonstrating compliance with this proposed regulation. Public comments concerning proposed AC 25.1329–XX are invited by separate notice published elsewhere in this issue of the **Federal Register**.

These paragraphs are not intended to require proof of compliance for amended type certificates (ATC) and supplemental type certificates (STC) solely through flight tests, especially when relevant service history data exists. An analysis of such data, and its determination of applicability to a given project, may be used by the applicant to meet the proposed requirement(s). Regarding certain environmental factors such as icing, and for ATC and STC projects (for example where an existing, approved autopilot is replaced by another autopilot), conducting a review of field history data may help in determining the extent of required flight testing. If the applicant can show that there is a lack of autopilot-related accidents and/or incidents in the icing environment involving a type certificated airplane, it may be possible to show compliance without needing additional flight tests with ice shapes or in natural icing. The responsible aircraft certification office must approve the applicant's justification.

Proposed § 25.1329(h)

This would be a new requirement for speed protection. It would include both high and low speed protection. It would require that when the flight guidance system is in use, a means must be provided to avoid excursions beyond an acceptable margin from the speed range of the normal flight envelope. If the airplane experiences an excursion outside this range, the flight guidance system must not provide guidance or control to an unsafe speed. The phrase "to an unsafe speed" is intended to mean that the flight guidance system should not control or provide guidance that would eventually lead to an aerodynamic stall or a speed that is in excess of the maximum operating speed, regardless of the maneuver being conducted at the time.

The FAA Human Factors Team completed a report in 1996 that evaluated flightcrew/flight deck automation interfaces. The Background section of this document contains a summary of that report. One of the Team's conclusion was that during FGS operation, flightcrew awareness of, or attention to, airspeed may not be sufficient to provide timely detection of unintended speed changes that could possibly compromise safety. In addition, in certain conditions, the current modes of the autopilot and/or autothrust may not be designed to prevent speed excursions outside the normal range.

This proposed requirement would prevent unwanted airspeed excursions. The preferred implementation is for the FGS to automatically provide control and/or guidance to avoid these excursions. However, an implementation providing increased awareness of airspeed and/or alerts for immediate crew recognition and intervention of a potential airspeed excursion may also be an acceptable means of complying with this regulation. Proposed AC 25.1329–XX would provide guidance for several methods of compliance. However, as with all advisory material, that proposed guidance would be one acceptable means, but not the only means, for demonstrating compliance with this proposed regulation. Public comments concerning proposed AC 25.1329–XX are invited by separate notice published elsewhere in this issue of the **Federal Register**.

When applying these proposed regulations to amended type certification or supplemental type certification programs, it may not always be possible to have the updated FGS be in compliance with this proposed paragraph without updating

some other, non-flight-guidance systems. Some of these previously certified airplanes, particularly the smaller part 25 airplanes, may not be fully equipped with interfacing airplane systems (specifically, angle-of-attack sensors) that are normally required to implement fully a speed protection function in the flight guidance system. It is the intent of this proposed rule that, with programs of this nature and given limitations such as the one discussed above, the applicant design the best system possible that meets the intent of this proposed regulation. However, an applicant for an STC or ATC flight guidance system update would not be required to also install angle-of-attack sensors to support the speed protection function. To require that could possibly make the entire STC/ATC program so expensive that the applicant might not choose to update an earlier technology autopilot with the latest technology available. Such a decision would result in the loss of all other substantial increases in safety that otherwise would have been gained if the applicant had chosen to continue with that STC/ATC program.

Proposed § 25.1329(i)

This proposed paragraph (i) would have the same text as current paragraph (h), requiring indication of current mode of operation. It would also specify that these indications must include any armed modes, transitions, and reversions. It would add a statement of the safety objective to minimize crew errors and confusion. It would address logical grouping and presentation of mode indications and controls for the sake of visibility from each pilot position and for flightcrew awareness of active modes and mode changes. This proposed paragraph would also incorporate the current § 25.1385 text requiring indication of the mode of operation of any flight director.

Studies have shown that lack of sufficient flightcrew awareness of modes, transitions, and reversions is a key safety vulnerability. This paragraph would provide the regulatory basis for several provisions of the proposed advisory circular related to enhanced flightcrew awareness of flight guidance system active and armed modes. It would also address the need for awareness of changes in flight guidance system behavior that may otherwise be unanticipated by the flightcrew.

Proposed § 25.1329(j)

This proposed requirement for a visual and auditory warning of autopilot disengagement would be adopted from the current JAR 25.1329(i) and does not exist in the current 14 CFR part 25. This JAR requirement is appropriate because disengagement of the autopilot, for whatever reason, makes timely flightcrew intervention necessary to assume manual control of the airplane. Timely, in this case, is meant to specify a period suitable for the specific situation, without mandating a specific time period within the rule itself. The proposed requirement that the warning look and sound distinct from other cockpit warnings is meant to provide unequivocal awareness that the flightcrew must assume manual control of the airplane.

The term "warning" is defined in FAA Advisory Circular 25–11, Section 10. Current FAA harmonization and rulemaking activity regarding to § 25.1322, "Warning, caution, and advisory lights," when issued, would result in the definition of this term within the rule itself.

The original ARAC recommendation contained the wording "a visual and aural warning." The working group membership discussed that wording and changed it to "a warning (visual and aural)." This would ensure there was no confusion by the reader that there are two components to a warning, one visual and one aural.

Proposed § 25.1329(k)

This proposed paragraph is a new requirement. It would mandate providing a "caution" to each pilot when the autothrust has been disengaged.

The flightcrew needs to be aware that the autothrust system has disengaged, so they do not continue to expect the desired speed control to be provided. Normally, however, autothrust disengagement would not require immediate thrust control changes by the flightcrew. Therefore, the less specific "caution" rather than "warning" is required.

The term "caution" is defined in FAA Advisory Circular 25–11, Section 10. Also, current FAA harmonization and rulemaking activity regarding § 25.1322, "Warning, caution, and advisory lights," when issued, would result in the definition of this term within the rule itself.

Proposed § 25.1329(l)

This new paragraph requires that flightcrew override of the autopilot must not create a potential hazard when the flightcrew applies an override force to the flight controls. As stated previously in the discussion on § 25.1329(d), an override occurs when the pilot or first officer applies input to the flight deck controls without first manually disengaging the autopilot. Pilot override may not always result in autopilot disengagement. If the autopilot does not disengage during override, the result might be an out-of-trim condition (for example, a horizontal stabilizer/elevator jackknife, where the surfaces are aerodynamically opposing each other). This could result in a significant transient and/or loss of control if the autopilot were to be disconnected or if the pilot were to suddenly release the force being applied to the flight deck controls while the airplane is in this configuration. Several accidents and incidents have occurred after flightcrew override of the autopilot. Nevertheless, it is not advisable to prohibit flightcrew override in all cases, because override might be the last resort for the flightcrew to regain control of the airplane in certain abnormal (failure) conditions or in an emergency avoidance maneuver.

This rule paragraph is changed from the original ARAC recommendation. That proposed rule language used the term "unsafe condition." The FAA revised this rule paragraph to use the term "potential hazard" instead of "unsafe condition." The reason behind this revision is that the term "unsafe condition" has a very definite meaning within the context of FAA regulations. Under 14 CFR part 39, we issue airworthiness directives when we determine that an "unsafe condition" is likely to exist or develop on other products of the same type design. Proposed paragraph (l) addresses a specific type of hazard, and so the use of the broad term "unsafe condition," with its many implications under part 39, is inappropriate. Also, § 21.21(b)(2) prohibits certification of any aircraft which contains unsafe design features, so the original wording of this paragraph would be redundant of the part 21 rule. Therefore, the FAA revised this rule paragraph to refer to "potential hazard" instead.

This preamble does not attempt to give a complete definition of the term "potential hazard." The FAA cannot define all airplane configurations that should be considered potentially hazardous that may occur during a flightcrew override. To do so would be too restrictive, as this would assume the FAA is able to fully define all hazardous or potentially hazardous conditions that might result for all current and future FGS and airplane designs. What this term means is anything that could significantly reduce safety margins or invalidate any assumption or premise made by the System Safety Assessment.

The term "potential hazard" used above is intended to describe possible

future hazards if another event were to happen with the airplane in a specific configuration during the override. That event might be an autopilot disengagement, the pilot abruptly releasing the controls, or another failure that occurs during the flightcrew override. Therefore, the term "potential hazard" is not fully defined. Rather, a description of the concept has been used to explain what is meant and how compliance with this paragraph could be demonstrated. Proposed paragraph (l) should be evaluated under "normal conditions" discussed elsewhere in this document.

Proposed § 25.1329(m)

This new paragraph requires that the flightcrew be able to move the thrust levers during autothrust operation without using excessive force. It requires that the autothrust response to flightcrew override must not create a potential hazard.

This rule paragraph is changed from the original ARAC recommendation. That proposed rule language used the term "unsafe condition." For the reasons described for § 25.1329(l), the FAA revised this rule paragraph to use the term "potential hazard" instead of "unsafe condition." We intend "potential hazard" under this paragraph to have the same meaning as under § 25.1329(l). Examples of potentially hazardous situations include a rapid and unexpected change in the pitch attitude of the airplane (because of a change in engine thrust on an airplane with underslung engines) or an uncontrolled increase or decrease in the thrust settings.

As under § 25.1329(l), the term "potential hazard" is used to describe possible future hazards if another event were to happen with the airplane in a specific configuration during the override. That event might be an autothrust system disengagement, the pilot abruptly releasing the controls, or another failure that occurs during the flightcrew override. Therefore, the term "potential hazard" is not fully defined. Rather, a description of the concept has been used to explain what is meant and how compliance with this paragraph could be demonstrated.

There may be times when the flightcrew needs to immediately change thrust without first manually disengaging the autothrust system. There may be cases when the normal controls for disengaging the autothrust system have failed and the ability to override the autothrust system is the only means available to manually control thrust.

Proposed § 25.1335

Current § 25.1335 requires that if a flight director system is installed, its current mode of operation must be indicated to the flightcrew. The text of § 25.1335 would be removed and added to proposed § 25.1329(i). Section 25.1335 would be removed from the CFR.

**What Comments Were Received From the ARAC in Response to the Proposal?**

A "Fast Track Harmonization" rulemaking project provides for a formal review of the draft NPRM, if requested, by the ARAC. The ARAC did not request a formal review.

A meeting with the FAA, JAA, and FGS working group was held in Toulouse, France, in February 2004. Discussions concerning disposition of comments on the JAA NPA for JAR 25.1329 prompted the FAA to request comments on the NPRM from attending ARAC FGS working group members. The FAA received three comments. Although ARAC did not request a review of the NPRM, the intent of an ARAC review has been fulfilled.

The JAA proposed to adopt ARAC's recommendation without change. While we revised the proposed regulatory text in this NPRM from ARAC's recommendation to clarify certain provisions, we have confirmed that the substance and intent are the same. We therefore consider this proposal to be fully harmonized with the JAA's because the rules would have the same effect.

The following comments represent those received informally from the FGS working group members at the Toulouse meeting.

*FAA Response to Comment on the Term "Rare Normal Condition," Proposed Paragraph (e):* One FGS working group member disagreed with a statement included in the proposed preamble language that the term "rare normal condition" is intended to make a distinction regarding the severity of the environmental and operational conditions encountered, not the probability of encountering those conditions. The commenter asserted that the HWG did imply to infer probability when discussing "rare normal" conditions.

*FAA Disposition of Comment:* The FAA disagrees with this comment. "Rare normal conditions" cannot imply anything about the probability of encountering those conditions for the following reasons. Some icing conditions (possibly severe) may be encountered on a regular basis, perhaps daily. This is especially true, for example, given a specific daily operation in some extreme weather conditions (for example, northern latitudes in stormy conditions in autumn or winter). Therefore, in the probabilistic sense of the word, it may not be "rare" to encounter these severe conditions.

The real concern is that the Flight Guidance System must be able to handle these adverse environmental conditions according to the proposed regulations whenever they occur, regardless of how often they occur. Proposed paragraphs (d) and (e) would make a distinction based on the severity of the condition encountered, not the probability of encountering that condition. Proposed paragraph (e) would allow some degradation of system performance for the more severe environmental conditions encountered than those allowed by paragraph (d). The probability of encountering those conditions is not an issue.

*Changes:* No change was made to the NPRM because of this comment.

*FAA Response to Comment on the Proposed Preamble Discussion of Pilot Override:* One FGS working group member disagreed with the discussion in the proposed preamble that states, "An automatic autopilot disconnect due to a pilot override is a normal condition. The system is to be designed for this occurrence. It is not considered a non-normal event." The commenter strongly disagreed with the FAA statement that an override is a normal condition. The commenter expressed concern that the FAA and applicants would take this to mean that an override was a normal way to "disengage an autopilot."

*FAA Disposition of Comment:* The FAA disagrees with the main point of this comment. If a pilot override was classified as a non-normal event, proposed paragraph (e) would allow a significant transient to result because of the override. The override would be addressed with this proposed rule. Several accidents and incidents have occurred because of a pilot override of an engaged autopilot. This proposal would require a transient resulting from an override to be as benign as possible [in other words, to be covered by proposed paragraph (d)]. Classifying an override as a "non-normal condition" would be contrary to this intent.

One relevant point is that an override is not a "condition." It is an action taken by the flightcrew. It may be in response to a system failure, a reflexive reaction by the pilot to avoid oncoming traffic, or even a desire to assist an engaged autopilot in leveling off or slowing down a descending airplane without first manually disengaging the

system. A "condition," based on proposed § 25.1329 text and the proposed AC 25.1329–XX, is due to a system failure or adverse environmental circumstance, or (in the case of a normal condition) the lack of failures or adverse environmental circumstances. A pilot action is therefore not a "condition."

*Changes:* The FAA agrees that the proposed preamble wording should be revised. The revised NPRM would state that an override is a normal event rather than a normal condition, and make it clear that an override is not the usual or preferred method to disengage an engaged autopilot. We have revised the NPRM.

*FAA Response to Comment on the Term "Hazardous Conditions," Proposed Paragraph (g):* One FGS working group member stated that the revision made to proposed paragraph (g) did not fully define flight guidance malfunction criteria, and that the term "hazardous conditions" is confusing. The commenter stated that this could be misconstrued as the AC 25.1309 definition of "hazardous." The commenter suggests that proposed paragraph (g) should "invoke the concept that the severity of the malfunction is inversely proportional to the probability of occurrence." This would relate flight guidance malfunctions to the following § 25.1309 standards:

- A malfunction, which exceeds structural limits, should be Extremely Improbable.
- A malfunction, which exceeds limit loads or results in serious or fatal injury to a relatively small number of occupants, should be Extremely Remote.
- A malfunction which results in physical distress, possibly including injuries should be Remote.

*FAA Disposition of Comment:* The commenter has two comments. First, the commenter finds the use of the term "hazardous" confusing. The FAA disagrees with this comment. The proposed use of hazardous in paragraph (g) is very similar to the use of hazardous in the current § 25.1329. Proposed paragraph (g) would invoke the concept of the § 25.1309 definition of hazardous.

**Note:** The only difference between current paragraph § 25.1329(f) and the ARAC recommendation is the removal of the language, "within the range of system adjustments available to the human pilot." This language is removed because it is confusing and technically obsolete.

Second, the commenter states that proposed paragraph (g) should "invoke the concept that the severity of the malfunction is inversely proportional to the probability of occurrence." The FAA does not consider this necessary. The autopilot system being certified under proposed § 25.1329(g) must also meet the requirements of § 25.1309. Therefore, this concept is already covered by that regulation and does not need to be repeated in proposed § 25.1329(g).

*Changes:* The FAA does not agree. No change will be made to proposed paragraph (g).

**What Is the Effect of the Proposed Standard Relative to the Current Regulations?**

The proposed rule expands the scope of § 25.1329 beyond autopilot systems to include requirements for flight director and autothrust. These functions are increasingly integrated into the same equipment. The fundamental principles for engagement, disengagement, and flightcrew awareness of changes in system operation, apply to each of the functions in a similar manner. The NTSB has recommended changes for enhanced flightcrew awareness of system operation and changes in airplane condition. Often, during FGS operation, the flightcrew is insufficiently aware of changes in attitude, airspeed, trim, and so forth that could adversely affect flight safety. This proposed rule and proposed advisory circular would increase the level of safety through improved system indications, annunciations, and speed protection. It would also encourage modern airplane flight deck standardization, which would also improve safety when flightcrew personnel pilot more than a single airplane type.

**What Is the Effect of the Proposed Standard Relative to the Current Regulations?**

The effect of the proposed change on current industry practice would be that:

- Operating differences between different airplane types would be minimized.
- Manufacturers would be required to assess system transients during disengagement of the autopilot systems.
- Flight guidance systems would be required to address the issue of speed protection.
- Certification standards for flight guidance systems for the U.S. and Europe would be harmonized.
- Other design enhancements would be incorporated to address system vulnerabilities that have been highlighted by several NTSB safety recommendations and FAA studies.

**What Other Options Have Been Considered and Why Were They Not Selected?**

The following is a discussion of major alternatives considered during the rulemaking activity, and the reasons each proposal was ultimately rejected.

- Envelope FAA and JAA requirements without adding new requirements.

*Pro:* Enveloping the FAA and JAA rules (adopting the more rigorous requirements of each) would have been a much simpler rulemaking task and an easier adjustment for industry. It would have harmonized the requirements and simplified bilateral validation programs.

*Con:* The existing requirements are out of date. They do not adequately address safety issues related to current designs and the anticipated direction of future designs. Service history and studies show that previous assumptions about flightcrew awareness of the airplane during autopilot operation are out of date as well. Flightcrew reliance on automated flight control systems has increased markedly since the current regulations were issued. The FAA Human Factors Team report, many NTSB safety recommendations, and other information (noted earlier in this document) point out the need to enhance flightcrew awareness of autopilot and guidance system operation. Newer designs enable functions that were not possible for automated systems when the current regulations were developed. They integrate the functions of many related systems and are far more complex than "first or second generation" systems based on analog technology. The newer designs also tend to be more complex from the crew's perspective, and vulnerable to flightcrew confusion over mode behavior and transitions. Standards cannot be effective if they simply address a particular avionics system; they need to address the functionality, regardless of which systems host the functionality. For reasons like these, the simple adoption of current requirements would not provide adequate safety standards.

- Define the scope of the rule to include all automatic control and guidance systems including FMS, yaw damping, integrated energy management, and so forth.

*Pro:* If mandated, a fully integrated system such as the one described above would provide increased safety because complex interactions between systems would be transparent to the flightcrew. All human-machine interfaces would be consistent among the various functions. All functionality would be totally

integrated and would not (if designed correctly) result in a situation where the individual system "expectations" conflicted with each other.

*Con:* This activity was considered out of the scope of the ARAC tasking, although such a system may be desirable for future development. Many of the functions listed are not considered part of a flight guidance system, and would therefore require coordination and agreement on appropriate language addressed in several other ARAC tasks. This would jeopardize completion of this rulemaking within a reasonable time. Also, the cost of such a system would most likely be prohibitive when applied to some of the smaller part 25 category aircraft.

- Require full flight envelope protection, that is, protections provided by the FGS, available in all flight phases and operational modes, that would not allow the airplane to exceed certain predefined speeds, pitch and bank angles, "g" maneuvers, and so forth, or would alert the pilot to that these limits were being exceeded.

*Pro:* Enhanced safety in all flight phases and flight guidance system modes.

*Con:* The cost/benefit return was not sufficient, because the primary focus in accidents and incidents is speed rather than full flight envelope. Therefore, the most cost-effective approach would be requiring speed protection only. Also, full flight envelope protection is more a function of design of the overall flight control system of the airplane, and not the flight guidance system.

- Require that speed protection always involve some form of automatic autothrust "wakeup," that is, automatic autothrust system engagement from a disengaged state.

*Pro:* Enhance safety by having low speed protection thrust control engage automatically, even if the autothrust system is not currently active.

*Con:* Many airplanes are not equipped with an autothrust system, so those airplanes would not benefit from any regulation of this type. Also, many autothrust systems must be manually armed by manipulating a switch before the automatic function is allowed to become active. This is a necessary safeguard in some systems to prevent inadvertent activation when it could be hazardous (on the ground, for example). System designs that require the manual switch before the system can be activated would make the design of such a "wake up" feature very difficult and costly to implement. The ARAC decided that the proposed rule and AC adequately address low speed awareness and protection without requiring this feature.

**Who Would Be Affected by the Proposed Change?**

Avionics manufacturers would incur the added expense and time of designing and developing systems with extra features that would meet new proposed regulations (high and low speed protection, for example). Airplane manufacturers would be impacted as well. Operators could be affected by additional training requirements and the need to update equipment and documentation.

The proposed rule would apply to all new type certification (TC) programs. There would be added development costs incurred by both avionics and airplane manufacturers to meet these new regulations. When the NPRM is issued and the proposed requirements become known, the new features could be incorporated as part of the basic design.

The proposed rule, if applied to supplemental type certification (STC) or amended type certification (ATC) programs, would update previously certified airplanes and ATC programs. If the changes are "cut-in" to an existing production line, then new functionality of the airplane could be required (speed protection, for example) and therefore added costs could be incurred. These added costs would be dependent upon the configuration of the airplane being modified and the functionality of the system required to be installed in that airplane. The STC/ATC applicant could incur costs to modify the airplane, for example, to add additional sensors, and wiring. There would be increased costs associated with, for example, equipment, development, and flight test. Both the avionics vendor and the STC/ATC applicant would incur increased costs to cover extended development and certification of the modified airplane. The operator and airplane manufacturer could incur increased costs if part of a fleet is required to meet the latest regulations. The operator might elect to bring its entire fleet up to the latest standards for fleet commonality and training considerations.

**Is Existing FAA Advisory Material Adequate?**

No, the existing advisory material is not adequate. The existing advisory material would be made obsolete by this proposed rule. The ARAC developed a proposed harmonized advisory circular, proposed AC 25.1329–XX. Public comments concerning proposed AC 25.1329–XX are invited by separate notice published elsewhere in this issue of the **Federal Register**.

**Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no new information collection requirements associated with this proposed rule.

**International Compatibility**

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

**What Regulatory Analyses and Assessments Has the FAA Conducted?**

*Regulatory Evaluation Summary, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment*

This portion of the preamble summarizes the FAA's analysis of the economic impacts of this NPRM, consistent with various Federal directives and orders. Each Federal agency proposing a regulation must make a reasoned determination that the benefits justify the costs, and, separately, assess the effects on small entities, international trade, and whether or not the proposal imposes a Federal mandate resulting in a total expenditure of $100 million or more in any one year (an "unfunded mandate assessment"). In conducting these analyses, the FAA has determined that the proposal:

(1) Has benefits that justify its costs;
(2) Is not a significant regulatory action;
(3) Would not have a significant impact on a substantial number of small entities;
(4) Is in compliance with the Trade Agreement Act; and
(5) Does not impose an unfunded mandate of $100 million or more, in any one year, on State, local, or tribal governments, or on the private sector.

The FAA has placed these analyses in the docket and summarized them below.

*Total Costs and Benefits of This Rulemaking*

Estimated discounted costs—
Small part 25 certificated airplanes (large business jets): $97 million.

New-production part 25 large transport category airplanes already meet the proposed requirements.

Estimated discounted benefits—

Small part 25 certificated airplanes (large business jets).

Qualitative Benefits Analysis—NPRM may avert four accidents with a value equivalent to discounted costs of $97 million.

*Who Is Affected by This Rulemaking?*

Manufacturers of small part 25 airplanes incur costs.

Occupants in affected airplanes receive safety benefits.

*Assumptions and Standard Values*

- Discount rate: 3%.
- Period of analysis: 2005–2040. Costs, 2005–2015 (one year of certification costs followed by ten years of production costs; there are no operating costs incurred as a result of the revisions). Benefits, 2007–2040 (based on 25-year operating lives of newly-certificated airplanes, all of which will be produced between 2006–2015).
- Value of statistical fatality avoided: $3 million.
- The proposed rule would significantly reduce occurrence of autopilot-related accidents in part 25 business jets.

*Alternatives Considered*

JAA/FAA harmonized standards were selected for this NPRM because of both the assessed improvements in operation of autopilot systems and the potential cost savings resulting from harmonization of FAA and JAA requirements.

*Costs of This Rulemaking*

Certification costs (non-recurring) equal $530,000 for each of four type-certifications. Recurring costs equal $52,000 for each airplane produced. Non-recurring and recurring costs total $116.520 million, or $96.554 million at present value. Present value costs are based on a 3% discount factor, which is allowed by the Office of Management and Budget where a study period covers 25 or more years; the combined costs-benefits period of analysis covers 36 years—2005 to 2040.

*Benefits of This Rulemaking*

The FAA has estimated the minimum levels of averted losses, in terms of avoided fatalities and airplane damage (each accident is valued at $40 million, *i.e.*, ten fatalities at $3 million each plus $10 million airplane replacement value) that would be necessary to offset the estimated compliance costs. The FAA has determined that the proposed rule would be cost-beneficial if four accidents were averted in the 34-year benefits period. There were four accidents or serious incidents involving business jets over a recent 20-year period (1983–2002); thus, over the future 34 years evaluated in this benefits' analysis, in the absence of a rule, one could expect nearly twice that number, or seven. Although it is not certain that the earlier events could have been prevented by the proposed autopilot changes (or, how many of any potential future accidents would, in fact, be catastrophic), the expected prevalence of more sophisticated autopilot systems in business jets, combined with the occurrence of serious accidents involving large transports (these provided the impetus for this rulemaking—see full regulatory evaluation), mandates regulatory action. For these reasons, the FAA finds this proposed rule to be cost-beneficial.

*Regulatory Flexibility Determination*

The Regulatory Flexibility Act of 1980 (RFA) requires that agencies perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. The proposed rule would affect manufacturers of part 25 business jets produced under future new type-certificates. For manufacturers, a small entity is one with 1,500 or fewer employees. None of the part 25 manufacturers have 1,500 or fewer employees.

Based on the above, the FAA certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA invites comments on the estimated small entity impact from interested and affected parties.

*International Trade Impact Assessment*

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, the FAA has assessed the potential effect of this proposed rule for airplanes produced under the affected FAR part. This rulemaking is consistent with the Trade Agreement Act since JAA and FAA international standards are the basis for this rulemaking.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (the Act) requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. The FAA determines that this proposed rule does not contain a significant intergovernmental mandate.

**What Other Assessments Has the FAA Conducted?**

*Executive Order 13132, Federalism*

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this notice of proposed rulemaking would not have federalism implications.

*Plain English*

Executive Order 12866 (58 FR 51735, Oct. 4, 1993) requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain unnecessary technical language or jargon that interferes with their clarity?
- Would the regulations be easier to understand if they were divided into more (but shorter) sections?
- Is the description in the preamble helpful in understanding the proposed regulations?

Please send your comments to the address specified in the **ADDRESSES** section.

*Environmental Analysis*

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this proposed rulemaking action qualifies for a categorical exclusion.

*Regulations That Significantly Affect Energy Supply, Distribution, or Use Impact*

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant energy action" under the executive order because it is not a "significant regulatory action" under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

**List of Subjects in 14 CFR Part 25**

Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 25 of Chapter 1 of Title 14, Code of Federal Regulations, as follows:

## PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

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

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702 and 44704.

2. Revise § 25.1329 to read as follows:

**§ 25.1329 Flight guidance system.**

(a) Quick disengagement controls for the autopilot and autothrust functions must be provided for each pilot. The autopilot quick disengagement controls must be located on both control wheels (or equivalent). The autothrust quick disengagement controls must be located on the thrust control levers. Quick disengagement controls must be readily accessible to each pilot while operating the control wheel (or equivalent) and thrust control levers.

(b) The effects of a failure of the system to disengage the autopilot or autothrust functions when manually commanded by the pilot must be assessed in accordance with the requirements of § 25.1309.

(c) Engagement or switching of the flight guidance system, a mode, or a sensor must not cause a transient response of the airplane's flight path any greater than a minor transient. For purposes of this section, a minor transient is an abrupt change in the flight path of the airplane that would not significantly reduce airplane safety, and which involves flightcrew actions that are well within their capabilities involving a slight increase in flightcrew workload or some physical discomfort to passengers or cabin crew.

(d) Under normal conditions, the disengagement of any automatic control function of a flight guidance system must not cause a transient response of the airplane's flight path any greater than a minor transient.

(e) Under rare normal and non-normal conditions, disengagement of any automatic control function of a flight guidance system must not result in a transient any greater than a significant transient. Significant transients may lead to a significant reduction in safety margins, an increase in flightcrew workload, discomfort to the flightcrew, or physical distress to the passengers or cabin crew, including non-fatal injuries. Significant transients do not require, in order to remain within or recover to the normal flight envelope, any of the following:

(1) Exceptional piloting skill, alertness, or strength.

(2) Forces applied by the pilot which are greater than those specified in § 25.143(c).

(3) Accelerations or attitudes in the airplane that might result in further hazard to secured or non-secured occupants.

(f) The function and direction of motion of each command reference control, such as heading select or vertical speed, must be plainly indicated on, or adjacent to, each control if necessary to prevent inappropriate use or confusion.

(g) Under any condition of flight appropriate to its use, the flight guidance system must not produce hazardous loads on the airplane, nor create hazardous deviations in the flight path. This applies to both fault-free operation and in the event of a malfunction, and assumes that the pilot begins corrective action within a reasonable period of time.

(h) When the flight guidance system is in use, a means must be provided to avoid excursions beyond an acceptable margin from the speed range of the normal flight envelope. If the airplane experiences an excursion outside this range, the flight guidance system must not provide guidance or control to an unsafe speed.

(i) The flight guidance system functions, controls, indications, and alerts must be designed to minimize flightcrew errors and confusion concerning the behavior and operation of the flight guidance system. Means must be provided to indicate the current mode of operation, including any armed modes, transitions, and reversions. Selector switch position is not an acceptable means of indication. The controls and indications must be grouped and presented in a logical and consistent manner. The indications must be visible to each pilot under all expected lighting conditions.

(j) Following disengagement of the autopilot, a warning (visual and auditory) must be provided to each pilot and be timely and distinct from all other cockpit warnings.

(k) Following disengagement of the autothrust function, a caution must be provided to each pilot.

(l) The autopilot must not create a potential hazard when the flightcrew applies an override force to the flight controls.

(m) During autothrust operation, it must be possible for the flightcrew to move the thrust levers without requiring excessive force. The autothrust must not create a potential hazard when the flightcrew applies an override force to the thrust levers.

**§ 25.1335 [Removed].**

3. Remove § 25.1335.

Issued in Renton, Washington, on July 28, 2004.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–18351 Filed 8–12–04; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Proposed Revisions to Advisory Circular 25.1329–1A, Automatic Pilot Systems Approval

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed advisory circular and request for comments.

**SUMMARY:** The Federal Aviation Administration invites public comment on proposed revisions to Advisory Circular, AC 25.1329–1A, "Automatic Pilot Systems Approval."

The revised advisory circular provides guidance for demonstrating compliance with a proposed amendment to 14 CFR 25.1329, published concurrently with this proposed AC. This notice provides interested persons an opportunity to comment on the revised advisory material concurrently with the proposed amendment.

**DATE:** Comments must be received on or before October 12, 2004.

**ADDRESSES:** You should send your comments to the Federal Aviation Administration, Transport Airplane Directorate, Attention: Gregg Bartley, Airplane & Flightcrew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056. You may also fax your comments to 425–227–1149, or you may send your comments electronically to: *gregg.bartley@faa.gov*. You may review all comments received at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Gregg Bartley at the above address, telephone 425–227–2889.

**SUPPLEMENTARY INFORMATION:**

#### How Do I Obtain a Copy of the Proposed Advisory Circular?

You may obtain an electronic copy of the proposed advisory circular at the following Internet address: *http://www.airweb.faa.gov/rgl*. If you do not have access to the Internet, you may request a copy by contacting Gregg Bartley at the address or phone number listed earlier in this announcement.

#### How Do I Submit Comments on the Proposed Advisory Circular?

You are invited to comment on the proposed AC by submitting written comments, data, or views. You must identify the AC by title and submit your comments in duplicate to the address specified above. We will consider all comments received on or before the closing date for comments before issuing the final AC.

#### Discussion

By separate notice published in this same issue of the **Federal Register**, the FAA proposes to amend 14 CFR 25.1329, "Automatic Pilot System," to update the regulation. Currently, § 25.1329 addresses only the autopilot system on transport category airplanes. The proposed amendment would consolidate and standardize regulations for all flight guidance functions, including the autopilot, autothrust, and flight director as well as any interactions with stability augmentation and trim functions.

The proposed revised Advisory Circular—AC 25.1329–IX—would provide guidance for demonstrating compliance with the proposed amendment. The means of compliance described in the proposed AC provides guidance to supplement the engineering and operational judgment that must form the basis of any compliance findings on the structural and functional safety standards for doors and their operating systems.

#### Harmonization of Standards and Guidance

The proposed AC is based on recommendations submitted to the FAA by the Aviation Rulemaking Advisory Committee (ARAC). The FAA tasked ARAC to provide advice and recommendations on "harmonizing" certain sections of part 25 with the counterpart standards contained in Joint Aviation Requirements (JAR) 25. The goal of "harmonization tasks," such as this, is to ensure that:

- Where possible, standards and guidance do not require domestic and foreign parties to manufacture or operate to different standards for each country involved; and
- The standards and guidance adopted are mutually acceptable to the FAA and the foreign aviation authorities.

The guidance contained in the proposed AC has been harmonized with that of the JAA, and provides a method of compliance that has been found acceptable to both the FAA and JAA.

Issuance of the proposed AC is contingent on final adoption of the proposed changes to14 CFR 25.1329.

Issued in Renton, Washington.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–18352 Filed 8–12–04; 8:45 am]

BILLING CODE 4910–13–P


Federal Register

Friday,
August 13, 2004

Part III

# Department of Education

**Special Demonstration Programs—Model Demonstration Projects—Positive Psychology; Notices**

## DEPARTMENT OF EDUCATION

**RIN 1820–ZA35**

### Special Demonstration Programs—Model Demonstration Projects—Positive Psychology

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Notice of final priority, definitions, and application requirements.

**SUMMARY:** The Assistant Secretary for the Office of Special Education and Rehabilitative Services announces a priority, definitions, and application requirements under the Special Demonstration Programs. The Assistant Secretary may use this priority, definitions, and application requirements for competitions in fiscal year (FY) 2004 and later years. We take this action to focus on an area of national need. We intend the priority to improve the quality of employment outcomes for vocational rehabilitation (VR) consumers through testing and measuring the effects of three specific positive psychology techniques for use within State VR agencies and American Indian VR Services (AIVRS) projects. The three specific techniques are—learned optimism, strengths and virtues versus talents for employment, and subjective well-being.

**DATES:** *Effective Date:* This priority, these definitions, and these application requirements are effective September 13, 2004.

**FOR FURTHER INFORMATION CONTACT:** Alfreda Reeves, U.S. Department of Education, 400 Maryland Avenue, SW., room 5040, Potomac Center Plaza, Washington, DC 20202–2800. Telephone: (202) 245–7485 or via Internet: *Alfreda.Reeves@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

**SUPPLEMENTARY INFORMATION:** The authority for these projects is title III, seciion 303(b) of the Rehabilitation Act of 1973, as amended (Act) (29 U.S.C. 773(b)) and 34 CFR part 373.

Positive psychology is the study and practice of counseling techniques based on cognitive-behavioral therapy to assist individuals to develop an increased awareness of their own positive character strengths, emotional processing, and belief systems (Seligman & Csikszentmihalyi, 2000). These techniques help consumers to build skills so that they can accurately assess beliefs about themselves that may create barriers to effectively coping with adversities that occur in their lives. These techniques may also expand their ability to challenge these beliefs in order to pursue flexible and appropriate responses to their adversities. Positive psychology techniques empower individuals to take control of their own lives, to increase their capacity for effective decisionmaking, and to persist in pursuing goal-directed activities.

Research in positive psychology has yielded a variety of approaches to assist individuals to identify their own beliefs and actions that are barriers to their ability to handle effectively life's adversities. These approaches are based on the techniques of cognitive-behavioral skills development and include models developed to change rigid and pessimistic beliefs and cognitive constructs to more flexible and positive ones. Major work in developing positive psychology approaches has been reported by Martin Seligman (1991), Barbara Fredrickson (2001), Mihaly Csikszentmihalyi (1997), Reivich & Shatte (2002), and others. A review of the literature by the National Institute on Disability and Rehabilitation Research (NIDRR) and use of the PsychArticles research database revealed one reported application of the principles of positive psychology to the employment outcomes of individuals with disabilities (Chapin & Kewin, 2001). However, no research literature was identified that applied these principles and techniques to individuals with disabilities in VR settings. The overall objective of the positive psychology priority is to develop and demonstrate the validity of counseling tools and techniques based on the principles of positive psychology with individuals with disabilities in the VR system. The priority supports section 303(b) by furthering the purposes of the Act, specifically empowering consumers of VR by implementing techniques that will increase the skills of individuals with disabilities, enabling them to achieve high quality employment outcomes.

Successful projects under this model demonstration program would address three specific aspects of positive psychology and their application to rehabilitation—learned optimism, strengths and virtues versus talents for employment, and subjective well-being.

We published a notice of proposed priority, definitions, and application requirements for this program in the **Federal Register** on May 26, 2004 (69 FR 30138). That notice included a discussion of the significant issues and analysis used in the determination of the priority, definitions, and application requirements.

Except for minor editorial and technical revisions, there are two minor differences between the notice of proposed priority, definitions, and application requirements and this final notice. These changes were made to clarify the following:

1. Consumers served by AIVRS projects may be included in the test population; and
2. The applicant must address all three positive psychology techniques.

### Analysis of Comments and Changes

In response to our invitation in the notice of proposed priority, definitions, and application requirements, six parties submitted comments. An analysis of the comments and of any changes in the priority, definitions, and application requirements since publication of the notice of proposed priority, definitions, and application requirements follows.

Generally, we do not address technical and other minor changes—and suggested changes that we are not authorized to make under the applicable statutory authority.

*Comment:* One commenter stated that the priority should require applicants to specify how they will ensure adequate sampling of VR consumers from minority backgrounds and underserved populations. The commenter suggested that projects collaborate with the AIVRS projects and community agencies that serve minority populations in order to obtain sufficiently representative samples from these populations.

*Discussion:* The application selection criteria already require applicants to describe how they will adequately address the needs of individuals from minority backgrounds and underserved populations, if these populations reside within the applicant's proposed service area. The selection criteria specifically require the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (34 CFR 75.210(d)(2)). In addition, we are clarifying the fact that consumers of the AIVRS projects are eligible participants in this priority.

*Change:* The General Requirements for Applicants section has been changed to reflect that consumers of AIVRS projects may be part of the test population.

*Comments:* Three commenters suggested that the priority include the study of additional factors that create or reduce barriers to individuals with disabilities in obtaining employment, including environmental, community, peer, cultural, spiritual, and service provider characteristic factors.

*Discussion:* We agree that a variety of factors have an impact on the employment outcomes of individuals with disabilities. However, this priority is intended only to demonstrate the effectiveness of the specific positive psychology factors defined within the notice.

*Change:* None.

*Comments:* Two commenters stated that the techniques of positive psychology are not distinct from other techniques used within the broader theoretical area of cognitive-behavioral psychology and that the priority should be expanded to include other techniques and interventions.

*Discussion:* We agree that the specific intervention areas defined in the priority can be considered within the context of cognitive-behavioral techniques. However, positive psychology focuses on developing consumers' positive attributes rather than on remediating areas of deficit. Not all cognitive-behavioral techniques have this focus. The American Psychological Association determined that positive psychology is a field of practice distinct enough to warrant its own division within the association. No research literature has been identified that applied these principles and techniques to individuals with disabilities in VR settings. Therefore, the purpose of the priority is to test these particular techniques in the VR settings.

*Change:* None.

*Comment:* One commenter suggested that the subjective well-being (SWB) topic area be dropped from the priority because SWB is an overall outcome of most positive psychology approaches rather than a distinct objective of its own.

*Discussion:* We agree that SWB is an anticipated outcome of most positive psychology interventions. However, improvements in the area of SWB can be demonstrated as a part of outcome measurements for the other stipulated focus areas, *i.e.*, learned optimism and strengths and virtues interventions. Nothing in the priority requires that SWB be a solitary outcome.

*Change:* None.

*Comment:* One commenter suggested that the priority include the option of using a research approach that would compare each individual intervention approach outcome to the outcomes resulting from combining approaches.

*Discussion:* The selection of the research and demonstration method is determined by applicants and included in their applications submitted for review. The priority does not impose limitations on the proposed research other than requiring that proposed activities focus on the defined areas of learned optimism, strengths and virtues versus talents for employment, and SWB. Applicants may include a combined approach if desired.

*Change:* None.

*Comment:* One commenter stated that the priority should stipulate whether applicants can choose to focus on one subpopulation of individuals with disabilities or if participants must represent cross-disability populations.

*Discussion:* The priority does not stipulate the selection of participants for the project other than that participants must be individuals with disabilities served by the State VR agencies or AIVRS projects. Applicants may select their project participants as part of their overall project design.

*Change:* None.

*Comment:* One commenter stated that the priority should stipulate whether applicants must address all three aspects of positive psychology listed in the notice and suggested that the language in the General Requirements for Applicants section, concerning adapting, testing, and measuring the impact of the three positive psychology strategies, is unclear.

*Discussion:* We agree that there should be clarity in whether the priority addresses all three techniques of positive psychology listed in the notice.

*Change:* The General Requirements for Applicants section has been changed to reflect that projects must test and measure the effects of all three techniques identified in the priority.

**Note:** This notice does *not* solicit applications. In any year in which we choose to use this priority, definitions, and application requirements, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority, definitions, and application requirements as absolute, competitive preference, or invitational. The effect of each type of priority follows:

*Absolute priority:* Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

*Competitive preference priority:* Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

*Invitational priority:* Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

**Priority**

*Priority, Definitions, and Application Requirements—Model Demonstration Projects—Positive Psychology*

Under 34 CFR 75.105(b)(2)(v) and section 303(b)(1) of the Rehabilitation Act of 1973, as amended (Act), this priority supports projects that test and measure the effects of three specific positive psychology techniques for vocational rehabilitation (VR) professionals for improving the quality of employment outcomes for individuals with disabilities. The three positive psychology techniques identified are—learned optimism, strengths and virtues versus talents for employment, and subjective well-being (SWB). The models tested under this program must incorporate effective, research-based positive psychology methods.

A. Definitions

*Learned optimism* teaches people to become more hopeful, realistic, and flexible in their identification of and disputation of internal beliefs that result in rigid, pessimistic, and negative outcome expectations.

*Strengths and virtues versus talents for employment* is a theoretical concept that links the internal characteristics of individuals rather than specific functional skills or talents with employment success.

*Subjective well-being* is a measurement of an individual's positive view of himself or herself across a number of dimensions, including optimism, life satisfaction, engagement, health, and sense of purpose.

B. General Requirements for Applicants

These model demonstration projects must focus on research-based positive psychology principles that adapt appropriate techniques for VR professionals to use to assist VR

consumers served by State VR agencies or American Indian Vocational Rehabilitation Services (AIVRS) projects to obtain meaningful postsecondary education and employment outcomes. The projects must test and measure the effects of all three techniques identified in this priority on achieving meaningful postsecondary education and employment outcomes. The projects must measure outcomes associated with each required technique. An applicant must be specific about what data it will collect in order to measure project outcomes against the established goals.

To meet the requirements an applicant must—

(1) Describe the manner in which positive psychology strategies will increase participation in postsecondary education and employment outcomes for consumers served by State VR agencies or the AIVRS projects;

(2) Adapt, test, and measure the impact of all three positive psychology strategies identified in this priority on increasing the level of optimism of consumers served by State VR agencies or the AIVRS projects and investigate the relationship between learned optimism and consumers' outcomes;

(3) Adapt and develop positive psychology assessment tools to identify the strengths and virtues of individuals with disabilities, identify specific job environments that match specific strengths and virtues, pilot placement activities with individuals with disabilities based on the fit of their strengths and virtues, and investigate the relationship of consumers' strengths and virtues and meaningful postsecondary education and employment outcomes;

(4) Develop positive psychology strategies to enhance SWB of people with disabilities in the VR setting. Projects must investigate the relationship between these strategies and meaningful postsecondary education and employment outcomes;

(5) Design and implement an evaluation plan that—

(a) assesses the validity of the models tested and developed under this project;

(b) includes use of objective performance measures that are clearly related to the intended outcomes and goals of the project and will produce quantitative and qualitative data to the extent possible; and

(c) provides performance feedback and permits periodic assessment of progress toward achieving intended outcomes and goals; and

(6) Disseminate these strategies, as appropriate, to State VR agencies and the AIVRS projects, their service providers, and independent living centers funded by the Rehabilitation Services Administration and other agencies and entities funded under the Act.

**Intergovernmental Review**

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

*Applicable Program Regulations:* 34 CFR part 373.

**Electronic Access to This Document**

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.235, Special Demonstration Programs—Model Demonstration Projects—Positive Psychology)

*Program Authority:* 29 U.S.C. 773(b).

Dated: August 11, 2004.

**Troy R. Justesen,**

*Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 04–18630 Filed 8–12–04; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

## Office of Special Education and Rehabilitative Services; Overview Information; Special Demonstration Programs—Model Demonstration Projects—Positive Psychology; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

*Catalog of Federal Domestic Assistance (CFDA) Number: 84.235A.*

**DATES:** *Applications Available:* August 13, 2004.

*Deadline for Transmittal of Applications:* September 13, 2004.

*Deadline for Intergovernmental Review:* September 17, 2004.

*Eligible Applicants:* State vocational rehabilitation agencies, community rehabilitation programs, Indian tribes or tribal organizations, and other public or nonprofit agencies or organizations, including institutions of higher education.

*Estimated Available Funds:* $500,000.

Funds under this competition will be used to support projects in FY 2004. In FY 2005, the Assistant Secretary may consider funding high-quality applications submitted in FY 2004.

*Maximum Award:* We will reject any application that proposes a budget exceeding $500,000 for a single budget period of 12 months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

*Number of Awards:* 1.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 60 months.

**Full Text of Announcement**

**I. Funding Opportunity Description**

*Purpose of Program:* This program provides grants to eligible entities to expand and improve the provision of rehabilitation services, including research and evaluation activities.

*Priority:* This priority is from the notice of final priority, definitions, and application requirements for this program, published elsewhere in this issue of the **Federal Register**.

*Absolute Priority:* For FY 2004 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet the priority, definitions, and application requirements.

The priority, definitions, and application requirements are:

*Model Demonstration Projects—Positive Psychology*

**Program Authority:** 29 U.S.C. 773(b).

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, and 99. (b) The regulations for this program in 34 CFR part 373.

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

**Note:** The regulations in 34 CFR part 86 apply to institutions of higher education only.

## II. Award Information

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* $500,000.

Funds under this competition will be used to support projects in FY 2004. In FY 2005, the Assistant Secretary may consider funding high-quality applications submitted in FY 2004.

*Maximum Award:* We will reject any application that proposes a budget exceeding $500,000 for a single budget period of 12 months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

*Number of Awards:* 1.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 60 months.

## III. Eligibility Information

1. *Eligible Applicants:* State vocational rehabilitation agencies, community rehabilitation programs, Indian tribes or tribal organizations, and other public or nonprofit agencies or organizations, including institutions of higher education.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

## IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.235A.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, Potomac Center Plaza Building, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Services (FIRS) at 1–800–877–8339.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program. There are also General Requirements for Applicants in the notice of final priority, definitions, and application requirements, published elsewhere in this issue of the **Federal Register**.

*Page Limit:* The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We suggest you limit Part III to the equivalent of no more than 35 pages, using the following standards:

- A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

3. *Submission Dates and Times:* Applications Available: August 13, 2004.

Deadline for Transmittal of Applications: September 13, 2004.

We do not consider an application that does not comply with the deadline requirements.

Applications for grants under this competition may be submitted by mail or hand delivery (including a commercial carrier or courier service), or electronically using the Electronic Grant Application System (e-Application) available through the Department's e-GRANTS system. For information (including dates and times) about how to submit your application by mail or hand delivery, or electronically, please refer to Section IV. 6. *Procedures for Submitting Applications* in this notice.

Deadline for Intergovernmental Review: September 17, 2004.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* Indirect cost reimbursement for grants under this program is limited to the recipient's actual indirect costs, as determined by its negotiated indirect cost rate agreement, or 10 percent of the total direct cost base, whichever amount is less (34 CFR 373.22(a)). We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Procedures for Submitting Applications:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

If you submit your application to us electronically, you must use e-Application available through the Department's e-GRANTS system. The e-GRANTS system is accessible through its portal page at: *http://e-grants.ed.gov*.

If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. The data you enter online will be saved into a database.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- You must submit your grant application electronically through the Internet using the software provided on the e-Grants Web site (*http://e-grants.ed.gov*) by 4:30 p.m., Washington, DC time, on the application deadline date. The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and after 7 p.m. on Wednesdays for maintenance, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction

Programs (ED 524), and all necessary assurances and certifications.

• Your e-Application must comply with any page limit requirements described in this notice.

• After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.

2. The applicant's Authorizing Representative must sign this form.

3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

4. Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

• We may request that you give us original signatures on other forms at a later date.

*Application Deadline Date Extension in Case of System Unavailability:* If you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application and you have initiated an e-Application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Special Demonstration Programs—Model Demonstration Projects—Positive Psychology competition at: *http://e-grants.ed.gov.*

b. *Submission of Paper Applications By Mail.* If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must send the original and two copies of your application on or before the application deadline date to the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.235A), 400 Maryland Avenue, SW., Washington, DC 20202.

You must show proof of mailing consisting of one of the following:

1. A legibly dated U.S. Postal Service Postmark;

2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service;

3. A dated shipping label, invoice, or receipt from a commercial carrier; or

4. Any other proof of mailing acceptable to the U.S. Secretary of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

1. A private metered postmark, or

2. A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will notify you that we will not consider the application.

Note: Applicants should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application on or before the application deadline date to the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.235A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays. A person delivering an application must show identification to enter the building.

**Note for Mail or Hand Delivery of Paper Applications:** If you mail or hand deliver your application to the Department:

1. You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED 424 (exp. 11/30/2004)) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

2. The Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt within 15 days from the mailing of your application, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

## V. Application Review Information

*Selection Criteria:* The selection criteria for this program are in the application package.

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* All grantees must submit an annual performance report documenting their evaluation findings. This report must describe whether the developed and tested model was successful in improving the quality of employment outcomes for individuals with disabilities. The report must include, but is not limited to, the following information: objective performance measures that clearly relate to the intended outcomes and goals and that are used to assess progress in achieving the intended outcomes and goals. Each grantee must report annually on this information using the Rehabilitation Services Administration Annual Reporting Form for Special

Demonstration Grants, OMB# 1820–0646, an electronic grantee reporting system.

**VII. Agency Contact**

**FOR FURTHER INFORMATION CONTACT:** Alfreda Reeves, U.S. Department of Education, 400 Maryland Avenue, SW., room 5040, Potomac Center Plaza, Washington, DC 20202–2800. Telephone: (202) 245–7485.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

**VIII. Other Information**

*Electronic Access to This Document:* You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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Dated: August 11, 2004.

**Troy R. Justesen,**

*Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 04–18631 Filed 8–12–04; 8:45 am]

BILLING CODE 4000–01–P

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Vol. 69, No. 156

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**H.R. 2443/P.L. 108–293**
Coast Guard and Maritime Transportation Act of 2004 (Aug. 9, 2004; 118 Stat. 1028)

**H.R. 3340/P.L. 108–294**
To redesignate the facilities of the United States Postal Service located at 7715 and 7748 S. Cottage Grove Avenue in Chicago, Illinois, as the "James E. Worsham Post Office" and the "James E. Worsham Carrier Annex Building", respectively, and for other purposes. (Aug. 9, 2004; 118 Stat. 1089)

**H.R. 3463/P.L. 108–295**
SUTA Dumping Prevention Act of 2004 (Aug. 9, 2004; 118 Stat. 1090)

**H.R. 4222/P.L. 108–296**
To designate the facility of the United States Postal Service located at 550 Nebraska Avenue in Kansas City, Kansas, as the "Newell George Post Office Building". (Aug. 9, 2004; 118 Stat. 1094)

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**H.R. 4417/P.L. 108–299**
To modify certain deadlines pertaining to machine-readable, tamper-resistant entry and exit documents. (Aug. 9, 2004; 118 Stat. 1100)

**H.R. 4427/P.L. 108–300**
To designate the facility of the United States Postal Service at 73 South Euclid Avenue in Montauk, New York, as the "Perry B. Duryea, Jr. Post Office". (Aug. 9, 2004; 118 Stat. 1101)

**S. 2712/P.L. 108–301**
To preserve the ability of the Federal Housing Administration to insure mortgages under sections 238 and 519 of the National Housing Act. (Aug. 9, 2004; 118 Stat. 1102)

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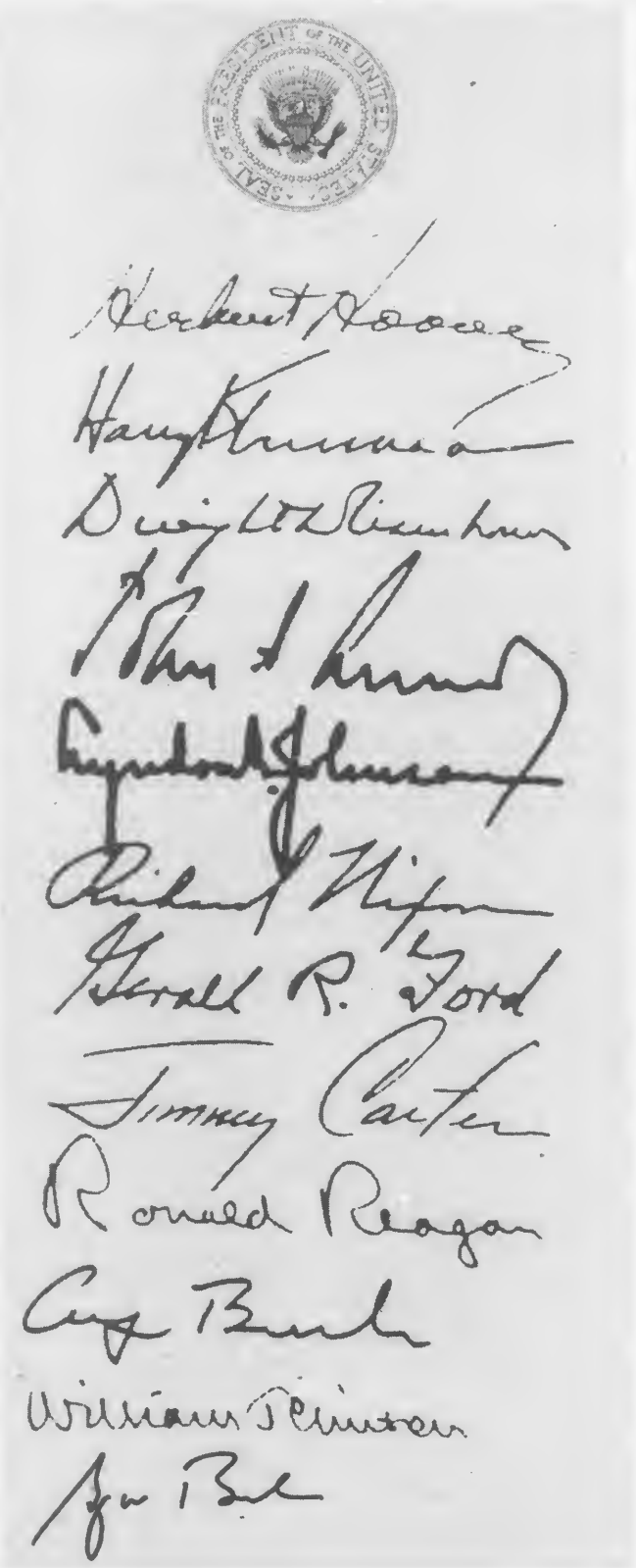

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