Federal Register

9–23–04 Thursday
Vol. 69 No. 184 Sept. 23, 2004

United States Government Printing Office
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U.S. Government Printing Office
(ISSN 0097-6326)

Federal Register

9–23–04
Vol. 69 No. 184

Thursday
Sept. 23, 2004

Pages 56925–57160

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Presidential Documents

Title 3—

The President

Proclamation 7818 of September 20, 2004

National Farm Safety and Health Week, 2004

By the President of the United States of America

A Proclamation

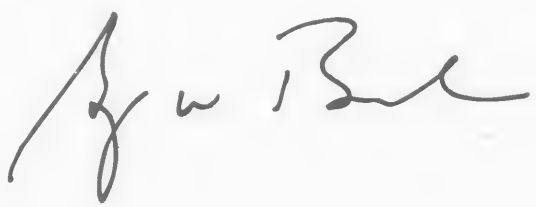
America's farm economy is strong and growing. Farm income is strong, farm exports are at a record high, and my Administration is working to ensure that American farm products are sold all over the world. During National Farm Safety and Health Week, we reflect on the contributions of America's farm and ranch families and underscore our commitment to making our farms safer and to protecting our farm and ranch land.

The safety and health of our farm and ranch families are of critical importance. These Americans perform tasks that contain risks—they operate farm machinery, apply agricultural chemicals and fertilizers, handle large and unpredictable livestock, and work in places where dusts and toxins can contaminate the air. We must continue to raise awareness of dangers and proper safety precautions and equipment, particularly among our young people involved in agriculture. Through education and training, we can help save lives and improve the well-being of our Nation's farmers and ranchers.

Our Nation's farmers and ranchers help feed and clothe people around the world, and they are now helping provide more energy for the American people. By promoting a safer farm and ranch environment, we can strengthen our agricultural economy and build a more prosperous future for all our citizens.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 19 through September 25, 2004, as National Farm Safety and Health Week. I call upon the agencies, organizations, and businesses that serve America's agricultural workers to strengthen their commitment to promoting farm safety and health programs. I also urge all Americans to honor our agricultural heritage and to recognize our farmers and ranchers for their remarkable contributions to our Nation's vitality and prosperity.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of September, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-ninth.



[FR Doc. 04–21506
Filed 9–22–04; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 890 and 892

RIN 3206–AJ34

Federal Employees Health Benefits Children's Equity

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to implement the Federal Employees Health Benefits Children's Equity Act of 2000, which was enacted October 30, 2000. This law mandates the enrollment of a Federal employee for self and family coverage in the Federal Employees Health Benefits (FEHB) Program, if the employee is subject to a court or administrative order requiring him or her to provide health benefits for his or her child or children and the employee does not provide documentation of compliance with the order.

DATES: *Effective Date:* October 25, 2004.

FOR FURTHER INFORMATION CONTACT: Nataya Battle (202) 606–0004, or e-mail to *nataya.battle@opm.gov*.

SUPPLEMENTARY INFORMATION:

Background

On October 1, 2003, OPM issued interim regulations in the **Federal Register** (68 FR 56523) to mandate compliance with court or administrative orders requiring Federal employees to provide health benefits for their children. The interim regulations were effective on October 31, 2003, and are located at parts 890 and 892.

On October 30, 2000, the Federal Employees Health Benefits Children's Equity Act of 2000 (Pub. L. 106–394, 114 Stat. 1629) was enacted. This law mandates compliance with court or administrative orders requiring Federal employees to provide health benefits for their children.

Before the enactment of Pub. L. 106–394, a court or State administrative agency could issue an order for an individual to provide health benefits for his or her child or children; however, there was nothing in the FEHB law to require compliance. While the issuance of such an order was an event that allowed an employee to enroll or to change from self only to self and family, the enrollment was voluntary on the employee's part.

The law now makes compliance with the court or administrative order mandatory. A Federal employee subject to such an order must enroll for self and family coverage in a health plan that provides full benefits in the area where the children live or provide documentation to the agency that he or she has obtained other health benefits for the children. If the employee does not do so, the agency will enroll the employee involuntarily as follows: (1) If the employee has no FEHB coverage, the agency will enroll him or her for self and family coverage in the option of the Blue Cross and Blue Shield Service Benefit Plan that provides the lower level of coverage; (2) if the employee has a self only enrollment in a fee-for-service plan or in an HMO that serves the area where the children live, the agency will change his or her enrollment to self and family in the same option of the same plan; (3) if the employee is enrolled in an HMO that does not serve the area where the children live, the agency will change his or her enrollment to self and family in the lower option of the Blue Cross and Blue Shield Service Benefit Plan.

As long as the court or administrative order is in effect, and the employee has at least one child identified in the order who is still eligible under the FEHB Program, the employee may not cancel his or her enrollment, change to self only, or change to a plan that does not serve the area in which the child or children live, unless he or she provides documentation that he or she has other coverage for the children. If the court or administrative order is still in effect at the time the employee retires, and if at least one child is still eligible for FEHB, the employee must continue FEHB into retirement (if eligible) and may not make any of these changes after retirement for as long as the order remains in effect and the child continues to be eligible under 5 U.S.C. 8901(5).

If such an employee goes into a nonpay status, or if his or her salary becomes insufficient to make the premium withholdings, he or she may not choose to terminate the enrollment. Instead, the employee must continue the coverage and either make direct premium payments or incur a debt to the Government. (By law, an employee's enrollment still terminates after 1 year in nonpay status.) If the annuity of an employee who remained subject to such a court or administrative order upon retirement becomes insufficient to make the premium withholdings, the annuitant may not choose to terminate the enrollment. Instead, he or she must continue the coverage and make direct premium payments for as long as the order remains in effect and the child continues to be eligible under 5 U.S.C. 8901(5).

OPM received comments from one Federal agency, three State agencies, and one independent organization. Several of the comments addressed the same issue concerning mandating that the National Medical Support Notice (NMSN) be accepted as an administrative order for medical support orders. OPM has addressed this issue in a Benefits Administration Letter instructing agencies to recognize the NMSN as an administrative order and to respond to the questions therein. Two comments suggested establishing an interagency procedure to determine health coverage requirements, including requesting copies of policies. The Public Law requires employees to provide evidence of full health benefits coverage and services in the location in which the child resides. It is not the intent of OPM to require agencies to analyze that coverage to compare benefits. One comment addressed the need for edits in the National Finance Center (NFC) system to prevent affected employees from making unlawful changes in their enrollment. The NFC has had these edits in place for nearly two years. One comment addressed the need to extend health care coverage to all eligible children of non-custodial parents and to assure that the coverage covers siblings that may live in different geographical locations. Custodial parents must look

to the court system or administrative agency to issue an order for an individual to be required to provide health benefits for his or her children. This regulation stipulates that the health coverage provided must cover all eligible children wherever they may live. Another suggestion was that employees who allow their alternate health benefits coverage to lapse should then lose the option to provide alternate coverage and be restricted to enrollment in the FEHB Program only. We do not believe the final regulations needs to impose such a restriction. OPM is not aware that lapses in coverage occur with any frequency. In addition, it is clearly the intent of the law that employees be allowed to provide alternate coverage.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect health benefits of certain Federal employees and retirees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects

5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Military personnel, Reporting and recordkeeping requirements, Retirement.

5 CFR Part 892

Administrative practice and procedure, Government employees, Health insurance, Taxes, Wages.

Office of Personnel Management.

Kay Coles James,

Director.

■ Accordingly, the interim rule amending 5 CFR parts 890 and 892, which was published at 68 FR 56523 on October 1, 2003, is adopted with only minor editorial changes for greater clarity as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

■ 1. The authority citation for part 890 is revised to read as follows:

Authority: 5 U.S.C. 8913; § 890.303 also issued under 50 U.S.C. 403(p), 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; § 890.102 also issued under sections 11202(f), 11232(e), and 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251; and section 721 of Pub. L. 105–261, 112 Stat. 2061 unless otherwise noted.

■ 2. In § 890.301 revise paragraphs (e)(1)(ii), (f)(3) and (g)(4)(i) to read as follows:

§ 890.301 Opportunities for employees who are not participants in premium conversion to enroll or change enrollment; effective dates.

* * * * *

(e) * * *

(1) * * *

(ii) An employee who is subject to a court or administrative order as discussed in § 890.301(g)(3) may not make this change as long as the court or administrative order is still in effect and the employee has at least one child identified in the order who is still eligible under the FEHB Program, unless the employee provides documentation to the agency that he or she has other coverage for the child(ren).

* * * * *

(f) * * *

(3) With one exception, during an open season, an eligible employee may enroll and an enrolled employee may change his or her existing enrollment from self only to self and family, may change from one plan or option to another, or may make any combination of these changes. *Exception:* An employee who is subject to a court or administrative order as discussed in § 890.301(g)(3) may not cancel his or her enrollment, change to self only, or change to a comprehensive medical plan that does not serve the area where his or her child or children live as long as the court or administrative order is still in effect and the employee has at least one child identified in the order who is still eligible under the FEHB Program, unless the employee provides documentation to the agency that he or she has other coverage for the child(ren).

* * * * *

(g) * * *

(4) * * *

(i) If the court or administrative order requires an earlier effective date, the effective date will be the 1st day of the pay period that includes that date. Effective dates may not be retroactive to a date more than 2 years earlier, or prior to October 30, 2000.

* * * * *

■ 3. In § 890.304 revise paragraph (d)(1) to read as follows:

§ 890.304 Termination of enrollment.

* * * * *

(d) *Cancellation or suspension.* (1)(i) An employee who participates in health insurance premium conversion as provided in part 892 of this chapter may cancel his or her enrollment only during an open season or because of and consistent with a qualifying life event defined in § 892.101 of this chapter.

(ii) Subject to the provisions of paragraph (d)(iii) of this section, an enrollee who does not participate in premium conversion may cancel his or her enrollment at any time by filing an appropriate request with the employing office. The cancellation is effective at the end of the last day of the pay period in which the employing office receives the appropriate request canceling the enrollment.

(iii) An employee who is subject to a court or administrative order as discussed in § 890.301(g)(3), or an annuitant who was subject to such a court or administrative order at the time of his or her retirement, may not cancel or suspend his or her enrollment as long as the court or administrative order is still in effect and the enrollee has at least one child identified in the order who is still eligible under the FEHB Program, unless the employee or annuitant provides documentation to the agency that he or she has other coverage for the child or children.

* * * * *

■ 4. In § 890.306 revise paragraphs (e)(1) and (f)(1)(i) to read as follows:

§ 890.306 When can annuitants or survivor annuitants change enrollment and what are the effective dates?

* * * * *

(e) *Enrollment change to self only.* (1) With one exception, an annuitant may change the enrollment from self and family to self only at any time. *Exception:* An annuitant who, as an employee, was subject to a court or administrative order as discussed in § 890.301(g)(3) at the time he or she retired may not change to self only after retirement as long as the court or administrative order is still in effect and the annuitant has at least one child identified in the order who is still eligible under the FEHB Program, unless the annuitant provides documentation to the retirement system that he or she has other coverage for the child or children.

* * * * *

(f) * * *

(1) * * *

(i) With one exception, an enrolled annuitant may change the enrollment from self only to self and family, may change from one plan or option to another, or may make any combination of these changes. *Exception:* An annuitant who, as an employee, was

subject to a court or administrative order as discussed in § 890.301(g)(3) at the time he or she retired may not cancel or suspend his or her enrollment, change to self only, or change to a comprehensive medical plan that does not serve the area where his or her children live after retirement as long as the court or administrative order is still in effect and the annuitant has at least one child identified in the order who is still eligible under the FEHB Program, unless the annuitant provides documentation to the retirement system that he or she has other coverage for the child or children.

* * * * *

■ 5. In § 890.502 revise the second sentence in paragraph (b)(2) and revise paragraph (b)(4)(ii) to read as follows:

§ 890.502 Employee withholdings and contributions.

* * * * *

(b) * * *

(2) * * * *Exception:* An employee who is subject to a court or administrative order as discussed in § 890.301(g)(3) may not elect to terminate his or her enrollment as long as the court/administrative order is still in effect and the employee has at least one child identified in the order who is still eligible under the FEHB Program, unless the employee provides documentation that he or she has other coverage for the child or children. * * *

* * * * *

(4) * * *

(ii) If the employee is subject to a court or administrative order as discussed in § 890.301(g)(3), the coverage may not terminate. If the employee does not return the signed form, the coverage will continue and the employee will incur a debt to the Government as discussed in paragraphs (b)(2)(i) and (b)(2)(ii) of this section.

* * * * *

PART 892—FEDERAL FLEXIBLE BENEFITS PLAN: PRE-TAX PAYMENT OF HEALTH BENEFITS PREMIUMS

■ 6. The authority citation for part 892 continues to read as follows:

Authority: 5 U.S.C. 8913; 26 U.S.C. 125.

■ 7. Revise § 892.207 to read as follows:

§ 892.207 Can I make changes to my FEHB enrollment while I am participating in premium conversion?

(a) Subject to the exceptions described in paragraphs (b) and (c) of this section, you can make changes to your FEHB enrollment for the same reasons and with the same effective dates listed in § 890.301 of this chapter.

(b) However, if you are participating in premium conversion there are two exceptions: you must have a qualifying life event to change from self and family enrollment to self only enrollment or to drop FEHB coverage entirely. (*See* § 892.209 and § 892.210.) Your change in enrollment must be consistent with and correspond to your qualifying life event as described in § 892.101. These limitations apply only to changes you may wish to make outside open season.

(c) If you are subject to a court or administrative order as discussed in § 890.301(g)(3) of this chapter, your employing agency can limit a change to your enrollment as long as the court or administrative order is still in effect and you have at least one child identified in the order who is still eligible under the FEHB Program, unless you provide documentation to your agency that you have other coverage for your child or children. *See also* § 892.208 and § 892.209.

■ 8. Add a new paragraph (c) to § 892.208 to read as follows:

§ 892.208 Can I change my enrollment from self and family to self only at any time?

* * * * *

(c) If you are subject to a court or administrative order as discussed in § 890.301(g)(3) of this chapter, you may not change your enrollment to self only as long as the court or administrative order is still in effect and you have at least one child identified in the order who is still eligible under the FEHB Program, unless you provide documentation to your agency that you have other coverage for your child or children. See also § 892.207 and § 892.209.

■ 9. Revise paragraph (c) to § 892.209 to read as follows:

§ 892.209 Can I cancel FEHB coverage at any time?

* * * * *

(c) If you are subject to a court or administrative order as discussed in § 890.301(g)(3) of this chapter, you may not cancel your coverage as long as the court or administrative order is still in effect and you have at least one child identified in the order who is still eligible under the FEHB Program, unless you provide documentation to your agency that you have other coverage for your child or children.

[FR Doc. 04–21304 Filed 9–22–04; 8:45 am]

BILLING CODE 6325–39–P

FEDERAL RESERVE SYSTEM

12 CFR Part 263

[Docket No. OP–1211]

Rules of Practice for Hearings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (the Board) is amending its rules of practice and procedure to adjust the maximum amount, as set by statute, of each civil money penalty (CMP) within its jurisdiction to account for inflation. This action is required under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.

EFFECTIVE DATE: October 12, 2004.

FOR FURTHER INFORMATION CONTACT: Katherine H. Wheatley, Assistant General Counsel (202/452–3779), or Katrina P. Sukduang, Senior Attorney (202/452–3351), Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. For users of Telecommunication Device for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 28 U.S.C. 2461 *note* (FCPIA Act), requires each Federal agency to adjust each CMP within its jurisdiction by a prescribed cost-of-living adjustment at least once every four years. This cost-of-living adjustment is based on the formula described in section 5(b) of the FCPIA Act. The Board made its last adjustment in October 2000 (*see* 65 FR 60583).

The required cost-of-living adjustment formula is based on the difference between the Consumer Price Index (CPI) for June of the year preceding the adjustment (in this case, June 2003) and the CPI for June of the year when the CMP was last set or adjusted. To calculate the adjustment, the Board used the Department of Labor, Bureau of Labor Statistics—All Urban Consumers tables, in which the period 1982–84 was equal to 100, to get the CPI values.

The calculations performed for the 2004 adjustment consisted of three categories, depending on the year in which the penalty was last set or adjusted. For penalties that changed in 2000, the relevant CPIs were June 2003 (183.7) and June 2000 (172.4), resulting in a CPI increase of 6.6 percent. For

penalties that were last changed in 1996, the relevant CPIs were June 2003 (183.7) and June 1996 (156.7), resulting in a CPI increase of 17.2 percent. Finally, for the one penalty that had not changed since its establishment in 1994, the relevant CPIs were June 2003 (183.7) and June 1994 (148.0), resulting in a CPI increase of 24.1 percent.

Section 5 of the FCPIA Act provides that the adjustment amount must be rounded before adding it to the existing penalty amount. The rounding provision depends on the size of the penalty being adjusted. For example, if the penalty is greater than $100 but less than or equal to $1,000, the increase is rounded to the nearest $100; if it is greater than $1,000 but less than or equal to $10,000, the increase is rounded to the nearest $1,000. Because of this rounding rule, five penalty amounts are not changing at this time. For example, the penalty under 12 U.S.C. 3909(d) prior to the 2004 adjustment was $1,100. As this penalty was last changed in 1996, the 17.2 percent adjustment would be $189. Rounding that increase to the nearest $1,000 results in an increase of $0. The penalties that are not adjusted at this time because of this rounding formula will be adjusted at the next adjustment cycle to take account of the entire period between the time of their last adjustment (either 1996 or 2000) and the next adjustment date. These unadjusted penalties include the inadvertently late or misleading reports under 12 U.S.C. 324; 12 U.S.C. 1832(c); Tier I penalty of 12 U.S.C. 1847(d), 3110(c); 12 U.S.C. 334, 374a, 1884; and 12 U.S.C. 3909(d).

Because the statute also prohibits initial increases that exceed 10 percent, the penalty for 42 U.S.C. 4012a(f)(5) will increase to only $385 in 2004. This penalty was initially set at $350 in 1994, and did not change in either the 1996 or 2000 adjustments. Accordingly, the 24.1 percent CPI increase from 1994 results in $84, which is rounded to $100 pursuant to the rounding rules. As that increase would exceed 10 percent, the penalty was adjusted to $385.

In accordance with section 6 of the FCPIA Act, the increased penalties set forth in this amendment apply only to violations that occur after the date the increase takes effect.

Public Comment Not Required

This rule is not subject to the provisions of 5 U.S.C. 553 requiring notice, public participation, and deferred effective date. The FCPIA Act provides Federal agencies with no discretion in the adjustment of CMPs to the rate of inflation, and it also requires that adjustments be made at least every four years. Moreover, this regulation is ministerial and technical. For these reasons, the Board finds good cause to determine that public notice and comment for this new regulation is unnecessary, impractical, and contrary to the public interest, pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B). These same reasons also provide the Board with good cause to adopt an effective date for this regulation that is less than 30 days after the date of publication in the **Federal Register**, pursuant to the APA, 5 U.S.C. 553(d).

Regulatory Flexibility Act

The Regulatory Flexibility Act applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). *See* 5 U.S.C. 601(2). Because the Board has determined for good cause that the APA does not require public notice and comment on this final rule, we are not publishing a general notice of proposed rulemaking. Thus, the Regulatory Flexibility Act does not apply to this final rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR part 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

List of Subjects in 12 CFR Part 263

Administrative practice and procedure, Claims, Crime, Equal Access to Justice, Lawyers, Penalties.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board of Governors amends 12 CFR part 263 as follows:

PART 263—RULES OF PRACTICE FOR HEARINGS

■ 1. The authority citation for part 263 continues to read as follows:

Authority: 5 U.S.C. 504; 12 U.S.C. 248, 324, 504, 505, 1817(j), 1818, 1828(c), 1831o, 1831p-1, 1847(b), 1847(d), 1884(b), 1972(2)(F), 3105, 3107, 3108, 3907, 3909; 15 U.S.C. 21, 78o-4, 78o-5, 78u-2; and 28 U.S.C. 2461 *note*.

■ 2. Section 263.65 is revised to read as follows:

263.65 Civil penalty inflation adjustments

(a) *Inflation adjustments.* In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note), the Board has set forth in paragraph (b) of this section adjusted maximum penalty amounts for each civil money penalty provided by law within its jurisdiction. The adjusted civil penalty amounts provided in paragraph (b) of this section replace only the amounts published in the statutes authorizing the assessment of penalties and the previously-adjusted amounts adopted as of October 12, 2000 and October 24, 1996. The authorizing statutes contain the complete provisions under which the Board may seek a civil money penalty. The increased penalty amounts apply only to violations occurring after the effective date of this rule.

(b) *Maximum civil money penalties.* The maximum civil money penalties as set forth in the referenced statutory sections are as follows:

(1) 12 U.S.C. 324:
  (i) Inadvertently late or misleading reports, inter alia—$2,200.
  (ii) Other late or misleading reports, inter alia—$27,000.
  (iii) Knowingly or recklessly false or misleading reports, inter alia—$1,250,000.
(2) 12 U.S.C. 504, 505, 1817(j)(16), 1818(i)(2) and 1972(2)(F):
  (i) First tier—$6,500.
  (ii) Second tier—$32,500.
  (iii) Third tier—$1,250,000.
(3) 12 U.S.C. 1832(c)—$1,100.
(4) 12 U.S.C. 1847(b), 3110(a)—$32,500.
(5) 12 U.S.C. 1847(d), 3110(c):
  (i) First tier—$2,200.
  (ii) Second tier—$27,000.
  (iii) Third tier—$1,250,000.
(6) 12 U.S.C. 334, 374a, 1884—$110.
(7) 12 U.S.C. 3909(d)—$1,100.
(8) 15 U.S.C. 78u–2:
  (i) 15 U.S.C. 78u-2(b)(1)—$6,500 for a natural person and $65,000 for any other person.
  (ii) 15 U.S.C. 78u-2(b)(2)—$65,000 for a natural person and $325,000 for any other person.
  (iii) 15 U.S.C. 78u-2(b)(3)—$130,000 for a natural person and $625,000 for any other person.
(9) 42 U.S.C. 4012a(f)(5):
  (i) For each violation—$385.
  (ii) For the total amount of penalties assessed under 42 U.S.C 4012a(f)(5) against an institution or enterprise during any calendar year—$125,000.

Dated: September 20, 2004.

By order of the Board of Governors of the Federal Reserve System.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04–21362 Filed 9–22–04; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17447; Airspace Docket No. 04–AGL–12]

Modification of Class E Airspace; Merrill, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Merrill, WI. Standard Instrument Approach Procedures have been developed for Merrill Municipal Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action modifies the area of existing controlled airspace for Merrill Municipal Airport.

EFFECTIVE DATE: 0901 UTC, November 25, 2004.

FOR FURTHER INFORMATION CONTACT: J. Mark Reeves, FAA, Terminal Operations, Central Service Office, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, June 9, 2004, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Merrill, WI (69 FR 32294). The proposal was to modify controlled airspace extending upwafd from 700 feet or more above the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class airspace at Merrill, WI, to accommodate aircraft executing instrument flight procedures into and out of Merrill Municipal Airport. The area will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p 389.

§71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9L, airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

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

* * * * *

AGL WI E5 Merrill, WI [Revised]

Merrill Municipal Airport, WI
(Lat. 45°11′56″ N., long.89°42′46″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Merrill Municipal Airport.

* * * * *

Issued in Des Plaines, Illinois on September 9, 2004.

Keith A. Thompson,

Area Staff Manager, Central Terminal Operations.

[FR Doc. 04–21396 Filed 9–22–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17446 Airspace Docket No. 04–AGL–11]

Modification of Class E Airspace; Albert Lea, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Albert Lea, MN. Standard Instrument Approach Procedures have been developed for Albert Lea Municipal Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth designated as an extension, is no longer needed. This action eliminates the area of controlled airspace designated as an extension to the existing Class E airspace area, at Albert Lea Municipal Airport.

DATES: *Effective Date:* 0901 UTC, November 25, 2004.

FOR FURTHER INFORMATION CONTACT: J. Mark Reeves, FAA, Terminal Operations, Central Service Office, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, June 9, 2004, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Albert Lea, MN (69 FR 32293). The proposed was to eliminate controlled airspace extending upward from 700 feet or more above the surface designated as an extension to the existing Class E airspace area.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designation for airspace areas extending

upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Albert Lea, MN, to accommodate aircraft executing instrument flight procedures into and out of Albert Lea Municipal Airport. The area will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

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

* * * * *

AGL MN E5 Albert Lea, MN [Revised]

Albert Lea Municipal Airport, MN
(Lat. 43°40′54″ N., long.93°22′02″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Albert Lea Municipal Airport.

* * * * *

Issued in Des Plaines, Illinois, on September 9, 2004.

Keith A. Thompson,

Area Staff Manager, Central Terminal Operations.

[FR Doc. 04–21395 Filed 9–22–04; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 228

Tire Advertising and Labeling Guides

AGENCY: Federal Trade Commission ("FTC" or "Commission").

ACTION: Final decision.

SUMMARY: The Commission previously announced its intention to review and seek public comment on its Tire Advertising and Labeling Guides ("Tire Guides" or "Guides"). That review has been completed, and this document announces the Commission's decision to rescind the Guides.

DATES: *Effective Date:* September 23, 2004.

ADDRESSES: Requests for copies of this document should be sent to the Consumer Response Center, Room 130, Federal Trade Commission, 600 Pennsylvania Ave., NW., Washington, DC 20580. The document is available on the Internet at the Commission's Web site *http://www.ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Jonathan L. Kessler, Federal Trade Commission, 1111 Superior Avenue, Suite 200, Cleveland, Ohio, 44114, telephone number (216) 263–3436, E-mail <jkessler@ftc.gov>.

SUPPLEMENTARY INFORMATION:

I. Overview of FTC Tire Advertising Regulation and the Consumer Tire Industry

The Commission's Tire Guides address aspects of the marketing, use, and servicing of tires "for use on passenger automobiles, station wagons, and similar vehicles." [1] 16 CFR 228.0. The Commission first promulgated Trade Practice Rules For The Tire Industry in 1936. The Tire Guides in their current form were published in 1968.[2] Commission hearings in the mid-1960s revealed problems with deceptive advertising by sellers, and the Commission concluded that consumers lacked the information needed to make informed purchasing decisions. The problems appear to have revolved around the lack of standard definitions for the terms "ply" and "ply rated," the lack of recognized standards for safety and quality, and pricing practices.

The tire industry, however, has changed considerably in the last 35 years. First, in 1968, bias ply tires were standard on passenger cars. Today, radial tires dominate the consumer market, with bias tires relegated to large trucks and historical vehicles. As a result, factors such as the number of plies in a tire or its cord material are no longer relevant to consumer decision making. Second, in 1968, consumers bought tires at full-service gas stations or locally-owned stores that carried only one brand of tire. Today, sales also occur through national retailers, regional tire stores, new car dealerships, and the Internet.[3] These new retail establishments offer multiple brands, tread patterns, and mileage warranties. Moreover, prices for these tires are widely advertised, often in full-page newspaper ads or inserts. As a result, consumers have more choices of tires and more information about prices and options. Third, in 1968, no government or industry association established standards for measuring tire quality or insuring safety. Today, the National Highway Traffic Safety Administration ("NHTSA") oversees the industry and has promulgated comprehensive regulations requiring disclosure of important safety and quality features.[4]

[1] This definition does not include minivans and sport utility vehicles.

[2] The only change since 1968 was the addition of a provision regarding retreaded tires in 1994.

[3] In the United States, six tire manufacturers sell nearly 200 million passenger car replacement tires every year. Almost three-fourths (72%) of these tires are sold through independent tire dealers, including chain stores like Tire Kingdom and NTB. Mass merchandisers like Wal-Mart, Sears, and K-Mart account for 18% of replacement tire sales. Company-owned stores (*e.g.*, Goodyear and Firestone), service stations, new car dealers, and, more recently, the Internet, account for the remainder.

[4] NHTSA's Uniform Tire Quality Grading System regulations ("NHTSA regulations") set standards for treadwear, traction, and temperature ratings, giving consumers the ability to compare the quality of one tire with that of another. See 49 CFR 575.104. NHTSA's New Pneumatic Tires for Light Vehicles regulations, 49 CFR 571.139 (TREAD Act regulations), require disclosure on the tire of, among other things, the tire's size, maximum inflation pressure, maximum load, generic name of cord material, number of plies, whether it has radial plies, and whether it is tube or tubeless.

II. Regulatory Review of the Guides and Public Comment

The Commission reviewed the Tire Guides as part of its continuing review of all current rules and guides.[5] On August 25, 2003, the Commission published a **Federal Register** notice seeking comments about the costs and benefits of the Guides. Three written comments were received, all in favor of significantly revising the Guides.[6] For example, one comment stated: "[A]s currently written, the Guides have limited utility to tire manufacturers, tire dealers and tire consumers, appear to be redundant with other consumer protection laws, and have been superseded in part by regulations issued by another government agency."[7] All three comments substantially agreed on four points:

(1) If retained, the Guides should be expanded from passenger car and station wagon tires to include tires for minivans, sport utility vehicles, and other light trucks.

(2) Section 228.2 is obsolete and in need of substantial revision or deletion. This provision requires that ads making comparative quality claims across tire brands also disclose that no generally accepted standards of tire quality exist. In 1978, however, NHTSA promulgated its Uniform Tire Quality Grading System, which establishes tests and criteria for grading tire quality.

(3) The ply count and cord material provisions of Sections 228.6 and 228.7 are obsolete because of the market change from bias ply to radial tires (nearly 100% of tires sold for consumer vehicles are radials).[8]

(4) Ads for used and retreaded tires should continue to disclose that those tires are not new, as required by Section 228.9.

Not all comments addressed each section of the Guides, but the overall suggestion of each comment was to revise and retain the Guides rather than to rescind them.

III. Determination To Rescind the Guides

After reviewing the Tire Guides, the consumer tire industry, the NHTSA regulations, the above-referenced comments, and other industry guides, the Commission has decided to rescind the Guides. This decision is based on the fact that many provisions in the Guides duplicate other laws and regulations or are obsolete. In addition, some provisions describe conduct that is addressed by section 5 of the FTC Act, which generally prohibits unfair or deceptive acts or practices.[9] A description and analysis of each of the Guides' nineteen substantive provisions follows.[10]

Section 228.1 requires point-of-sale disclosure of the load carrying capacity of the tire, the composition of the cord material and the actual number of plies. It also provides for permanent disclosures on the tire itself of the tire's size, whether it is tube or tubeless, and its number of plies. This section also requires disclosure via a label or tag on the tire of its cord material, load-carrying capacity, and inflation pressure. Today, however, NHTSA regulations require this information on the tire. Moreover, with radial tires dominating the market, the ply count and cord material disclosures provide no meaningful information to consumers buying tires for personal, family, or household use; NHTSA requires this information because it is important to tire retreaders.[11]

Section 228.2 prohibits the use of terms like "line," "level," and "premium" without also disclosing the lack of any "industry-wide or other accepted system of quality standards or grading of industry products' and that any representations of grade or level only apply to the marketer's brand. Marketers are prohibited from describing tires as "first line" "unless the products so described are the best products, exclusive of premium quality products embodying special features, of the manufacturer or brand name distributor." § 228.2 (d). Today, however, NHTSA regulations enable consumers to compare tires on several measures of quality: treadwear, traction, load capability, and temperature. Consumers also have the benefit of tire warranties, which typically warrant a tire for a particular number of miles.[12]

Section 228.3 complements Section 228.2 by prohibiting a manufacturer from using terms that imply that one of its tires is better than another unless the first is actually superior. Section 228.4 prohibits describing a tire as "original equipment" unless it is currently used on new cars or the manufacturer discloses when the tire was last used on new cars. Under the Guides, original equipment tires are considered to be "the same brand and quality tires used generally as original equipment on new current models of vehicles of domestic manufacture." There is no evidence, however, whether consumers still understand the term "original equipment" in this way or have changed their understanding over the years, and none of the commenters mentioned this section. Section 228.5 prohibits any other quality or performance claim unless the claim maker has test results to substantiate the claim. Today, most of these claims would clearly be covered by the FTC's deception standard and substantiation doctrine.[13]

Sections 228.6 and 228.7 govern representations of "ply count," "plies," "ply rating," and "cord material." These factors were important indicators of tire quality with bias ply tires. Today, however, radial tires make these measures far less meaningful; NHTSA requires them only because they affect the retread process. In their place, NHTSA regulations require more direct information about tire quality.

Sections 228.8, 228.9, and 228.11 require disclosures in ads for tires that are used or imperfect. In 1968, consumers who did not want to pay for new, perfect tires could purchase used, retreaded, or blemished tires. Today, however, these tires are seldom found in the consumer market. (Large truck tires, such as those for semis, are often retreaded, and retreads account for as much as 60% of that market.) Moreover, if a business were to sell a used, blemished, or defective tire without proper disclosures, such conduct would likely constitute deception in violation of section 5 of the FTC Act.

Section 228.10 requires disclosure if an advertised tire is a discontinued or

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[5] The Commission periodically reviews its rules and guides. These reviews seek and assess information about the costs and benefits of the rules and guides, as well as their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. In this instance, the Commission sought comments on, among other things: the economic impact of and the continuing need for the Guides; possible conflicts between the Guides and other federal, state, or local laws and regulations; and the effect of any technological, economic, or other industry changes on the Guides.

[6] Comments came from the Rubber Manufacturers Association, the National Automobile Dealers Association, and the Tire Industry Association.

[7] Letter dated October 24, 2003, from Ann Wilson, Rubber Manufacturers Association, to Secretary, Federal Trade Commission, at 2.

[8] The comments differed on whether to revise these sections or delete them entirely, however.

[9] 15 U.S.C. 45.

[10] Section 228.0 contains definitions and Section 228.0–1 provides "[u]se of guide principles." Sections 228.1 through 228.19 are the substantive sections.

[11] The Guides recognize the unique features of radials and allow the ply count disclosure to be satisfied with just the statement "radial ply." 16 CFR 228.2(b)(1) and (2).

[12] Tire ads for name-brand tires almost always state a mileage warranty. Such warranties provide additional, albeit non-specific, information about a tire's quality.

[13] Section 5 of the FTC Act, 15 U.S.C. 45, prohibits, among other things, deceptive acts or practices. The substantiation doctrine requires advertisers to have reasonable substantiation for claims in advertisements at the time the advertisement is published.

obsolete model. Tire manufacturers today, however, often change models, so it is questionable whether such information is material to consumers. None of the commenters discussed this provision and there is no evidence whether consumers are concerned about or would be adversely affected by purchasing a tire that is being discontinued. If problems were to surface in this area, they likely could be addressed by section 5 of the FTC Act.

Sections 228.12 and 228.13 address advertisements that use pictures or racing themes. Pictures must be of the tire advertised and ads using racing themes must disclose that the tires on race cars "are not generally available all purpose tires, unless such is the fact." As in 1968, pictures and video can be used today to misrepresent the qualities of tires, but any material misrepresentations would violate section 5 of the FTC Act.

Sections 228.14 and 228.15 address price advertising. Section 228.14 prohibits bait advertising, and Section 228.15 addresses price comparisons. Although both sections address concerns that may be relevant to the current tire market, the Commission has published guides devoted to both issues. *See* 16 CFR 238 (bait advertising) and 16 CFR 233 (deceptive pricing). These guides should provide adequate information for tire industry members to understand how section 5 of the FTC Act applies to their products, making Sections 228.14 and 228.15 redundant.

Section 228.16 requires ads containing guarantees to disclose details of those guarantees, including how price adjustments will be calculated if a tire fails during the guarantee period. Today, however, warranties must be available at a store for inspection before purchase. 16 CFR 702 (rule on the Presale Availability of Written Warranty Terms). Requiring disclosure of guarantee details in ads themselves thus appears unnecessary. Advertising claims about warranties and guarantees are also addressed by the Guides for the Advertising of Warranties and Guarantees, 16 CFR 239.

Section 228.17 prohibits absolute performance or safety claims such as "blowout proof" or "skid proof" unless the claims are true under all driving conditions. Any problems attributable to these or similar claims can be addressed by section 5 of the FTC Act.

Section 228.18 prohibits claims that deceive purchasers or prospective purchasers in any material respect. Even if updated, this section would still only restate established law and not provide additional guidance to the tire industry.

Section 228.19 requires that ads for metal studded snow tires disclose that their use is illegal in some places. Non-metal studded mud and snow tires and all weather tires, however, have made metal studded tires far less common now than in 1968.

In sum, the Commission's review has produced no clear reason for retaining the Guides. Even if revised as the comments suggested, the Guides would not provide consumers with any information not already required to be available to them by other laws and regulations. Moreover, neither the comments nor the Commission staff's own review of tire advertising has identified benefits to consumers from the existing Guides or areas where businesses are in particular need of Commission guidance. Indeed, one comment, after noting several changes in the industry that would make significant revisions necessary if the Guides were to be retained, admitted that "[t]hese changes will not make a huge difference to consumers. They will simply update the Guides to reflect today's market."[14] Because the vast majority of Tire Guide provisions are adequately addressed by other laws and regulations (including NHTSA regulations and Section 5 of the Federal Trade Commission Act) or have been rendered obsolete because of changes in the market, the Commission has determined to rescind the Guides.

List of Subjects in 16 CFR Part 228

Advertising, Automobile tires, Trade practices.

PART 228—[REMOVED]

■ The Commission, under authority of sections 5(a)(1) and 6(g) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1) and 46(g), amends Chapter 1 of Title 16 of the Code of Federal Regulations by removing part 228.

By direction of the Commission, Commissioner Leibowitz not participating.

Donald S. Clark,

Secretary.

[FR Doc. 04–21404 Filed 9–22–04; 8:45 am]

BILLING CODE 6750–01–P

[14] Letter dated October 24, 2003 from Becky MacDicken, Tire Industry Association, to Secretary, Federal Trade Commission, at 3.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. 2004N–0370]

Medical Devices; Immunology and Microbiology Devices; Classification of the Beta-Glucan Serological Assay

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying the beta-glucan serological reagent device into class II (special controls). The special control that will apply to the device is the guidance document entitled "Class II Special Controls Guidance Document: Serological Assays for the Detection of Beta-Glucan." The agency is taking this action in response to a petition submitted under the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Medical Device Amendments of 1976 (the 1976 amendments), the Safe Medical Devices Act of 1990, the Food and Drug Administration Modernization Act of 1997, and the Medical Device User Fee and Modernization Act of 2002. The agency is classifying the device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability of a guidance document that is the special control for this device.

DATES: This rule becomes effective October 25, 2004. The classification was effective May 21, 2004.

FOR FURTHER INFORMATION CONTACT: Freddie M. Poole, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–2096, ext. 111.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the act (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the 1976 amendments), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or

reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously marketed devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of FDA's regulations.

Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act (21 U.S.C. 360c(a) (1)). FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification (section 513(f)(2) of the act).

In accordance with section 513(f)(1) of the act, FDA issued a notice on March 18, 2004, classifying the beta-glucan serological assay in class III, because it was not substantially equivalent to a device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or a device which was subsequently reclassified into class I or class II. On March 22, 2004, Associates of Cape Cod submitted a petition requesting classification of the beta-glucan serological assay under section 513(f)(2) of the act. The manufacturer recommended that the device be classified into class II.

In accordance with section 513(f)(2) of the act, FDA reviewed the petition in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the act. Devices are to be classified into class II if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the petition, FDA determined that the beta-glucan serological assay can be classified in class II with the establishment of special controls. FDA believes these special controls, in addition to general controls, will provide reasonable assurance of safety and effectiveness of the device.

The device is assigned the generic name "Beta-glucan serological assays" and it is identified as a device that consists of antigens or proteases used in serological tests. It is intended for use in the presumptive diagnosis of fungal infection. The assay is indicated for use in patients with symptoms of, or medical conditions predisposing the patient to, invasive fungal infection. The device can be used as an aid in the diagnosis of deep-seated mycoses and fungemias. The assay should be used in conjunction with other diagnostic procedures, such as microbiological culture, histological examination of biopsy samples and radiological examination.

FDA has not identified any direct risks to health when tests are used as an aid to detecting invasive fungal infection. However, failure of the test to perform as indicated, or an error in interpretation of results, could lead to misdiagnosis, improper treatment and improper patient management. Therefore, in addition to the general controls of the act, the device is subject to special controls, identified as the guidance document entitled "Class II Special Controls Guidance Document: Serological Assays for the Detection of Beta-Glucan."

The class II special controls guidance document provides information on how to meet premarket (510(k)) submission requirements for the device including recommendations on validation of performance characteristics. FDA believes that following the class II special controls guidance document addresses the risks to health identified in the previous paragraph. Therefore, on May 21, 2004, FDA issued an order to the petitioner classifying the device into class II. FDA is codifying this classification by adding 21 CFR 866.3050.

Following the effective date of this final classification rule, any firm submitting a 510(k) premarket notification for beta-glucan serological assays will need to address the issues covered in the special controls guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurance of safety and effectiveness.

Section 510(m) of the act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the act, if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined that premarket notification is necessary to provide reasonable assurance of safety and effectiveness; therefore, the device is not exempt from premarket notification requirements. The device is used as an adjunct in detecting invasive fungal infection. FDA's review of the test's sensitivity, specificity, and reproducibility with regard to key performance characteristics, test methodology and other relevant performance data, will provide reasonable assurance that acceptable levels of performance for both safety and effectiveness will be addressed before marketing clearance. Thus, persons who intend to market this type of device must submit to FDA a premarket notification, prior to marketing the device, which contains information about the beta-glucan serological assay they intend to market.

II. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). 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). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so it is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Classification of these devices into class II will relieve manufacturers of the device of the cost of complying with the premarket approval requirements of section 515 of the act (21 U.S.C. 360e), and may permit small

potential competitors to enter the marketplace by lowering their costs. The agency, therefore, certifies that the final rule will not have a significant impact on a substantial number of small entities. In addition, this final rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate and, therefore, a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act is not required.

IV. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies 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. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

V. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VI. Reference

The following reference has been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Petition from Associates of Cape Cod dated March 22, 2004.

List of Subjects in 21 CFR Part 866

Biologics, Laboratories, Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 866 is amended as follows:

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

■ 1. The authority citation for 21 CFR part 866 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 866.3050 is added to subpart D to read as follows:

§ 866.3050 Beta-glucan serological assays.

(a) *Identification.* Beta-glucan serological assays are devices that consist of antigens or proteases used in serological assays. The device is intended for use for the presumptive diagnosis of fungal infection. The assay is indicated for use in patients with symptoms of, or medical conditions predisposing the patient to invasive fungal infection. The device can be used as an aid in the diagnosis of deep seated mycoses and fungemias.

(b) *Classification.* Class II (special controls). The special control is FDA's guidance document entitled "Class II Special Controls Guidance Document: Serological Assays for the Detection of Beta-Glucan." See § 866.1(e) for the availability of this guidance document.

Dated: September 10, 2004.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 04–21316 Filed 9–22–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 592

Rough Diamonds Control Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Treasury Department's Office of Foreign Assets Control is revising the Rough Diamonds Control Regulations previously issued as an interim final rule. The regulations carry out the purposes of Executive Order 13312 of July 29, 2003, which implemented the Clean Diamond Trade Act and the Kimberley Process Certification Scheme for rough diamonds. Based on its experience and that of other involved agencies, OFAC is revising certain reporting and recordkeeping requirements of the regulations.

DATES: Effective Date: September 23, 2004.

FOR FURTHER INFORMATION CONTACT: OFAC's Chief of Policy Planning and Program Management, tel.: (202) 622–4855, or Chief Counsel, tel.: (202) 622–2410.

SUPPLEMENTARY INFORMATION:

Background

On July 29, 2003, the President issued Executive Order 13312, to implement the Clean Diamond Trade Act (Pub. L. 108–19) and the multilateral Kimberley Process Certification Scheme for rough diamonds (KPCS). The Clean Diamond Trade Act requires the President, subject to certain waiver authorities, to prohibit the importation into, and exportation from, the United States of any rough diamond not controlled through the KPCS. This means shipments of rough diamonds between the United States and non-Participants in the KPCS generally are prohibited, and shipments between the United States and Participants are permitted only if they are handled in accordance with the standards, practices, and procedures of the KPCS set out in these regulations.

The Treasury Department's Office of Foreign Assets Control (OFAC), acting pursuant to Executive Order 13312 and delegated authority, published the Rough Diamonds Control Regulations, 31 CFR part 592 (the Regulations), as an interim final rule on August 4, 2003 (68 FR 45777). The Regulations, which are described in detail in the preamble to the interim final rule, implement the Clean Diamond Trade Act and the KPCS.

OFAC requested public comments on the Regulations. No public comments were received. However, based on its experience and that of other agencies that also participate in the implementation and administration of the Clean Diamond Trade Act and the KPCS, OFAC is revising the Regulations in four respects: (1) To specify that the ultimate consignee is responsible for retaining the original Kimberley Process Certificate accompanying an importation into the United States; (2) to require the ultimate consignee to report the receipt of a shipment of rough diamonds to the relevant foreign exporting authority within 15 calendar days of the date that the shipment arrived at a U.S. port of entry; (3) to advise persons engaged in the diamond trade of a pending requirement of U.S. Customs and Border Protection (Customs) that customs brokers, importers, and filers making entry of a shipment of rough diamonds either submit through Custom's Automated Broker Interface (ABI) system the unique identifying number of the Kimberley Process Certificate accompanying the shipment or, for non-ABI entries, indicate the certificate number on the Customs Form 7501 Entry Summary at each entry line; and (4) to clarify the country-of-origin reporting requirements for shipments of

parcels of mixed origin rough diamonds. OFAC is now issuing the Regulations as a final rule, incorporating these four revisions and the others described below.

Section 592.301 of the Regulations defines the term *Controlled through the Kimberley Process Certification Scheme.* OFAC is revising two subsections of this definition and adding a note to the section. First, § 592.301(a)(1) requires, among other things, that a shipment of rough diamonds imported into the United States be accompanied by a Kimberley Process Certificate validated by the relevant exporting authority. The certificate must be presented if demanded by Customs. Also, § 592.501 of the Regulations requires a United States person importing rough diamonds into the United States to maintain full and accurate records of the transaction for at least five years after the date of the transaction. OFAC has been advised that persons engaged in the diamond trade are uncertain which person should maintain possession of the original Kimberley Process Certificate accompanying an importation into the United States. To eliminate this uncertainty and to facilitate OFAC's and Customs' enforcement efforts, OFAC is revising § 592.301(a)(1) to specify that the ultimate consignee reported on the Customs Form 7501 Entry Summary or its electronic equivalent filed with Customs is responsible for retaining that certificate for a period of at least five years from the date of the importation.

Second, § 592.301(a)(3) of the Regulations originally required the importer of record in the United States to confirm receipt of a shipment of rough diamonds to the relevant foreign exporting authority. OFAC is revising this subsection to specify which person involved in an importation is required now to report the receipt of a shipment in an effective and timely manner. As revised, § 592.301(a)(3) specifies that the ultimate consignee reported on the Customs Form 7501 Entry Summary or its electronic equivalent filed with Customs is the person responsible for reporting receipt of the shipment to the foreign exporting authority. Also, the revised § 592.301(a)(3) now requires that the ultimate consignee must report specified information about the shipment to the foreign exporting authority within 15 calendar days of the date that the shipment arrived at a U.S. port of entry.

OFAC also is adding a note to § 592.301 to reflect a pending Customs requirement that customs brokers, importers, and filers making entry of a shipment of rough diamonds either submit through Customs' Automated Broker Interface (ABI) system the unique identifying number of the Kimberley Process Certificate accompanying the shipment or, for non-ABI entries, indicate the certificate number on the Customs Form 7501 Entry Summary at each entry line. This requirement will take effect on November 1, 2004. The submission of the Kimberley Process Certificate number will facilitate the Census Bureau's compilation of statistical data relating to the importation of rough diamonds.

Section 592.307 of the Regulations defines the term *Kimberley Process Certificate* to include a requirement that the certificate identify the country of origin for a shipment of one or more parcels of rough diamonds of unmixed (*i.e.*, from the same) origin. The definition's silence with respect to the treatment of a shipment that includes a parcel of mixed origin rough diamonds has prompted questions from importers as to whether the certificate may be used and how it should be completed, in such circumstances. A shipment including a parcel of mixed-origin rough diamonds is to be entered into the United States with the Kimberley Process Certificate validated by the relevant exporting authority, and the certificate need not indicate the countries of origin of the diamonds. With respect to such a shipment, however, OFAC is adding a note to § 592.307(b) to state that the country-of-origin field must be filled in with asterisks. The note also advises that the shipment still must comply with all other country-of-origin reporting requirements imposed by law.

OFAC is also revising the definition of *Effective date* in § 592.302 of the Regulations in light of the new reporting requirements imposed by § 592.301(a)(3), as well as revising § 592.801 to reflect the Office of Management and Budget's (OMB) issuance of three control numbers authorizing the collections of information in the Regulations. Finally, OFAC is revising § 592.602 to reflect properly the basis upon which the Director of OFAC may decide to issue a prepenalty notice and to make other minor corrections.

Electronic and Facsimile Availability

This file is available for download without charge in ASCII and Adobe Acrobat readable (*.PDF) formats at *GPO Access*. GPO Access supports HTTP, FTP, and Telnet at *fedbbs.access.gpo.gov*. It may also be accessed by modem dialup at (202) 512–1387 followed by typing "/GO/FAC." Paper copies of this document can be obtained by calling the Government Printing Office at (202) 512–1530. Additional information concerning the programs administered by OFAC is available for download from the Office's Internet Home Page at: *http://www.treas.gov/ofac* or via FTP at *ofacftp.treas.gov*. Facsimiles of information are available through the Office's 24-hour fax-on-demand service: call (202) 622–0077 using a fax machine, a fax modem, or (within the United States) a touch-tone telephone.

Executive Order 12866, Administrative Procedure Act, Regulatory Flexibility Act, and Paperwork Reduction Act

Because the regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

With respect to section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the collections of information in §§ 592.301(a)(1), 592.501, and 592.603 of the Regulations are made pursuant to OFAC's Reporting, Procedures and Penalties Regulations (31 CFR part 501) and have been approved by OMB under control number 1505–0164. *See* 31 CFR 501.901. The collection of information in § 592.301(a)(4) relating to the Census Bureau's Foreign Trade Statistics Regulations (15 CFR part 30) has been approved by OMB under control number 0607–0152. *See* Automated Export System Mandatory Filing for Exports (Reèxports) of Rough Diamonds, 68 FR 59877 (Oct. 20, 2003).

The collection of information in § 592.301(a)(3) of the Regulations has been submitted to and approved by OMB pending public comment and has been assigned OMB control number 1505–0198. Section 592.301(a)(3) specifies that the ultimate consignee identified on the Customs Form 7501 Entry Summary filed with Customs is required to report specified information about the shipment of rough diamonds imported into the United States to the foreign exporting authority within 15 calendar days of the date that the shipment arrived at a U.S. port of entry. This collection of information is needed to monitor the integrity of international rough diamond shipments, and the information collected will be used to further the compliance, enforcement, and civil penalty programs of OFAC,

U.S. Customs and Border Protection, and the Bureau of Immigration and Customs Enforcement. *See* sections 5(a) and 8 of the Clean Diamond Trade Act.

With respect to all of the foregoing collections of information, 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 control number.

The likely respondents and recordkeepers affected by the new collection of information in § 592.301(a)(3) are business organizations and individuals engaged in the international diamond trade. The estimated annual number of respondents and recordkeepers is 250, and the estimated total annual number of responses is 3,000.

The estimated total annual reporting and/or recordkeeping burden is estimated to be 500 hours. The estimated average annual burden per respondent/recordkeeper is 2 hours, based on an estimated annual frequency of 10 to 15 responses and an estimated time per response of 10 minutes.

Comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information has 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 and other forms of information technology; and (e) estimated capital or start-up costs of operation, maintenance, and purchase of services to provide information.

Comments concerning the above information, the accuracy of these burden estimates, and suggestions for reducing this burden should be directed to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with a copy to Chief of Records, Attention: Request for Comments, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Any such comments should be submitted not later than November 22, 2004. All comments on the collection of information in § 592.301(a)(3) will be a matter of public record.

List of Subjects in 31 CFR Part 592

Administrative practice and procedure, Foreign trade, Exports, Imports, Kimberley Process, Penalties, Reporting and recordkeeping requirements, Rough diamond.

■ For the reasons set forth in the preamble, 31 CFR chapter V, part 592 is revised to read as follows:

PART 592—ROUGH DIAMONDS CONTROL REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); Pub. L. 108–19, 117 Stat. 631 (19 U.S.C. 3901–3913); E.O. 13312, 68 FR 45151 3 CFR, 2003 Comp., p. 246.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 592.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part.

Subpart B—Prohibitions

§ 592.201 Prohibited importation and exportation of any rough diamond; permitted importation or exportation of any rough diamond.

(a) Except to the extent provided in paragraph (b) of this section, and notwithstanding the existence of any rights or obligations conferred or imposed by any contract entered into or any license or permit granted prior to the effective date, the importation into, or exportation from, the United States on or after July 30, 2003, of any rough diamond, from whatever source, is prohibited, unless the rough diamond has been controlled through the Kimberley Process Certification Scheme.

(b) The prohibitions in paragraph (a) of this section regarding the importation into, or exportation from, the United States of any rough diamond not controlled through the Kimberley Process Certification Scheme do not apply to an importation from, or exportation to, any country with respect to which the Secretary of State has granted a waiver pursuant to section 4(b) of the Clean Diamond Trade Act (Pub. L. 108–19) and section 2(a)(i) of Executive Order 13312.

Note to § 592.201. An importation of any rough diamond from, or an exportation of any rough diamond to, a non-Participant is not controlled through the Kimberley Process Certification Scheme and thus is not permitted, except in the following circumstance. The Secretary of State may, pursuant to section 4(b) of the Clean Diamond Trade Act, waive the prohibitions contained in section 4(a) of that Act with

respect to a particular country for periods of not more than one year each. The Secretary of State will publish a notice in the **Federal Register** identifying any country with respect to which a waiver applies and specifying the relevant time period during which the waiver will apply.

§ 592.202 Evasions; attempts; conspiracies.

(a) Notwithstanding the existence of any rights or obligations conferred or imposed by any contract entered into or any license or permit granted prior to July 30, 2003, any transaction by a United States person anywhere, or any transaction that occurs in whole or in part within the United States, on or after the effective date that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this part is prohibited.

(b) Notwithstanding the existence of any rights or obligations conferred or imposed by any contract entered into or any license or permit granted prior to July 30, 2003, any conspiracy formed to violate any of the prohibitions of this part is prohibited.

Subpart C—General Definitions

§ 592.301 Controlled through the Kimberley Process Certification Scheme.

(a) Except as otherwise provided in paragraph (b) of this section, the term *controlled through the Kimberley Process Certification Scheme* refers to the following requirements that apply, as appropriate, to the importation into the United States from a Participant, or to the exportation from the United States to a Participant, of any shipment including any rough diamond:

(1) *Kimberley Process Certificate.* A shipment of rough diamonds imported into, or exported from, the United States must be accompanied by an original Kimberley Process Certificate. The certificate must be presented in connection with an importation or exportation of rough diamonds if demanded by United States customs officials. Pursuant to 31 CFR §§ 501.601 and 501.602, the person identified as the ultimate consignee (see Customs Directive 3550–079A) on the Customs Form 7501 Entry Summary or its electronic equivalent filed with U.S. Customs and Border Protection in connection with an importation of rough diamonds must retain the original Kimberley Process Certificate for a period of at least five years from the date of importation and must make such certificate available for examination upon demand.

(2) *Tamper-resistant container.* A shipment of rough diamonds imported into, or exported, from the United States must be sealed in a tamper-resistant container;

(3) *Notification requirements for importations into the United States.* The person identified as the ultimate consignee (see Customs Directive 3550–079A) on the Customs Form 7501 Entry Summary or its electronic equivalent filed with U.S. Customs and Border Protection in connection with an importation of rough diamonds must report that person's receipt of a shipment of rough diamonds to the relevant foreign exporting authority within 15 calendar days of the date that the shipment arrived at the U.S. port of entry. The report must refer to the relevant Kimberley Process Certificate by its unique identifying number; specify the number of parcels in the shipment; specify the total carat weight of the shipment; and identify the importer and exporter of the shipment. The report need not be in any particular form and may be submitted electronically or by mail or courier; and

(4) *Validation of Kimberley Process Certificate for exportations from the United States.* With respect to the exportation of rough diamonds from the United States and regardless of the destination, the U.S. Census Bureau requires the filing of export information through the Automated Export System. Submission of export information through the Automated Export System must be done in advance and must be confirmed by the return of an Internal Transaction Number. The return to the filer of the Internal Transaction Number shall constitute the validation of the Kimberley Process Certificate for an exportation of rough diamonds from the United States to a Participant. The exporter is required to report the Internal Transaction Number on the Kimberley Process Certificate accompanying any exportation from the United States. The Internal Transaction Number is a unique confirmation number generated by the Automated Export System to the filer who provides in a timely manner the complete commodity shipment data when such data have been accepted by the system.

(b) The Secretary of State, consistent with section 3(2)(B) of the Clean Diamond Trade Act (Pub. L. 108–19), may modify the requirements set forth in paragraph (a) of this section upon making a determination that a Participant has established an alternative system of control for rough diamonds that meets substantially the standards, practices, and procedures of the Kimberley Process Certification Scheme.

Note 1 to § 592.301. The Secretary of State will periodically publish in the **Federal Register** an up-to-date listing of all Participants and their importing and exporting authorities. Where appropriate, such listing also will describe any modification of the requirements set forth in paragraph (a) of this section.

Note 2 to § 592.301. Pursuant to 31 CFR §§ 501.601 and 501.602, the recordkeeping and reporting requirements imposed by § 592.501 apply to all U.S. persons engaged in the importation into, or exportation from, the United States of any shipment of rough diamonds.

Note 3 to § 592.301. Effective November 1, 2004, customs brokers, importers, and filers making entry of a shipment of rough diamonds must either submit through U.S. Customs' Automated Broker Interface (ABI) system the unique identifying number of the Kimberley Process Certificate accompanying the shipment or, for non-ABI entries, indicate the certificate number on the Customs Form 7501 Entry Summary at each entry line.

§ 592.302 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part as follows:

(a) With respect to all provisions of this part except for § 592.301(a)(3), 12:01 a.m., eastern daylight time, July 30, 2003; and

(b) With respect to § 592.301(a)(3), September 23, 2004.

§ 592.303 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, or other organization.

§ 592.304 Exporting authority.

(a) The term *exporting authority* means one or more entities designated by a Participant from whose territory a shipment of rough diamonds is being exported as having the authority to validate the Kimberley Process Certificate.

(b) The exporting authority for the United States is the U.S. Bureau of the Census.

Note to § 592.304. The Secretary of State will periodically publish in the **Federal Register** an up-to-date listing of the exporting authorities of all Participants.

§ 592.305 Importation into the United States.

The term *importation into the United States* means the bringing of goods into the United States.

§ 592.306 Importing authority.

(a) The term *importing authority* means one or more entities designated by a Participant into whose territory a shipment of rough diamonds is being

imported as having the authority to enforce the laws and regulations of the Participant regulating imports, including the verification of the Kimberley Process Certificate accompanying the shipment.

(b) The importing authorities for the United States are the U.S. Bureau of Customs and Border Protection or, in the case of a territory or possession of the United States with its own customs administration, analogous officials.

Note to § 592.306. The Secretary of State will periodically publish in the **Federal Register** an up-to-date listing of the importing authorities of all Participants.

§ 592.307 Kimberley Process Certificate.

The term *Kimberley Process Certificate* means a tamper- and forgery-resistant document that bears the following information in any language, provided that an English translation is incorporated:

(a) The title "Kimberley Process Certificate" and the statement: "The rough diamonds in this shipment have been handled in accordance with the provisions of the Kimberley Process Certification Scheme for rough diamonds";

(b) Country of origin for shipment of parcels of unmixed (*i.e.*, from the same) origin;

Note to paragraph (b). A shipment including a parcel of mixed-origin rough diamonds is to be entered into the United States with the Kimberley Process Certificate accompanying the shipment, and the certificate need not indicate the countries of origin of the diamonds. With respect to such a shipment, the country-of-origin field on the certificate must be filled in with asterisks. The shipment must, however, still comply with all other country-of-origin reporting requirements imposed by statute or regulation.

(c) Unique numbering with the Alpha 2 country code, according to ISO 3166–1;

(d) Date of issuance;

(e) Date of expiry;

(f) Name of issuing authority;

(g) Identification of exporter and importer;

(h) Carat weight/mass;

(i) Value in U.S. dollars;

(j) Number of parcels in the shipment;

(k) Relevant Harmonized Commodity Description and Coding System; and

(l) Validation by the exporting authority.

Note to paragraph (l). *See* § 592.301(a)(4) for procedures governing the validation of the Kimberley Process Certificate when exporting from the United States.

§ 592.308 Participant.

The term *Participant* means a state, customs territory, or regional economic integration organization identified by the Secretary of State as one for which rough diamonds are controlled through the Kimberley Process Certification Scheme.

Note to § 592.308. The Secretary of State will periodically publish in the **Federal Register** an up-to-date listing of all Participants.

§ 592.309 Person.

The term *person* means an individual or entity.

§ 592.310 Rough diamond.

The term *rough diamond* means any diamond that is unworked or simply sawn, cleaved, or bruted and classifiable under subheading 7102.10, 7102.21, or 7102.31 of the Harmonized Tariff Schedule of the United States.

§ 592.311 United States.

The term *United States*, when used in the geographic sense, means the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

§ 592.312 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen; any alien admitted for permanent residence into the United States; any entity organized under the laws of the United States or any jurisdiction within the United States (including its foreign branches); or any person in the United States.

Subpart D—Interpretations

§ 592.401 Reference to amended sections.

Except as otherwise specified, reference to any provision in this part or chapter or to any other regulation refers to the same as currently amended.

§ 592.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, or instruction issued by or under the direction of the Director of the Office of Foreign Assets Control does not affect any act done or omitted, or any civil or criminal suit or proceeding commenced or pending prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, or instruction continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 592.403 Transshipment or transit through the United States.

The prohibitions in § 592.201 apply to the importation into, or exportation from, the United States, for transshipment or transit, of any rough diamond intended or destined for any country other than the United States, unless the shipment is sealed in a tamper-resistant container, accompanied by a Kimberley Process Certificate, and leaves the United States in the identical state in which it entered. The validation, recordkeeping, and reporting procedures applicable to importations and exportations do not apply in this case.

§ 592.404 Importation into or release from a bonded warehouse or foreign trade zone.

The requirements of the Kimberley Process Certification Scheme apply to all imported shipments of a rough diamond, regardless of whether they are destined for entry into, or withdrawal from, a bonded warehouse or a foreign trade zone of the United States.

Subpart E—Records and Reports

§ 592.501 Records and reports.

For provisions relating to required records and reports, see part 501, subpart C, of this chapter. Recordkeeping and reporting requirements imposed by part 501 of this chapter with respect to the prohibitions contained in this part are considered requirements arising pursuant to this part.

Subpart F—Penalties

§ 592.601 Penalties.

(a) Attention is directed to section 8 of the Clean Diamond Trade Act (the "Act") (Pub. L. 108–19), which provides that:

(1) A civil penalty not to exceed $10,000 per violation may be imposed on any person who violates, or attempts to violate, any order or regulation issued under the Act;

(2) Whoever willfully violates, or willfully attempts to violate, any order or regulation issued under this Act shall, upon conviction, be fined not more than $50,000, or, if a natural person, may be imprisoned for not more than 10 years, or both; and any officer, director, or agent of any corporation who willfully participates in such violation may be punished by a like fine, imprisonment, or both; and

(3) Those customs laws of the United States, both civil and criminal, including those laws relating to seizure

and forfeiture, that apply to articles imported in violation of such laws shall apply with respect to any rough diamond imported in violation of the Act.

Note to paragraph (a). As reflected in paragraphs (a)(1) and (2) of this section, section 8(a) of the Clean Diamond Trade Act (Pub. L. 108–19) establishes penalties with respect to any violation of any regulation issued under the Act. OFAC prepenalty, penalty, and administrative collection procedures relating to such violations are set forth below in §§ 592.602 through 592.605. Section 8(c) of the Act also authorizes the U.S. Bureau of Customs and Border Protection and the U.S. Bureau of Immigration and Customs Enforcement, as appropriate, to enforce the penalty provisions set forth in paragraph (a) of this section and to enforce the laws and regulations governing exports of rough diamonds, including with respect to the validation of the Kimberley Process Certificate by the U.S. Bureau of the Census. The Office of Foreign Assets Control civil penalty procedures set forth below are separate from, and independent of, any penalty procedures that may be followed by the U.S. Bureau of Customs and Border Protection and the U.S. Bureau of Immigration and Customs Enforcement in their exercise of the authorities set forth in section 8(c) of the Clean Diamond Trade Act.

(b) The criminal penalties provided in the Act are subject to increase pursuant to 18 U.S.C. 3571.

(c) Attention is also directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device, a material fact, or makes any materially false, fictitious, or fraudulent statement or representation or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry shall be fined under title 18, United States Code, or imprisoned not more than five years, or both.

(d) Violations of this part may also be subject to relevant provisions of other applicable laws.

§ 592.602 Prepenalty notice.

(a) *When required.* If the Director of the Office of Foreign Assets Control has reason to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any regulation or order issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the Clean Diamond Trade Act, and the Director determines that further civil proceedings are warranted, the Director shall notify the alleged violator of the agency's intent to impose a monetary penalty by issuing a prepenalty notice. The prepenalty notice shall be in writing. The prepenalty notice may be issued whether or not another agency has taken any action with respect to the matter.

(b) *Contents of notice*—(1) *Facts of violation.* The prepenalty notice shall describe the violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty.

(2) *Right to respond.* The prepenalty notice also shall inform the respondent of the respondent's right to make a written presentation within the applicable 30-day period set forth in § 592.603 as to why a monetary penalty should not be imposed or why, if imposed, the monetary penalty should be in a lesser amount than proposed.

(c) *Informal settlement prior to issuance of prepenalty notice.* At any time prior to the issuance of a prepenalty notice, an alleged violator may request in writing that, for a period not to exceed sixty (60) days, the agency withhold issuance of the prepenalty notice for the exclusive purpose of effecting settlement of the agency's potential civil monetary penalty claims. In the event the Director grants the request, under terms and conditions within his discretion, the Office of Foreign Assets Control will agree to withhold issuance of the prepenalty notice for a period not to exceed 60 days and will enter into settlement negotiations of the potential civil monetary penalty claim.

§ 592.603 Response to prepenalty notice; informal settlement.

(a) *Deadline for response.* The respondent may submit a response to the prepenalty notice within the applicable 30-day period set forth in this paragraph. The Director of the Office of Foreign Assets Control may grant, at his discretion, an extension of time in which to submit a response to the prepenalty notice. The failure to submit a response within the applicable time period set forth in this paragraph shall be deemed to be a waiver of the right to respond.

(1) *Computation of time for response.* A response to the prepenalty notice must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to the Office of Foreign Assets Control by courier) on or before the 30th day after the postmark date on the envelope in which the prepenalty notice was mailed. If the respondent refused delivery or otherwise avoided receipt of the prepenalty notice, a response must be postmarked or date-stamped on or before the 30th day after the date on the stamped postal receipt maintained at the Office of Foreign Assets Control. If the prepenalty notice was personally delivered to the respondent by a non-U.S. Postal Service agent authorized by the Director, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(2) *Extensions of time for response.* If a due date falls on a federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the Director's discretion, only upon the respondent's specific request to the Office of Foreign Assets Control.

(b) *Form and method of response.* The response must be submitted in writing and may be handwritten or typed. The response need not be in any particular form. A copy of the written response may be sent by facsimile, but the original also must be sent to the Office of Foreign Assets Control Civil Penalties Division by mail or courier and must be postmarked or date-stamped, in accordance with paragraph (a) of this section.

(c) *Contents of response.* A written response must contain information sufficient to indicate that it is in response to the prepenalty notice and must include the Office of Foreign Assets Control identification number listed on the prepenalty notice.

(1) A written response must include the respondent's full name, address, telephone number, and facsimile number, if available, or those of the representative of the respondent.

(2) A written response should either admit or deny each specific violation alleged in the prepenalty notice and also state if the respondent has no knowledge of a particular violation. If the written response fails to address any specific violation alleged in the prepenalty notice, that alleged violation shall be deemed to be admitted.

(3) A written response should include any information in defense, evidence in support of an asserted defense, or other factors that the respondent requests the Office of Foreign Assets Control to consider. Any defense or explanation previously made to the Office of Foreign Assets Control or any other agency must be repeated in the written response. Any defense not raised in the written response will be considered waived. The written response also should set forth the reasons why the respondent believes the penalty should not be imposed or why, if imposed, it should be in a lesser amount than proposed.

(d) *Failure to respond.* Where the Office of Foreign Assets Control receives no response to a prepenalty notice within the applicable time period set forth in paragraph (a) of this section, a penalty notice generally will be issued, taking into account the mitigating and/or aggravating factors present in the record. If there are no mitigating factors present in the record, or the record contains a preponderance of aggravating factors, the proposed prepenalty amount generally will be assessed as the final penalty.

(e) *Informal settlement.* In addition to or as an alternative to a written response to a prepenalty notice, the respondent or respondent's representative may contact the Office of Foreign Assets Control as advised in the prepenalty notice to propose the settlement of allegations contained in the prepenalty notice and related matters. However, the requirements set forth in paragraph (f) of this section as to oral communication by the representative must first be fulfilled. In the event of settlement at the prepenalty stage, the claim proposed in the prepenalty notice will be withdrawn, the respondent will not be required to take a written position on allegations contained in the prepenalty notice, and the Office of Foreign Assets Control will make no final determination as to whether a violation occurred. The amount accepted in settlement of allegations in a prepenalty notice may vary from the civil penalty that might finally be imposed in the event of a formal determination of violation. In the event no settlement is reached, the time limit specified in paragraph (a) of this section for written response to the prepenalty notice will remain in effect unless additional time is granted by the Office of Foreign Assets Control.

(f) *Representation.* A representative of the respondent may act on behalf of the respondent, but any oral communication with the Office of Foreign Assets Control prior to a written submission regarding the specific allegations contained in the prepenalty notice must be preceded by a written letter of representation, unless the prepenalty notice was served upon the respondent in care of the representative.

§ 592.604 Penalty imposition or withdrawal.

(a) *No violation.* If, after considering any response to the prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was no violation by the respondent named in the prepenalty notice, the Director shall notify the respondent in writing of that determination and of the cancellation of the proposed monetary penalty.

(b) *Violation.* (1) If, after considering any written response to the prepenalty notice, or default in the submission of a written response, and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was a violation by the respondent named in the prepenalty notice, the Director is authorized to issue a written penalty notice to the respondent of the determination of the violation and the imposition of the monetary penalty.

(2) The penalty notice shall inform the respondent that payment or arrangement for installment payment of the assessed penalty must be made within 30 days of the date of mailing of the penalty notice by the Office of Foreign Assets Control.

(3) The penalty notice shall inform the respondent of the requirement to furnish the respondent's taxpayer identification number pursuant to 31 U.S.C. 7701 and that such number will be used for purposes of collecting and reporting on any delinquent penalty amount.

(4) The issuance of the penalty notice finding a violation and imposing a monetary penalty shall constitute final agency action. The respondent has the right to seek judicial review of that final agency action in federal district court.

§ 592.605 Administrative collection; referral to United States Department of Justice.

In the event that the respondent does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Director of the Office of Foreign Assets Control within 30 days of the date of mailing of the penalty notice, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a federal district court.

Subpart G—Procedures

§ 592.701 Procedures.

For procedures relating to rulemaking and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart E, of this chapter.

§ 592.702 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13312 (FR vol. 68, No. 147, July 31, 2003) and any further Executive orders relating to the Clean Diamond Trade Act (Pub. L. 108–19) may be taken by the Director of the Office of Foreign Assets Control or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart H—Paperwork Reduction Act

§ 592.801 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of the information collections relating to the recordkeeping and reporting requirements of §§ 592.301(a)(1), subpart C, § 592.501, subpart E, and 592.603, subpart F, *see* § 501.901 of this chapter. The information collection requirements in §§ 592.301(a)(3) and (a)(4), subpart C, have been approved by the OMB and assigned control numbers 1505–0198 and 0607–0152, respectively. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Dated: August 20, 2004.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: September 2, 2004.

Juan Zarate,

Assistant Secretary (Terrorist Financing), Department of the Treasury.

[FR Doc. 04–21329 Filed 9–20–04; 10:11 am]

BILLING CODE 4810–25–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IA–191–1191; FRL–7812–5]

Approval and Promulgation of Air Quality Implementation Plans; Iowa Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is updating the materials submitted by Iowa that are incorporated by reference (IBR) into the state implementation plan (SIP). The regulations affected by this update have been previously submitted by the state agency and approved by EPA. This update affects the SIP materials that are available for public inspection at the Office of the Federal Register (OFR), Office of Air and Radiation Docket and Information Center, and the Regional Office.

DATES: This action is effective September 23, 2004.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, KS 66101; or at the EPA, Office of Air and Radiation Docket and Information Center, Room B–108, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460, or 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.*

FOR FURTHER INFORMATION CONTACT: Evelyn VanGoethem at (913) 551–7659, or by e-mail at *vangoethem.evelyn@epa.gov.*

SUPPLEMENTARY INFORMATION: The SIP is a living document which the State can revise as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and the Office of Federal Register (OFR). The description of the revised SIP document, IBR procedures and "Identification of plan" format are discussed in further detail in the May 22, 1997, **Federal Register** document.

On February 12, 1999, EPA published a document in the **Federal Register** (64 FR 7091) beginning the new IBR procedure for Iowa. In today's document EPA is updating the IBR material.

EPA is also making a minor correction to the table in § 52.820(c). On February 2, 1998 (63 FR 5269), EPA updated regulations for Linn County Health Department. The table is being updated to include information in the "Explanation" column that was inadvertently omitted. EPA is also making a minor correction to the table in § 52.820(d). On March 11, 1999 (64 FR 12090), EPA approved an administrative consent order for IES Utilities. The title of the order, which was identified as "98–AQ–20", is corrected to read "97–AQ–20."

On November 22, 1999 (64 FR 63694), paragraph (b) of § 52.824 Original identification of plan section was updated instead of paragraph (b) of § 52.820 Identification of plan section. We are correcting paragraph (b) of § 52.824.

EPA has determined that today's rule falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved state programs. Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Immediate notice in the CFR benefits the public by updating citations.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. This action 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. Because the agency has made a good cause finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as indicated in the **SUPPLEMENTARY INFORMATION** section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA.

This action also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This action does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The action also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). With this action, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of this action in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This action does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rules are discussed in previous actions taken on the State's rules.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the Congressional Review Act if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. Today's action simply codifies provisions which are already in effect as a matter of law in Federal and approved state programs (5 U.S.C. 808(2). As previously stated, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of September 23, 2004. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United

States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

EPA has also determined that the provisions of section 307(b)(1) of the CAA pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Iowa SIP compilation had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA does not believe that this action reopens the 60-day period for filing such petitions for judicial review for these "Identification of plan" actions for Iowa.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 31, 2004.

William Rice,

Acting Regional Administrator, Region 7.

■ Chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

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

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

Subpart Q—Iowa

■ 2. In § 52.820 paragraphs (b), (c), (d) and (e) are revised to read as follows:

§ 52.820 Identification of plan.

* * * * *

(b) Incorporation by reference.

(1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to August 10, 2004, was approved for incorporation by reference by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates after August 10, 2004, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region VII certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated state rules/regulations which have been approved as part of the SIP as of August 10, 2004.

(3) Copies of the materials incorporated by reference may be inspected at the Environmental Protection Agency, Region VII, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101; or at the EPA, Air and Radiation Docket and Information Center, Room B–108, 1301 Constitution Avenue, NW (Mail Code 6102T), Washington, DC 20460; or 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.*

(c) EPA-approved regulations.

EPA-APPROVED IOWA REGULATIONS

Iowa citation	Title	State effective date	EPA approval date	Explanation
Iowa Department of Natural Resources Environmental Protection Commission [567]				
Chapter 20—Scope of Title-Definitions-Forms-Rule of Practice				
567–20.1	Scope of Title	5/13/98	5/22/00, 65 FR 32031.	
567–20.2	Definitions	7/21/99	3/4/02, 67 FR 9593	The definitions for anaerobic lagoon, odor, odorous substance, and odorous substance, and source, are not SIP approved.
567–20.3	Air Quality Forms Generally	4/24/02	3/7/03, 68 FR 10971.	
Chapter 21—Compliance				
567–21.1	Compliance Schedule	3/14/90	6/29/90, 55 FR 26690.	
567–21.2	Variances	7/21/99	3/04/02, 67 FR 9593.	
567–21.3	Emission Reduction Program	3/14/90	6/29/90, 55 FR 26690.	
567–21.4	Circumvention of Rules	3/14/90	6/29/90, 55 FR 26690.	
567–21.5	Evidence Used in Establishing That a Violation Has or Is Occurring.	11/16/94	10/30/95, 60 FR 55198.	
Chapter 22—Controlling Pollution				
567–22.1	Permits Required for New or Existing Stationary Sources.	7/17/02	3/7/03, 68 FR 10971	Subrules 22.1(2), 22.1(2) "g," 22.1(2) "i" have a state effective date of 5/23/01.
567–22.2	Processing Permit Applications	4/9/97	6/25/98, 63 FR 34600.	
567–22.3	Issuing Permits	4/24/02	3/7/03, 68 FR 10971	Subrule 22.3(6) is not SIP approved.
567–22.4	Special Requirements for Major Stationary Sources Located in Areas Designated Attainment or Unclassified (PSD).	3/14/01	3/04/02, 67 FR 9593.	
567–22.5	Special Requirements for Nonattainment Areas.	7/21/99	3/04/02, 67 FR 9593.	
567–22.8	Permit by Rule	7/21/99	3/04/02, 67 FR 9593.	

EPA-APPROVED IOWA REGULATIONS—Continued

Iowa citation	Title	State effective date	EPA approval date	Explanation
567–22.105	Title V Permit Applications	11/16/94	10/30/95, 60 FR 55198	Only subparagraph (2)i(5) is included in the SIP.
567–22.200	Definitions for Voluntary Operating Permits.	10/18/95	4/30/96, 61 FR 18958.	
567–22.201	Eligibility for Voluntary Operating Permits.	4/24/02	3/7/03, 68 FR 10971.	
567–22.202	Requirement to Have a Title V Permit.	4/9/97	6/25/98, 63 FR 34601.	
567–22.203	Voluntary Operating Permit Applications.	10/14/98	3/04/02, 67 FR 9593.	
567–22.204	Voluntary Operating Permit Fees	12/14/94	4/30/96, 61 FR 18958.	
567–22.205	Voluntary Operating Permit Processing Procedures.	12/14/94	4/30/96, 61 FR 18958.	
567–22.206	Permit Content	10/18/95	4/30/96, 61 FR 18958.	
567–22.207	Relation to Construction Permits	12/14/94	4/30/96, 61 FR 18958.	
567–22.208	Suspension, Termination, and Revocation of Voluntary Operating Permits.	12/14/94	4/30/96, 61 FR 18958.	
567–22.300	Operating Permit by Rule for Small Sources.	4/24/02	3/7/03, 68 FR 10971	Subrule 22.300(7) "c" has a state effective date of 10/14/98.
Chapter 23—Emission Standards for Contaminants				
567–23.1	Emission Standards	10/14/98	5/22/00, 65 FR 32031	Subrules 23.1(2)–(5) are not SIP approved.
567–23.2	Open Burning	5/13/98	5/22/00, 65 FR 32031.	
567–23.3	Specific Contaminants	7/21/99	3/04/02, 67 FR 9593	Subrule 23.3(2) has a state effective date of 5/13/98. Subrule 23.3(3) "(d)" is not SIP approved.
567–23.4	Specific Processes	7/21/99	3/04/02, 67 FR 9593	Subrule 23.4(10) is not SIP approved.
Chapter 24—Excess Emissions				
567–24.1	Excess Emission Reporting	5/13/98	5/22/00, 65 FR 32031.	
567–24.2	Maintenance and Repair Requirements.	3/14/90	6/29/90, 55 FR 26690.	
Chapter 25—Measurement of Emissions				
567–25.1	Testing and Sampling of New and Existing Equipment.	4/24/02	3/7/03, 68 FR 10971.	
Chapter 26—Prevention of Air Pollution Emergency Episodes				
567–26.1	General	3/14/90	6/29/90, 55 FR 26690.	
567–26.2	Episode Criteria	3/14/90	6/29/90, 55 FR 26690.	
567–26.3	Preplanned Abatement Strategies	3/14/90	6/29/90, 55 FR 26690.	
567–26.4	Actions During Episodes	3/14/90	6/29/90, 55 FR 26690.	
Chapter 27—Certificate of Acceptance				
567–27.1	General	3/14/90	6/29/90, 55 FR 26690.	
567–27.2	Certificate of Acceptance	3/14/90	6/29/90, 55 FR 26690.	
567–27.3	Ordinance or Regulations	3/14/90	6/29/90, 55 FR 26690.	
567–27.4	Administrative Organization	3/14/90	6/29/90, 55 FR 26690.	
567–27.5	Program Activities	3/14/90	6/29/90, 55 FR 26690.	
Chapter 28—Ambient Air Quality Standards				
567–28.1	Statewide Standards	3/14/90	6/29/90, 55 FR 26690.	
Chapter 29—Qualification in Visual Determination of the Opacity of Emissions				
567–29.1	Methodology and Qualified Observer.	5/13/98	5/22/00, 65 FR 32031.	
Chapter 31—Nonattainment Areas				
567–31.1	Permit Requirements Relating to Nonattainment Areas.	2/22/95	10/23/97, 62 FR 55172.	

EPA-APPROVED IOWA REGULATIONS—Continued

Iowa citation	Title	State effective date	EPA approval date	Explanation
567–31.2	Conformity of General Federal Actions to the Iowa SIP or Federal Implementation Plan.	5/13/98	5/22/00, 65 FR 32031.	
Linn County				
Chapter 10	Linn County Code of Ordinance Providing for Air Quality Chapter 10.	3/7/97	2/2/98, 63 FR 5268	The following sections are not EPA-approved: 10.2, definition of federally enforceable; 10.4(1), 10.9(2), 10.9(3), 10.9(4), 10.11, and 10.15.
Polk County				
Chapter V	Polk County Board of Health Rules and Regulations - Air Pollution Chapter V.	4/15/98, 10/4/00	1/9/04, 69 FR 1538	Article I, Section 5–2, definition of "variance"; Article VI, Sections 5–16(n), (o) and (p); Article VIII, Article IX, Sections 5–27(3) and (4); Article XIII, and Article XVI, Section 5–75(b) are not a part of the SIP.

(d) EPA-approved State source-specific orders/permits.

EPA-APPROVED IOWA SOURCE-SPECIFIC ORDERS/PERMITS

Name of source	Order/permit No.	State effective date	EPA approval date	Explanation
(1) Archer-Daniels Midland Company.	90–AQ–10	3/25/91	11/1/91, 56 FR 56158.	
(2) Interstate Power Company	89–AQ–04	2/21/90	11/1/91, 56 FR 56158.	
(3) Grain Processing Corporation	74–A–015–S	9/18/95	12/1/97, 62 FR 63454.	
(4) Grain Processing Corporation	79–A–194–S	9/18/95	12/1/97, 62 FR 63454.	
(5) Grain Processing Corporation	79–A–195–S	9/18/95	12/1/97, 62 FR 63454.	
(6) Grain Processing Corporation	95–A–374	9/18/95	12/1/97, 62 FR 63454.	
(7) Muscatine Power and Water	74–A–175–S	9/14/95	12/1/97, 62 FR 63454.	
(8) Muscatine Power and Water	95–A–373	9/14/95	12/1/97, 62 FR 63454.	
(9) Monsanto Corporation	76–A–161S3	7/18/96	12/1/97, 62 FR 63454.	
(10) Monsanto Corporation	76–A–265S3	7/18/96	12/1/97, 62 FR 63454.	
(11) IES Utilities, Inc	97–AQ–20	11/20/98	3/11/99, 64 FR 12090	SO_2 Control Plan for Cedar Rapids.
(12) Archer-Daniels-Midland Corporation.	SO_2 Emissions Control Plan	9/14/98	3/11/99, 64 FR 12090	ADM Corn Processing SO_2 Control Plan for Cedar Rapids.
(13) Linwood Mining and Minerals Corporation.	98–AQ–07	3/13/98	3/18/99, 64 FR 13346	PM_{10} control plan for Buffalo.
(14) Lafarge Corporation	98–AQ–08	3/13/98	3/18/99, 64 FR 13346	PM_{10} control plan for Buffalo.
(15) Holnam, Inc.	A.C.O. 1999–AQ–31	9/2/99	11/06/02, 67 FR 67565	For a list of the 47 permits issued for individual emission points see IDNR letters to Holnam, Inc., dated 7/24/01.
(16) Holnam, Inc.	Consent Amendment to A.C.O. 1999–AQ–31.	5/16/01	11/06/02, 67 FR 67565	For a list of the 47 permits issued for individual emission points see IDNR letters to Holnam, Inc., dated 7/24/01.
(17) Holnam, Inc.	Permits for 17–01–009, Project Nos. 99–511 and 00–468.	7/24/01	11/06/02, 67 FR 67565	For a list of the 47 permits issued for individual emission points see IDNR letters to Holnam, Inc., dated 7/24/01.
(18) Lehigh Portland Cement Company.	A.C.O. 1999–AQ–32	9/2/99	11/06/02, 67 FR 67565	For a list of the 41 permits issued for individual emission points see IDNR letters to Lehigh dated 7/24/01 and 2/18/02.

EPA-APPROVED IOWA SOURCE-SPECIFIC ORDERS/PERMITS—Continued

Name of source	Order/permit No.	State effective date	EPA approval date	Explanation
(19) Lehigh Portland Cement Company.	Permits for plant No. 17–01–005, Project Nos. 99–631 and 02–037.	2/18/02	11/06/02, 67 FR 67565 ..	For a list of the 41 permits issued for individual emission points see IDNR letters to Lehigh dated 7/24/01 and 2/18/02.
(20) Blackhawk Foundry and Machine Company.	A.C.O. 03–AQ–51	12/4/2003	6/10/04, 69 FR 32456	Together with the permits listed below this order comprises the PM_{10} control strategy for Davenport, Iowa.
(21) Blackhawk Foundry and Machine Company.	Permit No. 02–A–116 (Cold Box Core Machine).	8/19/02	6/10/04, 69 FR 32456	Provisions of the permit that relate to poliutants other than PM_{10} are not approved by EPA as part of this SIP.
(22) Blackhawk Foundry and Machine Company.	Permit No. 02–A–290 (Wheelabrator #2 and Casting Sorting).	8/19/02	6/10/04, 69 FR 32456	Provisions of the permit that relate to pollutants other than PM_{10} are not approved by EPA as part of this SIP.
(23) Blackhawk Foundry and Machine Company.	Permit No. 02–A–291 (Mold Sand Silo).	8/19/02	6/10/04, 69 FR 32456	Provisions of the permit that relate to pollutants other than PM_{10} are not approved by EPA as part of this SIP.
(24) Blackhawk Foundry and Machine Company.	Permit No. 02–A–292 (Bond Storage).	8/19/02	6/10/04, 69 FR 32456	Provisions of the permit that relate to pollutants other than PM_{10} are not approved by EPA as part of this SIP.
(25) Blackhawk Foundry and Machine Company.	Permit No. 02–A–293 (Induction Furnace and Aluminum Sweat Furnace).	8/19/02	6/10/04, 69 FR 32456	Provisions of the permit that relate to pollutants other than PM_{10} are not approved by EPA as part of this SIP.
(26) Blackhawk Foundry and Machine Company.	Permit No. 77–A–114–S1 (Wheelabrator #1 & Grinding).	8/19/02	6/10/04, 69 FR 32456	Provisions of the permit that relate to pollutants other than PM_{10} are not approved by EPA as part of this SIP.
(27) Blackhawk Foundry and Machine Company.	Permit No. 84–A–055–S1 (Cupola ladle, Pour deck ladle, Sand shakeout, Muller, Return sand #1, Sand cooler, Sand screen, and Return sand #2).	8/19/02	6/10/04, 69 FR 32456	Provisions of the permit that relate to pollutants other than PM_{10} are not approved by EPA as part of this SIP.
(28) Blackhawk Foundry and Machine Company.	Permit No. 72–A–060–S5 (Cupola).	8/19/02	6/10/04, 69 FR 32457	Provisions of the permit that relate to pollutants other than PM_{10} are not approved by EPA as part of this SIP.

(e) The EPA approved nonregulatory provisions and quasi-regulatory measures.

EPA-APPROVED IOWA NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
(1) Air Pollution Control Implementation Plan.	Statewide	1/27/72	5/31/72, 37 FR 10842.	
(2) Request for a Two Year Extension to Meet the NAAQS.	Council Bluffs	1/27/72	5/31/72, 37 FR 10842	Correction notice published 3/2/76.
(3) Revisions to Appendices D and G.	Statewide	2/2/72	5/31/72, 37 FR 10842	Correction notice published 3/2/76.
(4) Source Surveillance and Record Maintenance Statements.	Statewide	4/14/72	3/2/76, 41 FR 8960.	
(5) Statement Regarding Public Availability of Emissions Data.	Statewide	5/2/72	3/2/76, 41 FR 8960.	

EPA-APPROVED IOWA NONREGULATORY PROVISIONS—Continued

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
(7) Letter Describing the Certificates of Acceptance for Local, Air Pollution Control Programs.	Linn County, Polk County ...	12/14/72	10/1/76, 41 FR 43407.	
(8) High Air Pollution Episode Contingency Plan.	Statewide	6/20/73	10/1/76, 41 FR 43407.	
(9) Summary of Public Hearing on Revised Rules Which Were Submitted on July 17, 1975.	Statewide	9/3/75	10/1/76, 41 FR 43407.	
(10) Air Quality Modeling to Support Sulfur Dioxide Emission Standards.	Statewide	3/4/77	6/1/77, 42 FR 27892.	
(11) Nonattainment Plans	Mason City, Davenport, Cedar Rapids, Des Moines.	6/22/79	3/6/80, 45 FR 14561.	
(12) Information on VOC Sources to Support the Nonattainment Plan.	Linn County	10/8/79	3/6/80, 45 FR 14561.	
(13) Information and Commitments Pertaining to Legally Enforceable RACT Rules to Support the Nonattainment Plan.	Linn County	11/16/79	3/6/80, 45 FR 14561.	
(14) Lead Plan	Statewide	8/19/80	3/20/81, 46 FR 17778.	
(15) Letter to Support the Lead Plan.	Statewide	1/19/81	3/20/81, 46 FR 17778.	
(16) Nonattainment Plans to Attain Secondary Standards.	Mason City, Cedar Rapids, Des Moines, Davenport, Keokuk, Council Bluffs, Fort Dodge, Sioux City, Clinton, Marshalltown, Muscatine, Waterloo.	4/18/80	4/17/81, 46 FR 22372.	
(17) Information to Support the Particulate Matter Nonattainment Plan.	Mason City, Cedar Rapids, Des Moines, Davenport, Keokuk, Council Bluffs, Fort Dodge, Sioux City, Clinton, Marshalltown, Muscatine, Waterloo.	9/16/80	4/17/81, 46 FR 22372.	
(18) Information to Support the Particulate Matter Nonattainment Plan.	Mason City, Cedar Rapids, Des Moines, Davenport, Keokuk, Council Bluffs, Fort Dodge, Sioux City, Clinton, Marshalltown, Muscatine, Waterloo.	11/17/80	4/17/81, 46 FR 22372.	
(19) Schedule for Studying Nontraditional Sources of Particulate Matter and for Implementing the Results.	Mason City, Cedar Rapids, Des Moines, Davenport, Keokuk, Council Bluffs, Fort Dodge, Sioux City, Clinton, Marshalltown, Muscatine, Waterloo.	6/26/81	3/5/82, 47 FR 9462.	
(20) Air Monitoring Strategy	Statewide	7/15/81	4/12/82, 47 FR 15583.	
(21) Letter of Commitment to Revise Unapprovable Portions of Chapter 22.	Statewide	5/14/85	9/12/85, 50 FR 37176.	
(22) Letter of Commitment to Submit Stack Height Regulations and to Implement the EPA's Regulations until the State's Rules Are Approved.	Statewide	4/22/86	7/11/86, 51 FR 25199.	
(23) Letter of Commitment to Implement the Stack Height Regulations in a Manner Consistent with the EPA's Stack Height Regulations with Respect to NSR/PSD Regulations.	Statewide	4/22/87	6/26/87, 52 FR 23981.	
(24) PM_{10} SIP	Statewide	10/28/88	8/15/89, 54 FR 33536.	

EPA-APPROVED IOWA NONREGULATORY PROVISIONS—Continued

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
(25) Letter Pertaining to NO_X Rules and Analysis Which Certifies the Material Was Adopted by the State on October 17, 1990.	Statewide	11/8/90	2/13/91, 56 FR 5757.	
(26) SO_2 Plan	Clinton	3/13/91	11/1/91, 56 FR 56158.	
(27) Letter Withdrawing Variance Provisions.	Polk County	10/23/91	11/29/91, 56 FR 60924	Correction notice published 1/26/93.
(28) Letter Concerning Open Burning Exemptions.	Statewide	10/3/91	1/22/92, 57 FR 2472.	
(29) Compliance Sampling Manual.	Statewide	1/5/93	5/12/93, 58 FR 27939.	
(30) Small Business Assistance Plan.	Statewide	12/22/92	9/27/93, 58 FR 50266.	
(31) Voluntary Operating Permit Program.	Statewide	12/8/94, 2/16/96, 2/27/96.	4/30/96, 61 FR 18958.	
(32) SO_2 Plan	Muscatine	6/19/96, 5/21/97	12/1/97, 62 FR 63454.	
(33) SO_2 Maintenance Plan	Muscatine	4/25/97	3/19/98, 63 FR 13343.	
(34) SO_2 Control Plan	Cedar Rapids	9/11/98	3/11/99, 64 FR 12090.	
(35) PM_{10} Control Plan	Buffalo, Iowa	10/1/98	3/18/99, 64 FR 13346.	

■ 3. Section 52.824 is amended by revising paragraph (b) to read as follows:

§ 52.824 Original identification of plan section.

* * * * *

(b) The plan was officially submitted on January 27, 1972.

* * * * *

[FR Doc. 04–21386 Filed 9–22–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7817–6]

National Priorities List for Uncontrolled Hazardous Waste Sites

AGENCY: Environmental Protection Agency.

ACTION: Final 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 adds two new sites to the NPL; both to the General Superfund Section of the NPL.

DATES: Effective Date: The effective date for this amendment to the NCP shall be October 25, 2004.

ADDRESSES: For addresses for the Headquarters and Regional dockets, as well as further details on what these dockets contain, see section II, "Availability of Information to the Public" in the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Yolanda Singer, phone (703) 603–8835, 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"), Public Law 99–499, 100 Stat. 1613 *et seq.*

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 and threatened 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's role is 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, pollutant or contaminants 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: (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, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each State as the greatest danger to public health, welfare, or the environment among known facilities in the State. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any 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).

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.

F. Does the NPL Define the Boundaries of Sites?

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 release 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.

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 known 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:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) 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 September 13, 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 September 13, 2004, EPA has deleted 46 portions of 38 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 September 13, 2004, there are a total of 904 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. Availability of Information to the Public

A. May I Review the Documents Relevant to This Final Rule?

Yes, documents relating to the evaluation and scoring of the sites in this final rule are contained in dockets located both at EPA Headquarters and in the Regional offices.

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 view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "Quick Search," then key in the appropriate docket identification number; SFUND–2004–0013. (Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facilities identified below in section II D.)

B. What Documents Are Available for Review at the Headquarters Docket?

The Headquarters docket for this rule contains, for each site, the HRS score sheets, the Documentation Record describing the information used to compute the score, pertinent information regarding statutory requirements or EPA listing policies that affect the site, and a list of documents referenced in the Documentation Record. The Headquarters docket also contains comments received, and the Agency's responses to those comments. The Agency's responses are contained in the "Support Document for the Revised National Priorities List Final Rule—September 2004". An electronic version is available at *http://www.epa.gov/edocket/* using the docket identification number SFUND–2004–0013.

C. What Documents Are Available for Review at the Regional Dockets?

The Regional dockets contain all the information in the Headquarters docket, plus the actual reference documents containing the data principally relied upon by EPA in calculating or evaluating the HRS score for the sites located in their Region. These reference documents are available only in the Regional dockets.

D. How Do I Access the Documents?

You may view the documents, by appointment only, after the publication of this document. The hours of operation for the Headquarters docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. Please contact the Regional dockets for hours.

Following is the contact information for the EPA Headquarters: Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue; EPA West, Room B102, Washington, DC 20004, 202/566–0276.

The contact information for the Regional dockets is as follows:

Ellen Culhane, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, Mailcode HSC, One Congress Street, Suite 1100, Boston, MA 02114–2023; 617/918–1225.

Dennis Munhall, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4343.

Dawn Shellenberger (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; 215/814–5364.

John Wright, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW., 9th floor, Atlanta, GA 30303; 404/562–8123.

Janet Pfundheller, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Superfund Division SRC–7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/353–5821.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mailcode 6SF–RA, Dallas, TX 75202–2733; 214/665–7436.

Michelle Quick, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Kansas City, KS 66101; 913/551–7335.

Gwen Christiansen, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 999 18th Street, Suite 500, Mailcode 8EPR–B, Denver, CO 80202–2466; 303/312–6463.

Jerelean Johnson, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105; 415/972–3094.

Tara Martich, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Mail Stop ECL–115, Seattle, WA 98101; 206/553–0039.

E. How May I Obtain a Current List of NPL Sites?

You may obtain a current list of NPL sites via the Internet at *http://www.epa.gov/superfund/* (look under the Superfund sites category) or by contacting the Superfund Docket (*see* contact information above).

III. Contents of This Final Rule

A. Additions to the NPL

This final rule adds two sites to the NPL; both to the General Superfund Section of the NPL. The two sites are the White Swan Cleaners/Sun Cleaners Area Ground Water Contamination site in Wall Township, New Jersey and the Ravenswood PCE Ground Water Plume site in Ravenswood, West Virginia.

B. Status of NPL

With the two new sites added to the NPL in today's final rule; the NPL now contains 1,244 final sites; 1,086 in the General Superfund Section and 158 in the Federal Facilities Section. In addition, with a proposed rule published elsewhere in today's **Federal Register** proposing 14 new sites and withdrawing one proposed site, there are now 68 sites proposed and awaiting final agency action, 61 in the General Superfund Section and seven in the Federal Facilities Section. Final and proposed sites now total 1,312. (These numbers reflect the status of sites as of September 13, 2004. Site deletions occurring after this date may affect these numbers at time of publication in the **Federal Register**.)

C. What Did EPA Do With the Public Comments It Received?

The White Swan Cleaners/Sun Cleaners Area Ground Water Contamination site was proposed to the NPL on April 30, 2003 (68 FR 23094). EPA responded to all relevant comments received on this site and EPA's responses to the site-specific comments are addressed in the "Support Document for the Revised National Priorities List Final Rule—September 2004". The comments and the support document are contained in the Headquarters Docket and are also listed in EPA's electronic public docket and comment system at *http://www.epa.gov/edocket/* using the SFUND–2004–0013 identification number.

The Ravenswood PCE Ground Water Plume site was proposed to the NPL on March 8, 2004 (69 FR 10646). EPA received only one comment on the site, a May 4, 2004 resolution passed by the town council and signed by Mayor Clare Roseberry. The resolution requested a 90 day extension of the comment period to allow the town time to develop an alternative cleanup plan rather than proceeding through listing on the NPL. EPA responded to the request on July 21, 2004, denying an extension of the comment period because EPA's general policy is to deny requests for extension unless the requester identifies issues that effect the requesters ability to develop relevant comments in a timely manner. EPA noted in its response the possibility that late comments could be considered.

Neither the requester or any other party submitted additional comments or contacted the Agency either during or after the close of the public comment period concerning alternatives to NPL listing or the underlying basis for the NPL listing. EPA is adding the Ravenswood PCE Ground Water Plume site to the NPL at this time.

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 Final 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.

2. Does the Paperwork Reduction Act Apply to This Final Rule?

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* 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.

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.

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.

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 rule listing sites on the NPL does not impose any obligations on any group, including small entities. This rule also does not establish standards or requirements that any small entity must meet, and imposes no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of a hazardous substances 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 rule does not impose any requirements on any small entities. For the foregoing reasons, I certify that this rule 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), Public Law 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 Final 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 necessarily 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 Final 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 final rule does not have federalism implications. It will 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. 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 Final Rule?

This final 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 final 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 Final Rule?

This 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 section 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 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), Public Law 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 Final Rule?

No. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Possible Changes to the Effective Date of the Rule

1. Has EPA Submitted This Rule to Congress and the General Accounting Office?

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 has submitted 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 rule is not a "major rule" as defined by 5 U.S.C. 804(2).

2. Could the Effective Date of This Final Rule Change?

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation.

Under the CRA, 5 U.S.C. 801(a), before a rule can take effect the federal agency promulgating the rule must submit a report to each House of the Congress and to the Comptroller General. This report must contain a copy of the rule, a concise general statement relating to the rule (including whether it is a major rule), a copy of the cost-benefit analysis of the rule (if any), the agency's actions relevant to provisions of the Regulatory Flexibility Act (affecting small businesses) and the Unfunded Mandates Reform Act of 1995 (describing unfunded federal requirements imposed on state and local governments and the private sector), and any other relevant information or requirements and any relevant Executive Orders.

EPA has submitted a report under the CRA for this rule. The rule will take effect, as provided by law, within 30 days of publication of this document, since it is not a major rule. Section 804(2) defines a major rule as any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) finds has resulted in or is likely to result in: an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or 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. NPL listing is not a major rule because, as explained above, the listing, itself, imposes no monetary costs on any person. It establishes no enforceable duties, does not establish that EPA necessarily will undertake remedial action, nor does it require any action by any party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Section 801(a)(3) provides for a delay in the effective date of major rules after this report is submitted.

3. What Could Cause a Change in the Effective Date of This Rule?

Under 5 U.S.C. 801(b)(1) a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802.

Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha*, 462 U.S. 919,103 S. Ct. 2764 (1983) and *Bd. of Regents of the University of Washington* v. *EPA*, 86 F.3d 1214,1222 (D.C. Cir. 1996) cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, EPA will publish a document of clarification in the **Federal Register**.

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: September 15, 2004.

Thomas P. Dunne,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

■ 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

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.

■ 2. Table 1 of Appendix B to part 300 is amended by adding the following sites in alphabetical order to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/County	Notes [a]
*	* * * * * *		*
NJ	White Swan Cleaners/Sun Cleaners Area Ground Water Contamination	Wall Township	
*	* * * * * *		*
WV	Ravenswood PCE Ground Water Plume	Ravenswood	
*	* * * * * *		*

[a] A = Based on issuance of health advisory by Agency-for Toxic Substance and Disease Registry (if scored, HRS score need not be ≤ 28.50).

C = Sites on Construction Completion list.
S = State top priority (included among the 100 top priority sites regardless of score).
P = Sites with partial deletion(s).

[FR Doc. 04–21388 Filed 9–22–04; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 27, 74, 90 and 101

[WT Docket No. 01–319; DA 04–2591]

Review of Quiet Zones Application Procedures

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of June 7, 2004, a document in the Quiet Zones proceeding, WT Docket No. 01–319, which incorrectly indicated that a new or modified information collection exists that requires approval by the Office of Management and Budget ("OMB"), and contained an incorrect **DATES** section. This document corrects the effective date.

DATES: Effective June 7, 2004.

FOR FURTHER INFORMATION CONTACT: Linda C. Chang, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th St., Washington, DC 20554, (202) 418–0620.

SUPPLEMENTARY INFORMATION: The FCC published a document in the **Federal Register** of June 7, 2004, (69 FR 17946) regarding the adoption of changes to rules relating to areas known as "Quiet Zones." In FR Doc. 04–7799, published in the **Federal Register** of June 7, 2004, the document incorrectly indicated that a new or modified information collection exists that requires approval by the Office of Management and Budget ("OMB"), and contained an incorrect **DATES** section. This document corrects the effective date.

Dated: September 9, 2004.

Linda C. Chang,

Associate Division Chief, Mobility Division.

[FR Doc. 04–20785 Filed 9–20–04; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[ET Docket No. 04–295; FCC 04–187]

Communications Assistance for Law Enforcement Act

AGENCY: Federal Communications Commission.

ACTION: Declaratory ruling.

SUMMARY: This document issues a *Declaratory Ruling* to clarify that commercial wireless "push-to-talk" services continue to be subject to the 1994 Communications Assistance for Law Enforcement Act ("CALEA"), regardless of the technologies that Commercial Mobile Radio Services ("CMRS") providers choose to apply in offering them. We issue this ruling at the request of, and in response to, a joint petition filed by the Department of Justice, Federal Bureau of Investigation, and the Drug Enforcement Administration (collectively, "Law Enforcement").

EFFECTIVE DATE: September 23, 2004.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 418–2454, e-mail: *Rodney.Small@fcc.gov*, TTY (202) 418–2989.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Declaratory Ruling*, ET Docket No. 04–295, FCC 04–187, adopted August 4, 2004, and released August 9, 2004. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. Alternate formats are available to persons with disabilities by contacting Brian Millin at (202)418–7426 or TTY (202) 418–7365.

Summary of the Declaratory Ruling

1. Law Enforcement asserts that an increasing number of wireless carriers offer push-to-talk services this service without admitting that they have related CALEA obligations. We clarify that CMRS carrier offerings of push-to-talk service that are offered in conjunction with interconnected service to the public switched telephone network ("PSTN"), but may use different technologies, are subject to CALEA requirements.

2. The *Second Report and Order* (*Second R&O*) in CC Docket No. 97–213, 64 FR 55164, October 12, 1999, addressed the dichotomy between push-to-talk "dispatch" services that are interconnected to the PSTN and those that are not. The Commission focused on this difference in the context of first concluding that CMRS providers should be considered telecommunications carriers for the purposes of CALEA. The Commission found that § 102(8)(B)(i) of CALEA, defining "telecommunications carrier" as including "a person or entity engaged in providing commercial mobile service (as defined in section 332(d) of the [Communications Act])" requires that conclusion, *See Communications Assistance for Law Enforcement Act*, CC Docket No. 97–213, *Second Report and Order*, 15 FCC Rcd 7105 (2000), 64 FR 55164, October 12, 1999, The Commission further recognized that the definition of commercial mobile service requires interconnected service. Thus, if services such as "traditional" Specialized Mobile Radio provide interconnection to the PSTN, the Commission determined that they satisfy the definition of CMRS and thus, are subject to CALEA. The Commission further found the same definitional approach holds for push-to-talk "dispatch" service, because if it is offered as an interconnected service, "it is a switched service functionally equivalent to a combination of speed dialing and conference calling." If the push-to-talk "dispatch" service otherwise does not interconnect to PSTN, the Commission found that it is not subject to CALEA.

3. We find that this approach continues to be applicable to CMRS offered push-to-talk services that may use different technologies, such as a packet mode network based on more advanced wireless protocols. The Commission noted in the *Second R&O* that CALEA is technology neutral, and "[t]hus, the choice of technology that a carrier makes when offering common carrier services does not change its obligations under CALEA." We find that whether a CMRS carrier's push-to-talk service offering is subject to CALEA depends on the regulatory definition and functional characteristics of that service and not on the particular

technology the carrier chooses to apply in offering it. Therefore, we conclude that regardless of what newer technologies a CMRS carrier may use in its offering of push-to-talk "dispatch service," it continues to be subject to the requirements of CALEA, if the required definitional element for CMRS service is met, *i.e.*, the delivery of the push-to-talk service is offered in conjunction with interconnected service to the PSTN.

4. On the other hand, we reiterate that if the push-to-talk service is limited to a private or "closed" network, and is not offered in conjunction with interconnected service to the PSTN, then, generally, it remains not subject to CALEA. We qualify this approach, however, recognizing that what has been termed "private dispatch services" may be developed or implemented in a manner that raises issues pertaining to the "Substantial Replacement Provision" of CALEA § 102(8)(B)ii), which is discussed in the Commission's companion *Notice of Proposed Rulemaking* ("*NPRM*") in this proceeding. For example, an entity might deploy a seemingly "private" or "closed" push-to-talk services that may satisfy all three prongs of the Substantial Replacement Provision such that this service would be subject to CALEA. We find that such instances are within the scope of the *NPRM*, and commenters should address them in that context.

Ordering Clauses

5. Pursuant to sections 1, 4(i), 7(a), 229, 301, 303, and 332 of the Communications Act of 1934, as amended, and sections 103, 106, 107, and 109 of the Communications Assistance for Law Enforcement Act, 47 U.S.C. 151, 154(i), 157(a), 229, 301, 303, 332, 1002, 1005, 1006, and 1008, the DECLARATORY RULING is hereby ADOPTED.

6. The Commission's Consumer Information and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this DECLARATORY RULING to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–20706 Filed 9–22–04; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 69, No. 184
Thursday, September 23, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–78]

Robert H. Leyse; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; denial.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking submitted by Mr. Robert H. Leyse (PRM–50–78). The petitioner requested that the NRC's regulations governing domestic licensing of production and utilization facilities and associated guidance be amended to address the impact of fouling on the performance of all heat exchange surfaces in a nuclear power plant. The petitioner further stated that the fouling of heat transfer surfaces is not adequately considered in licensing and compliance inspections, testing programs, and computer codes used for nuclear power facilities.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and the NRC's letter of denial to the petitioner may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Public File Area O1F21, Rockville, Maryland. These documents are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For further information contact the PDR reference staff at (800) 387–4209 or (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Tim A. Reed, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1462, e-mail *TAR@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Background

The petition for rulemaking designated PRM–50–78 was received by the NRC on September 9, 2002. A notice of receipt of the petition and request for public comment was published in the **Federal Register** (FR) on October 31, 2002 (67 FR 66347). The public comment period closed January 16, 2003. Four letters of public comment were received in response to the **Federal Register** notice.

The Petition

In PRM–50–78, the petitioner, Mr. Robert H. Leyse, requested that regulations be developed to require addressing the impact of fouling on the performance of all significant heat transfer surfaces in nuclear power plants (NPPs). The requested rule changes would also require that fouling impact be addressed in NRC-funded test programs and NRC-produced computer codes that are used to assess cooling and heat exchanger performance. The petitioner contended that fouling of heat exchange surfaces is not adequately considered in the licensing and compliance inspection of NPPs, for example, licensing bases and technical specifications do not specifically limit fouling on fuel elements. The petitioner also requested that regulations be added to require publicly available performance reports on these surfaces, including records of mechanical degradation, and cleaning procedures and their effectiveness.

In addition, the petitioner contended that fouling would restrict fuel element cooling and that axial growth beyond design limits would cause fuel rods to bow, and contact other fuel rods and control rod guide tubes. The petitioner claimed that this would lead to a safety problem. In addition, the petitioner proposed that the rules should require investigating grossly off-normal performance of heat exchange equipment. For example, the petitioner stated that fouling of steam generator tubes should be investigated because it has occasionally reduced heat transfer effectiveness to force operation at below-normal secondary side pressure, creating a safety issue.

Public Comments on the Petition

Four letters of public comment were received on PRM–50–78. Two were from the petitioner, who noted in support of his petition that the Advisory Committee on Reactor Safeguards (ACRS) did not address fouling of heat exchange surfaces during a meeting with Electric Power Research Institute (EPRI) in October 2002 and that one of the numerous heat transfer tests done for the NRC by Westinghouse (FLECHT Run 9573) resulted in tube failure. In addition, the petitioner noted that five additional ACRS subcommittee meetings did not address fouling issues.

The Nuclear Energy Institute (NEI) opposed the petition, noting that current reporting requirements in 10 CFR 50.72 and 50.73 require reporting any event or condition that could interfere with a safety function of any system needed to shutdown that plant and maintain it in a safe condition, remove residual heat, control radiological material, or mitigate accident consequences.

The Strategic Teaming and Resource Sharing (STARS) group, a consortium of nuclear utilities, opposed the petition noting that these same concerns were previously addressed by industry organizations in comments on PRM–50–73, PRM–50–73A, and PRM–50–76. In the STARS group's view, this latest petition restates the same concern in a different context, without presenting any further evidence to provide a basis for revising the regulations. The STARS group believes that the requested additional reporting burden would not be justified by the unproven and questionable scenarios presented in the petition.

NRC Technical Evaluation

The NRC reviewed each of the petitioner's requests and concluded that none of the requests justified the initiation of rulemaking. The NRC's responses to each of the petitioners' requests are as follows:

1. Regulations are needed to address the impact of fouling on the performance of heat exchange surfaces throughout licensed nuclear power plants. The petitioner stated that this included fuel elements, steam generators, condensers, fan coolers, etc.

The NRC disagrees with the petitioner's assertion. The petitioner's assertion that regulations are needed to address the impact of fouling on fuel

elements was addressed previously in a **Federal Register** notice of denial of PRM–50–73 and PRM–50–73A (also submitted by the petitioner) published at 68 FR 41963 on July 16, 2003. The petitioner did not submit any new information or provide any additional considerations that would cause the NRC to reconsider the denial of PRM–50–73 and PRM–50–73A.

In regard to other heat exchange surfaces, regulations and guidance addressing fouling effects on heat exchanger performance already exist for the primary and secondary sides of NPPs.

Specifically:

• 10 CFR 50.65 requires licensees to monitor performance parameters or to demonstrate that monitoring is not needed, and to provide preventive maintenance sufficient to ensure that all safety related structures, systems, or components (*e.g.*, heat exchangers important to safety) are capable of fulfilling their intended functions.

• 10 CFR part 50, Appendix A, Criterion 14 (or plant-specific principal design criteria in the plant design basis for plants issued construction permits before the effective date of 10 CFR part 50, Appendix A), requires that the reactor coolant pressure boundary heat exchangers critical to safety (*e.g.*, steam generators) be designed and tested to ensure an extremely low probability of abnormal leakage that might be caused by fouling or other factors. Steam generator tube performance is closely monitored by inspection as detailed in plant technical specifications. Technical specifications vary from plant to plant, but each pressurized-water reactor (PWR) plant has requirements to monitor steam generator tube performance.

• 10 CFR part 50, Appendix A, Criterion 44 (and equivalent plant-specific criteria for pre-General Design Criteria (GDC) plants), requires provision of a cooling system to transfer heat from structures, systems, and components to an ultimate heat sink under normal operating and accident conditions. This heat transfer function is accomplished by structures and components (including heat exchangers) in key safety systems such as the residual heat removal and essential service water systems.

• 10 CFR part 50, Appendix A, Criteria 45 and 46 (and equivalent plant-specific criteria for pre-GDC plants), require the capability by design to perform inspection and testing of cooling water systems to ensure integrity and adequate performance. The technical specifications for each plant define limiting conditions for operation (LCO) for systems that mitigate design basis transients and accidents. The operability requirements for those systems defined in LCOs include the adequate performance of heat exchangers needed for the systems to perform their safety functions. The specific LCOs vary by plant type and format of the plant-specific technical specifications. However, each plant does have requirements related to safety-significant heat removal systems such as residual heat removal and safety-related service water. For a typical boiling water reactor, the LCOs include but are not limited to LCOs 3.4.9 and 3.4.10 for residual heat removal, LCO 3.5.1 for emergency core cooling, LCO 3.6.5.5 for drywell air temperature, LCO 3.7.1 for standby service water and ultimate heat sink, LCO 3.7.2 for high pressure core spray service water, and LCO 3.8.1 for diesel generators. Degradation of a heat exchanger that renders a system covered by an LCO inoperable would require completion of required actions, possibly including a shutdown of the affected unit, within the required completion times. The administrative requirements defined within all plants' technical specifications also require licensees to establish and maintain various procedures related to the operation and testing of plant requirement. A partial list of the required procedures is provided in Regulatory Guide 1.33, "Quality Assurance Program Requirements (Operation)." The NRC routinely performs inspections of licensees' programs for implementing the required procedures.

• Generic Letter (GL) 89–13, "Service Water System Problems Affecting Safety-Related Equipment," July 18, 1989, recommended that licensees initiate test programs to verify heat transfer capability of all safety-related heat exchangers cooled by service water and routine inspection and maintenance programs to ensure serviceability of safety-related systems supplied by service water. Generic Letter 89–13 specifies that a continuing program for periodic retesting should address the effects of fouling, and licensees monitor parameters such as coolant flow, temperature, and pressure indicative of acceptable heat exchanger performance.

• The NRC oversees the licensees' testing and maintenance programs via the inspection and assessment procedures included in the reactor oversight process. The NRC inspection procedure IP 71111.07, "Heat Sink Performance," defines the current sampling and review process for NRC inspectors assessing licensees' programs for the testing and maintenance of safety-significant heat exchangers.

• Standard Review Plan (SRP) 4.2 describes the NRC review of thermal margins, effects of corrosion products, and hydraulic loads. This review also addresses postulated fuel failure resulting from overheating of fuel cladding.

• SRP 4.2 also describes the NRC review of licensee fuel design analyses to ensure that dimensional changes due to thermal or irradiation effects (such as fuel rod bowing or growth) are addressed.

Thus, the NRC believes that additional regulations are not needed to address the impact of fouling on the performance of heat exchange surfaces throughout licensed nuclear power plants.

2. Fouling of heat exchange surfaces in reactors has the potential to cause significant safety problems.

The NRC acknowledges that, left undetected, excessive fouling of key heat exchange surfaces, or other problems that challenge the safety function of those heat exchangers, could represent a significant safety problem. The classification of the important heat exchangers as safety-related equipment, and the resultant requirements associated with their design and maintenance, demonstrates their importance. The NRC determined, for example, that the clogging of service water heat exchangers could have caused safety significant problems in the past and as a result issued several generic communications culminating in Generic Letter 89–13, "Service Water System Problems Affecting Safety-Related Equipment," July 18, 1989. The NRC believes that the current regulatory requirements for the testing and maintenance of heat exchangers (as described in GL 89–13 along with recommendations for meeting the requirements) are adequate to identify and correct potential safety significant problems in safety-related heat exchangers. Consequently, the NRC has determined that no new regulations are required to address this issue. The NRC will continue to monitor the implementation of GL 89–13 and will take appropriate action if adverse trends are observed.

3. NRC regulations must require publicly available reporting on the performance of heat exchange surfaces, including records of mechanical degradation of heat transfer assemblies, and cleaning procedures and their effectiveness.

The NRC believes that it is not necessary to report the routine operational matters involving heat

exchanger degradation and cleaning which the petitioner proposes. The NRC is interested in system performance degradation when the situation might lead to a loss of safety function and regulations requiring such reporting already exist. 10 CFR 50.72, "Immediate notification requirements for operating nuclear power reactors," and 10 CFR 50.73, "Licensee event report system," require licensees to report on performance of any safety system in the primary or secondary sides of reactors if an event occurs that might compromise safe operating conditions, such as a deviation from plant technical specifications pertaining to residual heat removal systems.

Specifically, section 50.72(b)(3)(ii) requires reporting to the NRC within eight hours any event or condition that results in: (1) the condition of the nuclear power plant, including its principal safety barriers, being seriously degraded, or (2) the nuclear power plant being in an unanalyzed condition that significantly degrades plant safety. In addition, section 50.72(b)(3)(v) requires eight hour reporting of any event or condition that at the time of discovery could have prevented fulfillment of the safety function of structures or systems needed to: (1) Shutdown the reactor and maintain it in a safe shutdown condition, (2) remove residual heat, (3) control the release of radioactive material, and (4) mitigate the consequences of an accident. Section 50.73 (a)(2)(i)(B) requires submittal of a Licensee Event Report (LER) within sixty days regarding any operation or condition prohibited by the plants' Technical Specifications, such as failure of a covered heat exchanger, and 50.73(a)(2)(ii)(A) requires an LER for any event or condition that resulted in the condition of the nuclear power plant, including its principal safety barriers, being seriously degraded. The NRC believes that existing reporting requirements adequately address degradation of performance of heat exchange surfaces in nuclear power plants.

4. NRC regulations must address the need for investigating the grossly off-normal performance of heat exchange equipment in NPPs.

The NRC believes that the existing structure of regulations, technical specifications, reporting requirements, and licensee programs subject to NRC inspection provides the necessary confidence that plant safety systems, including heat exchangers, are properly designed and maintained. A discussion of the existing structure of requirements and programs is provided in the NRC response to the petitioner's first request. An additional regulatory requirement related directly to the need for investigating the degradation of heat exchange equipment and to take those actions necessary to ensure that the performance of the equipment will support its safety function is provided by, Criterion XVI, "Corrective Action," of Appendix B to 10 CFR Part 50. This regulation requires that conditions adverse to quality, such as a significant degradation of a heat exchanger that is important to safety, be promptly identified and corrected. The NRC ensures compliance with these requirements by routinely performing inspections of licensees' programs for identifying and correcting problems.

5. Severe fouling of nuclear fuel elements leads to axial growth of the fuel rods beyond design limits as the operating temperature of the fuel rods becomes greater than allowed for in design. This would cause fuel rods to bow and contact adjacent rods and control rod guide tubes, interfering with coolant flow.

The NRC believes that pressurized water reactor (PWR) and boiling water reactor (BWR) fuel bundle designs provide ample space for fuel pins to expand in the axial direction. A PWR fuel pin is neither supported at the bottom nor at the top; instead, spacers are used to hold the fuel pins together. Designed space both at the bottom and at the top of fuel bundles permits fuel pins to expand thermally without touching any other structures. A BWR fuel bundle is normally seated at the bottom and there is no restriction to prevent thermal expansion into the upper plenum. Expansion springs are sometimes used between fuel pins to allow nonuniform axial expansion within a fuel bundle. For these reasons, the NRC considers it unlikely that a fuel pin will bow enough to contact adjacent rods and control rod tubes and interfere with coolant flow. SRP 4.2 requires the NRC to review licensee fuel design analysis to confirm that dimensional changes due to thermal or irradiation effects such as fuel pin bowing or axial growth are adequately addressed.

6. Fouling of heat-transfer surfaces is generally not adequately considered in the licensing and compliance inspections of NPPs.

The NRC believes that the effects of fouling of heat transfer surfaces are adequately addressed in the following NRC licensing and compliance inspection program elements:

- The NRC conducts an extensive review of the licensee's design of key safety systems, structures, and components, including heat exchangers in the primary and secondary sides of a plant. NRC staff analyses of all key safety systems, including heat exchangers, are performed during development of NRC safety evaluation reports (SERs) pertaining to a license application. As previously discussed, various regulatory requirements such as 10 CFR 50.65, Appendix B to Part 50, and plant technical specifications require that licensees maintain, test and restore equipment such that the safety functions are maintained consistent with the licensing of the plant. These processes are subject to NRC inspection to ensure that the requirements are met.
- Inspections of safety systems, structures, and components, including safety-significant heat exchangers, are designed to determine compliance with Appendix A to Part 50, "General Design Criteria for Nuclear Power Plants." Specifically, in the Reactor Oversight Program, Inspection Procedure 71111.07, "Heat Sink Performance," requires that a sample of safety significant heat exchangers (*e.g.*, for the residual heat removal, component cooling water, emergency core cooling systems) be inspected both annually for specific performance issues and biennially for an intense review of heat transfer characteristics.

7. The NRC must require by rule the inclusion of fouling considerations in NRC-funded heat transfer test programs and in the several heat exchanger computer programs produced by the NRC.

The NRC believes that these requirements do not need to be included by regulation.

- NRC-funded computer codes used to audit emergency core cooling system (ECCS) performance are capable of considering the impact of fouling on the performance of fuel element surfaces, and these codes have been used for that purpose when warranted.
- Ongoing experimental and analytical test programs (*e.g.*, Argonne National Laboratory study on fuel cladding performance) in the NRC Office of Nuclear Regulatory Research (RES) are investigating transient and operational oxidation models, including effects of significant pre-oxidation.
- Calculations were performed by RES to support the evaluation of this petition using NRC computer codes. These calculations showed that fouling and excess pre-oxidation would not have a significant effect on reflood heat transfer capability.
- The NRC fuel performance code FRAPCON–3 can calculate enhanced oxidation from crud buildup on fuel element surfaces.

• The RELAP and TRACE codes use the FRAPCON information to calculate transient effects.

The NRC has evaluated the advantages and disadvantages of the rulemaking requested by the petitioner with respect to the five performance goals set out by the Commission in the Strategic Plan for Fiscal years 2004–2009 announced on August 12, 2004.

1. *Maintaining Safety:* The NRC believes that the requested rulemaking would not make a significant contribution to maintaining safety because current regulations, regulatory guidance and practices already provide for monitoring, detecting, and correcting possible fouling effects on heat exchanger performance. In addition, no data or evidence was provided by the petitioner to suggest that fouling of heat exchanger surfaces created any significant safety problems.

2. *Ensure Secure Use and Management of Radioactive Material:* The petitioner has not established, nor has the NRC found the existence of, any safety issues regarding the performance of heat exchange surfaces that would compromise the secure use of licensed radioactive material.

3. *Ensuring Openness in the NRC Regulatory Process:* The Administrative Procedures Act provides that any interested person has the right to petition an agency for issuance, amendment, or repeal of a rule. This statute expands on the "right to petition" provided by the First Amendment to the Constitution. The NRC implements this statute through 10 CFR 2.802, Petition for rulemaking, using guidance provided in NUREG–BR–0053, Revision 5, U.S. NRC Regulations Handbook, to ensure that the regulatory process takes place in an open manner.

4. *Improving Efficiency, Effectiveness, and Realism:* The proposed revisions would not improve efficiency, effectiveness, and realism because licensees and the NRC would be required to generate additional and unnecessary information as part of the evaluation of numerous heat exchanger surfaces throughout the nuclear power plant. Revising the regulations to be more specific about effects of fouling on heat exchanger performance would require an expenditure of NRC resources with little or no added safety benefit.

5. *Ensure Excellence in NRC Management:* The petitioner's request to revise the regulations to address the impact of fouling on all heat exchange surfaces in a nuclear power plant is not applicable to the strategic goal of continuous improvement in NRC management effectiveness.

Reasons for Denial

The Commission is denying the petition for rulemaking (PRM–50–78).

The NRC regulation and oversight of nuclear power plants includes the establishment of regulations, the issuance of operating licenses and technical specifications, and continual inspections and technical reviews of licensee programs and plant performance. When viewed in total, these regulatory requirements and related oversight practices provide confidence in the safety of operating nuclear power plants. The NRC's finding that no rulemaking is required, is based on the determination that the existing structure of regulations (*i.e.*, 10 CFR 50.65, Appendix A and B to part 50), technical specifications, and licensee programs subject to NRC inspection provides confidence that plant safety features, including heat exchangers, are properly designed and maintained in order to fulfill their intended function.

The Commission concludes that the integration of the various requirements and related NRC oversight functions provide reasonable assurance that systems important to safety, such as heat exchangers, will perform their intended functions. The addition of specific requirements to a regulation to address heat exchanger performance is not necessary.

For these reasons, the Commission denies PRM–50–78.

Dated in Rockville, Maryland, this 17th day of September, 2004.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 04–21337 Filed 9–22–04; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM198; Notice No. 25–04–03–SC]

Special Conditions: Boeing Model 777 Series Airplanes; Seats With Inflatable Lapbelts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed amendment of special conditions.

SUMMARY: This notice proposes amended special conditions for Boeing Model 777 series airplanes. These airplanes, manufactured by Boeing Commercial Airplanes, have novel or unusual design features associated with seats with inflatable lapbelts. Special Conditions No. 25–187–SC were issued on October 3, 2001, addressing this issue. The proposed amendment would add a new requirement that addresses the flammability of the material used to construct the inflatable lapbelt. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. The amended special conditions would contain the additional safety standards that the Administrator considers necessary to establish an appropriate level of safety considering the safety benefits associated with the inflatable lapbelt.

DATES: Comments must be received on or before October 13, 2004.

ADDRESSES: You may send comments, identified by Docket No. NM198, using any of the following methods:

• Mail: Federal Aviation Administration, Transport Airplane Directorate, ANM–113, Attn: Rules Docket, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

• Fax: 1–425–227–1232, Attn: Jayson Claar.

• Electronically: *jayson.claar@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Jayson Claar, FAA, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056; telephone (425) 227–2194.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the proposed special conditions, 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 these special conditions. 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.

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 these special conditions 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 back to you.

Background

On April 20, 2001, Boeing Commercial Airplanes, PO Box 3707, Seattle, Washington 98124, applied for a type certificate design change to install inflatable lapbelts for head injury protection on certain seats in Boeing Model 777 series airplanes. The Model 777 series airplane is a swept-wing, conventional-tail, twin-engine, turbofan-powered transport. The inflatable lapbelt is designed to limit occupant forward excursion in the event of an accident. This will reduce the potential for head injury, as determined by the Head Injury Criteria (HIC) measurement. The inflatable lapbelt behaves similarly to an automotive airbag, but in this case the airbag is integrated into the lapbelt, and inflates away from the seated occupant. While airbags are now standard in the automotive industry, the use of an inflatable lapbelt is novel for commercial aviation.

Because the existing airworthiness standards of 14 CFR part 25 do not address inflatable lapbelts, the FAA developed special conditions to address this design feature. Special Conditions No. 25–187–SC were issued to Boeing Commercial Airplanes on October 3, 2001, and published in the **Federal Register** on October 12, 2001 (66 FR 52017).

On February 26, 2004, The Boeing Company requested that the FAA amend SC No. 25–187–SC to address flammability of the airbag material. During the development of the inflatable lapbelt the manufacturer was unable to develop a fabric that would meet the inflation requirements for the bag and the flammability requirements of Part I(a)(1)(i) of appendix F to part 25. The fabrics that were developed that meet the flammability requirement did not produce acceptable deployment characteristics. However, the manufacturer was able to develop a fabric the meets the less stringent flammability requirements of Part I(a)(1)(iv) of appendix F to part 25 and has acceptable deployment characteristics.

Discussion

Part I of appendix F to part 25 specifies the flammability requirements for interior materials and components. There is no reference to inflatable restraint systems in appendix F because such devices did not exist at the time the flammability requirements were written. The existing requirements are based on both material types, as well as use, and have been specified in light of the state-of-the-art of materials available to perform a given function. In the absence of a specific reference, the default requirement would be for the type of material used to construct the inflatable restraint, which is a fabric in this case. However, in writing a special condition, the FAA must also consider the use of the material, and whether the default requirement is appropriate. In this case, the specialized function of the inflatable restraint means that highly specialized materials are needed. The standard normally applied to fabrics is a 12-second vertical ignition test. However, materials that meet this standard do not perform adequately as inflatable restraints. Since the safety benefit of the inflatable restraint is very significant, the flammability standard appropriate for these devices should not screen out suitable materials, thereby effectively eliminating use of inflatable restraints. The FAA will need to establish a balance between the safety benefit of the inflatable restraint and its flammability performance. At this time, the 2.5 inch per minute horizontal test is considered to provide that balance. As the state-of-the-art in materials progresses (which is expected), the FAA may change this standard in subsequent special conditions to account for improved materials.

The additional proposed safety standard would be added as Item 14 to existing SC 25–187–SC. Although Items 1 through 13 are standards already adopted in Special Conditions No. 25–187–SC and are not subject to further public comment, they are repeated later in this notice in order to place the additional standard in proper perspective.

Type Certification Basis

Under the provisions of § 21.101, Boeing Commercial Airplanes must show that the Model 777 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. T00001SE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. T00001SE are as follows: Amendments 25–1 through 25–82 for the Model 777–200, and amendments 25–1 through 25–86 with exceptions for the Model 777–300. The U.S. type certification basis for the Model 777 is established in accordance with §§ 21.29 and 21.17 and the type certification application date. The U.S. type certification basis is listed in Type Certificate Data Sheet No. T00001SE.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25 as amended) do not contain adequate or appropriate safety standards for Boeing Model 777 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 777 must comply with the fuel vent and exhaust emission requirements of part 34 and the noise certification requirements of part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101.

Applicability

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Public Comment Period

Delivery of Model 777 airplanes with the additional flammability standard is currently scheduled for January 2006. Because a delay would significantly affect the applicant's installation and type certification of the airbag material, the public comment period is 20 days.

Conclusion

This action affects only certain novel or unusual design features on the Boeing Model 777 series airplanes. It is not a rule of general applicability, and it affects only Model 777 series airplanes listed on Type Certificate Data Sheet T00001SE.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration proposes the following additional special condition (Item No. 14) as part of the type certification basis for the Boeing Model 777 series airplanes with inflatable lapbelts installed. (Existing special condition Items 1–13 are repeated below for clarity only.).

1. *Seats With Inflatable Lapbelts.* It must be shown that the inflatable lapbelt will deploy and provide protection under crash conditions where it is necessary to prevent serious head injury. The means of protection must take into consideration a range of stature from a two-year-old child to a ninety-fifth percentile male. The inflatable lapbelt must provide a consistent approach to energy absorption throughout that range. In addition, the following situations must be considered:

a. The seat occupant is holding an infant.

b. The seat occupant is a child in a child restraint device.

c. The seat occupant is a child not using a child restraint device.

d. The seat occupant is a pregnant woman.

2. The inflatable lapbelt must provide adequate protection for each occupant regardless of the number of occupants of the seat assembly, considering that unoccupied seats may have active seatbelts.

3. The design must prevent the inflatable lapbelt from being either incorrectly buckled or incorrectly installed such that the inflatable lapbelt would not properly deploy. Alternatively, it must be shown that such deployment is not hazardous to the occupant and will provide the required head injury protection.

4. It must be shown that the inflatable lapbelt system is not susceptible to inadvertent deployment as a result of wear and tear, or inertial loads resulting from in-flight or ground maneuvers (including gusts and hard landings), likely to be experienced in service.

5. Deployment of the inflatable lapbelt must not introduce injury mechanisms to the seated occupant, or result in injuries that could impede rapid egress. This assessment should include an occupant who is in the brace position when it deploys and an occupant whose belt is loosely fastened.

6. It must be shown that an inadvertent deployment that could cause injury to a standing or sitting person is improbable.

7. It must be shown that inadvertent deployment of the inflatable lapbelt during the most critical part of the flight will either not cause a hazard to the airplane or is extremely improbable.

8. It must be shown that the inflatable lapbelt will not impede rapid egress of occupants 10 seconds after its deployment.

9. The system must be protected from lightning and HIRF. The threats specified in Special Condition No. 25–ANM–78 are incorporated by reference for the purpose of measuring lightning and HIRF protection. For the purposes of complying with HIRF requirements, the inflatable lapbelt system is considered a "critical system" if its deployment could have a hazardous effect on the airplane; otherwise it is considered an "essential" system.

10. The inflatable lapbelt must function properly after loss of normal aircraft electrical power, and after a transverse separation of the fuselage at the most critical location. A separation at the location of the lapbelt does not have to be considered.

11. It must be shown that the inflatable lapbelt will not release hazardous quantities of gas or particulate matter into the cabin.

12. The inflatable lapbelt installation must be protected from the effects of fire such that no hazard to occupants will result.

13. There must be a means for a crewmember to verify the integrity of the inflatable lapbelt activation system prior to each flight or it must be demonstrated to reliably operate between inspection intervals.

14. The inflatable material may not have an average burn rate of greater than 2.5 inches/minute when tested using the horizontal flammability test as defined in 14 CFR part 25, appendix F, part I, paragraph (b)(5). As the state-of-the-art in materials progresses (which is expected), the FAA may change this standard in subsequent special conditions to account for improved materials.

Issued in Renton, Washington, on September 17, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–21393 Filed 9–22–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17896; Airspace Docket No. 04–AGL–13]

Proposed Modification of Class D Airspace; Grissom ARB, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to modify Class D airspace at Grissom ARB, IN, where Instrument Flight Rules Category E circling procedures are being used. Increasing the current radius of the Class D airspace area will allow for a lower Circling Minimum Descent Altitude. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing these approach procedures. This action would increase the area of the existing controlled airspace for Grissom ARB, IN.

DATES: Comments must be received on or before November 25, 2004.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket Number FAA–2004–17896/ Airspace Docket No. 04–AGL–13, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: J. Mark Reeves, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7477.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking

by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this document must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2004–17896/Airspace Docket No. 04–AGL–13." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

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

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class D airspace at Grissom AFB, IN. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class D airspace areas extending upward from the surface of the earth are published in paragraph 5000 of FAA Order 7400.9L dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

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

List of Subjects in CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to name, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

Paragraph 5000 Class D airspace.

AGL IN D Grissom AFB, IN [Revised]

Grissom AFB, IN
(Lat. 40°38'53" N., long. 86°09'08" W.)

That airspace extending upward from the surface to and including 3,300 feet MSL within a 5.6-mile radius of Grissom, AFB. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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Issued in Des Plaines, Illinois on September 9, 2004.

Keith A. Thompson,

Area Staff Manager, Central Terminal Operations.

[FR Doc. 04–21398 Filed 9–22–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–18534; Airspace Docket No. 04–AGL–17]

Proposed Modification of Class E Airspace; Hibbing, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to modify Class E airspace at Hibbing, MN. Standard Instrument Approach Procedures have been developed for Chisholm-Hibbing Airport, Hibbing, MN. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approach procedures. This action would increase the area of existing controlled airspace for Chisholm-Hibbing Airport.

DATES: Comments must be received on or before November 25, 2004.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket Number FAA–2004–18534/ Airspace Docket No. 04–AGL–17, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets

Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at FAA Terminal Operations, Central Service Area Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: J. Mark Reeves, FAA, Terminal Operations, Central Service Office, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7477.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this document must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2004–18534/Airspace Docket No. 04–AGL–17." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

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

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Hibbing, MN, for Chisholm-Hibbing Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

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

* * * * *

AGL MN E5 Hibbing, MN [Revised]

Hibbing, Chisholm-Hibbing Airport, MN
(Lat. 47°23′12″ N., long. 92°50′20″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Chisholm-Hibbing Airport.

* * * * *

Issued in Des Plaines, Illinois on September 9, 2004.

Keith A. Thompson,

Area Staff Manager, Central Terminal Operations.

[FR Doc. 04–21399 Filed 9–22–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–18948; Airspace Docket No. 04–AGL–18]

Proposed Modification of Class E Airspace; Mount Comfort, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to modify Class E airspace at Mount Comfort, IN. Standard Instrument Approach Procedures have been developed for Mount Comfort Airport, Mount Comfort, IN. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approach procedures. This action would increase the area of existing controlled airspace for Mount Comfort Airport.

DATES: Comments must be received on or before November 25, 2004.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket Number FAA–2004–18948/ Airspace Docket No. 04–AGL–18, at the beginning of your comments. You may also submit comments on the internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at FAA Terminal Operations, Central Service Area Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: J. Mark Reeves, FAA Terminal Operations, Central Service Office, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7477.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this document must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2004–18948/Airspace Docket No. 04–AGL–18." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

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

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Mount Comfort, IN, for Mount Comfort Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment.

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

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

* * * * *

AGL IN E5 Mount Comfort, IN [Revised]

Mount Comfort Airport, IN
(Lat. 39°50'37" N., long. 85°53'49" W.)
Indianapolis Metropolitan Airport, IN
(Lat. 39°56'7" N., long. 86°2'42" W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of the Mount Comfort Airport, and within a 6.3-mile radius of the Indianapolis Metropolitan Airport, excluding that airspace within the Indianapolis Executive Airport, IN, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on September 9, 2004.

Keith A. Thompson,

Area Staff Manager, Central Terminal Operations.

[FR Doc. 04–21397 Filed 9–22–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–18533; Airspace Docket No. 04–AGL–16]

Proposed Revocation of Class E Airspace; Findlay, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to revoke Class E airspace at Findlay, OH. The weather observations at Findlay Airport have become automated, and there is no longer a weather observer located there. The Class E airspace area extending upward from the surface of the earth is no longer needed. This action would revoke the existing Class E surface area for Findlay, OH.

DATES: Comments must be received on or before November 25, 2004.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket Number FAA–2004–18533/ Airspace Docket No. 04–AGL–16, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level at the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the FAA, Terminal Operations, Central Service Area Office, 2300 East Devon Avenue, Des Plains, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: J. Mark Reeves, FAA, Terminal Operations, Central Service Office, Airspace Branch, AGL–520, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7477.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this document must submit with those comments a self-addressed, stamped postcard on which the following statment is made: "Comments to Docket No. FAA–2004–18533/ Airspace Docket No. 04–AGL–16." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plains, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

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

Additionally, any person may otain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to revoke Class E airspace at Findlay, OH, for Findlay Airport. Class E airspace areas extending upward from the surface of the earth are published in paragraph 6002 of FAA Order 7400.9L dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend CFR part 71 as follows:

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

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

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

§ 71. [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

AGL OH E2 Findlay, OH [Revoked]

* * * * *

Issued in Des Plaines, Illinois, On September 9, 2004.

Keith A. Thompson,

Area Staff Manager, Central Terminal Operations.

[FR Doc. 04–21394 Filed 9–22–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

17 CFR Part 450

RIN 1505–AB06

[Docket No. BPD GSRS 04–02]

Government Securities Act Regulations: Custodial Holdings of Government Securities

AGENCY: Office of the Assistant Secretary for Financial Markets, Treasury.

ACTION: Proposed rule.

SUMMARY: The Department of the Treasury ("Treasury," "We," or "Us") is issuing this proposed rule to solicit comments on a proposed amendment to the regulations issued under the Government Securities Act of 1986, as amended ("GSA"), that are applicable to depository institutions that hold government securities as fiduciary, custodian, or otherwise for the account of customers. The provisions of the GSA regulations for custodial holding of government securities held by depository institutions generally provide an exemption from these rules for a depository institution's holdings of such government securities that are subject to fiduciary standards of the Board of Governors of the Federal Reserve System ("the Board"), the Federal Deposit Insurance Corporation ("FDIC"), or the Office of the Comptroller of the Currency ("OCC"). This proposed amendment would modify the exemption to include savings associations subject to the fiduciary standards of the Office of Thrift Supervision ("OTS").

DATES: Submit comments on or before October 25, 2004.

ADDRESSES: You may send comments to: Bureau of the Public Debt, Government Securities Regulations Staff, 799 9th Street NW., Washington, DC 20239–0001. You also may e-mail us comments at either *govsecreg@bpd.treas.gov*, or through the Federal eRulemaking portal at *http://www.regulations.gov* and follow the instructions for submitting comments. When sending comments by e-mail, please provide your full name, mailing address, and docket number BPD GSRS 04–02 or RIN 1505–AB06. You may download this proposed amendment from *http://www.regulations.gov* or the Bureau of the Public Debt's Web site at *http://www.publicdebt.treas.gov*. The comments we receive will be available on Public Debt's web site. The proposed amendment and comments received will also be available for public inspection and copying at the Treasury Department Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. To visit the library, call (202) 622–0990 for an appointment.

FOR FURTHER INFORMATION CONTACT: Lori Santamorena (Executive Director), Lee Grandy (Associate Director), or Deidere Brewer (Government Securities Specialist), Bureau of the Public Debt, Government Securities Regulations Staff, (202) 504–3632 or e-mail us at *govsecreg@bpd.treas.gov*.

I. Background

A. GSA Regulations

Title II of the GSA [1] requires Treasury to prescribe, by regulation, standards for the safeguarding and use of government securities. The standards apply to depository institutions that hold government securities as fiduciary, custodian, or otherwise for the account of a customer. The regulations are to provide for the adequate segregation of government securities, including government securities subject to repurchase transactions. Prior to the adoption of regulations, Treasury is required to determine with respect to each appropriate regulatory agency, whether its "rules and standards adequately meet the purposes of the regulations" [2] to be issued, and if Treasury so determines, it must exempt any depository institution subject to those rules or standards from the regulations.

Treasury issued regulations under Title II of the GSA in 1987 at 17 CFR Part 450.[3] Based on the information provided by the appropriate regulatory agencies [4] and Treasury's own analysis, Treasury determined in 1987 that the rules and standards of the OCC, the FDIC, and the Board adequately met the purposes of the regulations.[5] Consequently, Treasury provided an exemption in § 450.3 for depository institutions [6] subject to these standards with respect to their holdings in a fiduciary capacity. The exemption also extends to government securities held in a custodial capacity, provided the institutions have adopted policies and procedures that would apply to such custodial holdings all of the requirements imposed by their appropriate regulatory agency on government securities held in a fiduciary capacity, and the custodial holdings are subject to examination by the appropriate regulatory agency for compliance with such fiduciary requirements.

Whether or not they are exempt under 450.3, however, depository institutions that retain custody of government securities subject to a repurchase agreement are required to comply with the confirmation requirements for hold-in-custody repurchase agreements in the regulations under Title I of the GSA at 403.5(d).[7] Although Treasury initially provided an exception from the hold-in-custody repurchase agreement requirements for financial institutions that held customer securities in safekeeping and that did not retain the right to substitute securities, Treasury

[1] Pub. L. 99–571, 100 Stat. 3208 (1986).

[2] 31 U.S.C. 3121(h)(4) & 9110(d).

[3] The GSA implementing regulations were published as a final rule on July 24, 1987 (52 FR 27901). The regulations, as amended, are codified at 17 CFR Chapter IV. The requirements for depository institutions that hold government securities as a fiduciary, custodian, or otherwise are set out in Subchapter B (17 CFR Part 450).

[4] See 17 CFR 450.2(a).

[5] 52 FR 5677 (February 25, 1987).

[6] See 17 CFR 450.2(c). The GSA regulations at § 450.2(c) define "depository institution" as having the meaning stated in clauses (i) through (vi) of § 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A) (i)–(vi)). Savings associations are included in the definition of depository institutions at 12 U.S.C. 461(b)(1)(A)(vi).

[7] See 17 CFR 403.5(a)(2) & 401.4(b)(1)(ii).

rescinded that exception in August 1988.[8]

B. OTS Request

On October 6, 2003, the OTS submitted a written request that the exemption at § 450.3 be extended to include OTS-regulated savings associations that meet its conditions.[9] In 1987, when Treasury developed the GSA regulations, savings associations were not eligible for the exemption because the Federal Home Loan Bank Board, OTS' predecessor, had not completed its examination procedures or guidance related to the GSA regulations. Savings associations are not included in the exemption, therefore they must comply with the requirements contained in Part 450 with respect to all government securities held for the account of customers in a capacity as a fiduciary or a custodian, as well as the requirements under applicable fiduciary law, including OTS fiduciary regulations at 12 CFR part 550.

The OTS request states that when Congress gave federal savings associations trust powers in 1980, the intent was to provide them with the ability to offer trust services on the same basis as national banks.[10] Without this same ability, the OTS states that savings associations are at a competitive disadvantage and subject to duplicative rules.

The OTS further states in its request that it now has examination procedures for the GSA regulations in place, and that OTS' regulation of fiduciary, custodial and other holdings of government securities adequately protects customer accounts. Further, the OTS states that the regulatory oversight of fiduciary activities of savings associations is the same as other federal banking agencies, and its trust regulations, policies and procedures are similarly aligned with those of the OCC.

II. Analysis

Based on the information provided by the OTS and our analysis, we are proposing to amend the GSA regulations to add savings associations regulated by the OTS to the exemption in § 450.3 under the same conditions that currently apply to depository institutions regulated by the OCC, the FDIC and the Board. We are not proposing any other changes to the current rule.

The OTS is responsible for ensuring that fiduciary powers are exercised by savings associations in a manner consistent with the best interests of fiduciary beneficiaries and other parties at interest through conformity with applicable federal and state law and sound fiduciary principles. The OTS also is responsible for ensuring that the safekeeping of fiduciary assets are kept separate from the savings association's assets.[11] Savings associations regulated by the OTS are also subject to examination procedures that require a review of the institution's systems and procedures to ensure that assets are adequately protected; review of applicable laws, regulations and fiduciary principles governing the safekeeping of assets; review of the institution's accounting system to insure that records are accurate and reliable; and review of the adequacy of the institution's audit program. Additionally, the OTS has confirmation requirements that are consistent with those of the other bank regulators. All savings associations must comply with 12 CFR part 551, subpart A, which established recordkeeping and confirmation requirements for securities transactions.[12] Accordingly, based on the information provided by the OTS and Treasury's own analysis, we have determined that the rules and standards of the OTS adequately meet the purposes of part 450.

We welcome comments on this proposed rule amendment and in particular whether it meets the intent of protecting custodial holdings of government securities for customers by depository institutions. We believe the proposed change would ensure that savings associations subject to the jurisdiction of the OTS are not subject to duplicative requirements. In developing this proposed amendment, we have consulted with the staffs of the bank regulatory agencies and also the staff of the Securities and Exchange Commission.

While the Treasury does not anticipate that subsequent modifications of the applicable OTS rules and standards will make this exemption inappropriate, we expect (as provided in § 450.3(b)) that the OTS would inform us of any material revisions to such rules and standards.

III. Special Analysis

This proposed rule would make a technical amendment to the GSA regulations that would expand the exemption from the part 450 requirements, thus making OTS regulated savings associations eligible for the exemption. This proposed rule amendment does not meet the criteria for a "significant regulatory action" for the purposes of Executive Order 12866.

In addition, pursuant to the Regulatory Flexibility Act,[13] we certify that the proposed regulations, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed rule is deregulatory in that it provides a basis for exempting OTS regulated savings associations from the requirements of part 450. Accordingly, a regulatory flexibility analysis is not required.

The Paperwork Reduction Act of 1995 requires that collections of information prescribed in proposed rules be submitted to the Office of Management and Budget for review and approval.[14] Collections of information contained in the GSA regulations have been previously reviewed and approved by the Office of Management and Budget under Control Number 1535–0089. Under the Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

The collections of information related to this proposed rule are contained in part 450 of the GSA regulations. This proposed rule would expand the exemption at § 450.3 to include savings associations regulated by the OTS that meet the conditions of the exemption. The OTS estimates that 132 savings associations would qualify for the exemption, thus making them no longer subject to part 450.

List of Subjects in 17 CFR Part 450

Banks, banking, Depository institutions, Government securities, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, we propose that 17 CFR part 450.3 be amended as follows:

PART 450—CUSTODIAL HOLDINGS OF GOVERNMENT SECURITIES BY DEPOSITORY INSTITUTIONS

1. The authority citation for part 450 continues to read as follows:

[8] 53 FR 28981 (August 1, 1988). Treasury stated that securities transactions should be confirmed promptly and that such treatment is particularly appropriate for hold-in-custody repurchase transactions, even when the subject securities are delivered to a separate safekeeping department within the financial institution.

[9] See Letter from Scott M. Albinson, Managing Director, Office of Thrift Supervision, Department of the Treasury, to Van Zeck, Commissioner of the Public Debt, Bureau of the Public Debt, Department of the Treasury (October 6, 2003).

[10] See § 5(n) of Home Owners' Loan Act (HOLA) 12 U.S.C. 1464(n) for thrifts and 12 U.S.C. 92a for banks.

[11] See 12 U.S.C. 1464(n)(2), also 12 CFR part 550.

[12] 67 FR 76293 (December 12, 2002).

[13] 5 U.S.C. 601, *et seq.*

[14] 44 U.S.C. 3507(d).

Authority: Sec. 201, Pub. L. 99–571, 100 Stat. 3222–23 (31 U.S.C. 3121, 9110); Sec. 101, Pub. L. 99–571, 100 Stat. 3208 (15 U.S.C. 78o–5(b)(1)(A), (b)(4), (b)(5)(B)).

2. Section 450.3 is amended by revising paragraph (a) to read as follows:

§ 450.3 Exemption for holdings subject to fiduciary standards.

(a) The Secretary has determined that the rules and standards of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision governing the holding of government securities in a fiduciary capacity by depository institutions subject thereto are adequate. Accordingly, such depository institutions are exempt from this Part with respect to their holdings of government securities in a fiduciary capacity and their holdings of government securities in a custodial capacity provided that:

(1) Such institution has adopted policies and procedures that would apply to such custodial holdings all the requirements imposed by its appropriate regulatory agency that are applicable to government securities held in a fiduciary capacity, and

(2) Such custodial holdings are subject to examination by the appropriate regulatory agency for compliance with such fiduciary requirements.

* * * * *

Dated: September 8, 2004.

Timothy S. Bitsberger,

Acting Assistant Secretary for Financial Markets.

[FR Doc. 04–21334 Filed 9–22–04; 8:45 am]

BILLING CODE 4810–39–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7817–7]

National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule No. 41

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act ("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 14 new sites to the NPL; all to the General Superfund Section of the NPL.

DATES: Comments regarding any of these proposed listings must be submitted (postmarked) on or before November 22, 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–2004–0012. 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–2004–0012.

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–2004–0012. 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–2004–0012 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: Yolanda Singer, phone (703) 603–8835, 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:

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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"), Public Law 99–499, 100 Stat. 1613 *et seq.*

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 and threatened 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. At Federal Facilities Section sites, EPA's role is 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, pollutants or contaminants 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; (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, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each State as the greatest danger to public health, welfare, or the environment among known facilities in the State. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any 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).

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.

F. Does the NPL Define the Boundaries of Sites?

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.

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: (i) Responsible parties or other persons have implemented all appropriate response actions required; (ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or (iii) 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 September 13, 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 September 13, 2004, EPA has deleted 46 portions of 38 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 September 13, 2004, there are a total of 904 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 EPA's evaluation and scoring of the sites in this rule are contained in public dockets located both at EPA Headquarters in Washington, DC and in the Regional offices.

B. How Do I Access the Documents?

You may view the documents, by appointment only, in the Headquarters or the Regional dockets after the publication of this proposed rule. The hours of operation for the Headquarters docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday excluding Federal holidays. Please contact the Regional dockets 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 Regional dockets is as follows:

Ellen Culhane, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, Mailcode HSC, One Congress Street, Suite 1100, Boston, MA 02114–2023; (617) 918–1225.

Dennis Munhall, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; (212) 637–4343.

Dawn Shellenberger (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; (215) 814–5364.

John Wright, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW., 9th floor, Atlanta, GA 30303; (404) 562–8123.

Janet Pfundheller, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Superfund Division SRC–7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; (312) 353–5821.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mailcode 6SF–RA, Dallas, TX 75202–2733; (214) 665–7436.

Michelle Quick, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Kansas City, KS 66101; (913) 551–7335.

Gwen Christiansen, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 999 18th Street, Suite 500, Mailcode 8EPR–B, Denver, CO 80202–2466; (303) 312–6463.

Jerelean Johnson, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105; (415) 972–3094.

Tara Martich, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Mail Stop ECL–115, Seattle, WA 98101; (206) 553–0039.

You may also request copies from EPA Headquarters or the Regional dockets. 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–2004–0012. Please note that there are differences between the Headquarters Docket and the Regional Dockets and those differences are outlined below.

C. What Documents Are Available for Public Review at the Headquarters Docket?

The Headquarters docket for this rule contains: HRS score sheets for the proposed sites; a Documentation Record for the sites describing the information used to compute the score; information for any sites affected by particular statutory requirements or EPA listing policies; and a list of documents referenced in the Documentation Record.

D. What Documents Are Available for Public Review at the Regional Dockets?

The Regional dockets for this rule contain all of the information in the Headquarters docket, plus, the actual reference documents containing the data principally relied upon and cited by EPA in calculating or evaluating the HRS score for the sites. These reference documents are available only in the Regional dockets.

E. 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.

F. 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.

G. What Should I Consider When Preparing My Comments?

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that EPA should consider and how it affects individual HRS factor values or other listing criteria (*Northside Sanitary Landfill* v. *Thomas*, 849 F.2d 1516 (D.C. Cir. 1988)). EPA will not address voluminous comments that are not specifically cited by page number and referenced to the HRS or other listing criteria. EPA will not address comments unless they indicate which component of the HRS documentation record or what particular point in EPA's stated eligibility criteria is at issue.

H. 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 generally not delaying a final listing decision solely to accommodate consideration of late comments.

I. 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 (EPA Dockets at *http://www.epa.gov/edocket*) 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. Once in the EPA Dockets system, select "search", then key in the Docket ID No. SFUND–2004–0012. 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).

J. 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 Additions to the NPL

With today's proposed rule, EPA is proposing to add 14 new sites to the NPL; all to the General Superfund Section of the NPL. All of the sites in this proposed rulemaking are being proposed based on HRS scores of 28.50

or above. The sites are presented in Table 1 which follows this preamble.

B. Status of NPL

A final rule published elsewhere in today's **Federal Register** finalizes two sites to the NPL; resulting in an NPL of 1,244; 1086 in the General Superfund Section and 158 in the Federal Facilities Section. With this proposal of 14 new sites and the withdrawal of one proposal discussed below, there are now 68 sites proposed and awaiting final agency action, 61 in the General Superfund Section and seven in the Federal Facilities Section. Final and proposed sites now total 1,312. (These numbers reflect the status of sites as of September 13, 2004. Site deletions occurring after this date may affect these numbers at time of publication in the **Federal Register**.)

C. Withdrawal of Site From Proposal to the NPL

EPA is withdrawing the proposal to add the East Multnomah County Ground Water Contamination site in Multnomah County, Oregon to the NPL. The proposed rule can be found at 58 FR 27507 (May 10, 1993). Refer to the Superfund docket for supporting documentation regarding this action.

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.

2. Does the Paperwork Reduction Act Apply to This Proposed Rule?

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* 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.

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.

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.

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 of hazardous substances 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), Public Law 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 necessarily 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, 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. 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), Public Law 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.

TABLE 1.—NATIONAL PRIORITIES LIST PROPOSED RULE NO. 41, GENERAL SUPERFUND SECTION

State	Site name	City/county
CA	Klau/Buena Vista Mine.	San Luis Obispo County.
IL	Hegeler Zinc	Danville.
NC	Sigmon's Septic Tank Service.	Statesville.
NE	Parkview Well	Grand Island.
NJ	Crown Vantage Landfill.	Alexandria Township.
NY	Hopewell Precision Area Contamination.	Hopewell Junction.
OH	Copley Square Plaza.	Copley.
OH	South Dayton Dump & Landfill.	Moraine.
PA	Price Battery	Hamburg.
PA	Safety Light Corporation.	Bloomsburg.
PR	Pesticide Warehouse I.	Arecibo.
SC	Brewer Gold Mine.	Jefferson.
TN	Smalley-Piper	Collierville.
VT	Commerce Street Plume.	Williston.

Number of Sites Proposed to General Superfund Section: 14.

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.

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.

Dated: September 17, 2004.

Thomas P. Dunne,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 04–21387 Filed 9–22–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22, 24 and 64

[ET Docket No. 04–295; FCC 04–187]

Communications Assistance for Law Enforcement Act

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document launches a thorough examination of the appropriate legal and policy framework of the 1994 Communications Assistance for Law Enforcement Act ("CALEA"). We initiate this proceeding at the request of, and in response to, a joint petition filed by the Department of Justice, Federal Bureau of Investigation, and the Drug Enforcement Administration (collectively, "Law Enforcement").

DATES: Comments must be filed on or before November 8, 2004, and reply comments must be filed on or before December 7, 2004.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 418–2454, e-mail: *Rodney.Small@fcc.gov*, TTY (202) 418–2989.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making,* ET Docket No. 04–295, FCC 04–187, adopted August 4, 2004, and released August 9, 2004. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternate formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before November 8, 2004, and reply comments on or before December 7, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* 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. 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 appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. 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. U.S. Postal Service first-class mail, Express mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

Summary of the Notice of Proposed Rulemaking

Overview

1. In the *Notice of Proposed Rulemaking* ("NPRM"), the Commission examines issues relating to the scope of CALEA's applicability to packet-mode services, such as broadband Internet access, and implementation and enforcement issues. The Commission tentatively conclude that: (1) Congress intended the scope of CALEA's definition of "telecommunications carrier" to be more inclusive than that of the Communications Act; (2) facilities-based providers of any type of broadband Internet access service, whether provided on a wholesale or retail basis, are subject to CALEA; (3) "managed" Voice over Internet Protocol ("VoIP") services are subject to CALEA; (4) the phrase in § 102 of CALEA "a replacement for a substantial portion of the local telephone exchange service" calls for assessing the replacement of any portion of an individual subscriber's functionality previously provided via "plain old telephone service" ("POTS"); and (5) call-identifying information in packet networks is "reasonably available" under § 103 of CALEA if the information is accessible without "significantly modifying a network." We seek comment on: (1) the feasibility of carriers relying on a trusted third party to manage their CALEA obligations and to provide to law enforcement agencies ("LEAs") the electronic surveillance information they require in an acceptable format; and (2) whether standards for packet technologies are deficient and should not serve as safe harbors for complying with § 103 capability requirements.

2. We also propose mechanisms to ensure that telecommunications carriers comply with CALEA. Specifically, we propose to restrict the availability of compliance extensions under CALEA § 107(c) and clarify the role and scope of CALEA § 109, which addresses the payment of costs of carriers to comply with the § 103 capability requirements. Additionally, we consider whether, in addition to the enforcement remedies through the courts available to LEAs under CALEA § 108, we may take separate enforcement action against carriers that fail to comply with CALEA. We tentatively conclude that carriers are responsible for CALEA development and implementation costs for post-January 1, 1995 equipment and facilities; seek comment on cost recovery issues for wireline, wireless and other carriers; and refer to the Federal-State Separations Joint Board cost recovery issues for carriers subject to Title II of the Communications Act.

Background

3. CALEA, which was enacted in 1994, requires telecommunications carriers to incorporate into their networks technical capabilities to enable law enforcement to conduct lawful electronic surveillance. See Public Law 103–414, 108 Stat. 4279 (1994) (codified as amended in 18 U.S.C. 2522 and 47 U.S.C. 229, 1001–1010). CALEA does not authorize electronic surveillance; rather, it is intended to ensure that law enforcement has the ability to conduct electronic surveillance effectively and efficiently in the face of rapid advances in telecommunications technology. The various statutory provisions of CALEA are focused on the following topics: assistance capability to law enforcement; system capacity for simultaneous wiretaps, implementation and enforcement.

4. The Commission initiated this rulemaking proceeding in response to a joint petition for rulemaking filed by the Department of Justice, Federal Bureau of Investigation and Drug Enforcement Administration on March 10, 2004. The petition requested the Commission to resolve outstanding issues regarding CALEA implementation, including identifying the types of packet-mode services and entities providing such services that are subject to CALEA, establishing benchmarks and deadlines for CALEA packet-mode compliance, establishing procedures for enforcement action by the Commission, and clarifying certain cost recovery issues.

Introduction

5. In the *NPRM*, we addressed the types of services and entities encompassed by the terms "broadband access service" and "broadband telephony service." We rely on Law Enforcement's definitions to a large extent in this endeavor. We attempt to identify services and processes that provide broadband access to the public Internet, focusing primarily on those services and entities using packet-mode technology. In the *NPRM*, we refer to "broadband access service" and "broadband Internet access service" interchangeably. Law Enforcement does not define the term "broadband," and thus we will rely on previous uses we have made of this term, *i.e.*, those services having the capability to support upstream or downstream speeds in excess of 200 kilobits per second ("kbps") in the last mile. Finally, this *NPRM* addresses broadly CALEA compliance for any packet-mode application and focuses specifically on voice communications. We recognize that although broadband access for voice telephony communications could be provided using various packet-mode technologies, most packet voice communications in commercial use today are provided using the Internet Protocol and are commonly referred to as "VoIP." Thus, we refer to VoIP rather than "broadband telephony service" in the *NPRM*.

6. In the *NPRM*, we also addressed several other issues raised by Law Enforcement. Law Enforcement urges the Commission to take a more active role in CALEA implementation by, for example, establishing benchmarks and deadlines for packet-mode compliance and enforcement of CALEA requirements. We seek comment on these proposals, as well as alternatives, all designed with the goal of moving carriers toward full CALEA compliance

rapidly. We therefore explore alternative methods of achieving the same objective. Finally, LEAs are very concerned about the cost of conducting electronic surveillance and believe that increased rates for such surveillance might hamper their ability to rely on this important investigative tool. As the number of electronic surveillances has increased, so have the rates carriers charge LEAs. In the *NPRM*, we clarify and seek comment on various cost and cost recovery issues.

Applicability of CALEA to Broadband Internet Access and VoIP Services

7. We tentatively conclude that facilities-based providers of any type of broadband Internet access service, whether provided on a wholesale or retail basis, are subject to CALEA because, under the "Substantial Replacement Provision" of § 102(8)(B)(ii) of CALEA, they provide a replacement for a substantial portion of the local telephone exchange service used for dial-up Internet access service and treating such providers as telecommunications carriers for purposes of CALEA is in the public interest. Broadband Internet access providers include, but are not limited to, wireline, cable modem, satellite, wireless, and broadband access via powerline companies. We seek comment on this tentative conclusion. In addition, we tentatively conclude that providers of VoIP services that Law Enforcement characterizes as "managed" or "mediated" are subject to CALEA as telecommunications carriers under § 102(8)(B)(ii) of CALEA. Law Enforcement describes managed or mediated VoIP services as those services that offer voice communications calling capability whereby the VoIP provider acts as a mediator to manage the communication between its end points and to provide call set up, connection, termination, and party identification features, often generating or modifying dialing, signaling, switching, addressing or routing functions for the user. Law Enforcement distinguishes managed communications from "non-managed" or "peer-to-peer" communications, which involve disintermediated communications that are set up and managed by the end user via its customer premises equipment or personal computer. In these non-managed, or disintermediated, communications, the VoIP provider has minimal or no involvement in the flow of packets during the communication, serving instead primarily as a directory that provides users' Internet web addresses to facilitate peer-to-peer communications. We request comment on the appropriateness of this distinction between managed and non-managed VoIP communications for purposes of CALEA.

8. Law Enforcement asserts that CALEA applies to broadband Internet access service and mediated VoIP services and that application is critical to its efforts to combat crime and terrorism. We base our tentative conclusion that those services are subject to CALEA on an analysis of the statute and its legislative history—which demonstrate that the meaning of "telecommunications carrier" in CALEA is broader than its meaning under the Communications Act—and on Congress's stated intent "to preserve the government's ability, pursuant to court order or other lawful authorization, to intercept communications involving advanced technologies such as digital or wireless transmission modes." *See,* H.R. Rep. No. 103–827(I)(1994).

9. CALEA requires "telecommunications carriers" to ensure that their equipment, facilities, and services are capable of providing surveillance capabilities to LEAs, and CALEA contains its own unique definition of "telecommunications carrier." CALEA defines this term in section 102(8). *See* 47 U.S.C. 1001(8). For purposes of CALEA, a "telecommunications carrier" is "a person or entity engaged in the transmission or switching of wire or electronic communications as a common carrier for hire," but also includes entities that provide "a replacement for a substantial portion of the local telephone exchange service" if the Commission deems those entities to be "telecommunications carriers" as well, 47 U.S.C. 1001(8).

10. We tentatively conclude that Congress intended the scope of CALEA's definition of "telecommunications carrier" to be more inclusive than that of the Communications Act. We base this tentative conclusion on the facial differences in the statutory language discussed below. We acknowledge the Commission's previous statement that it expected "in virtually all cases that the definitions of the two Acts will produce the same results," *see*, Second R&O at 7112, ¶ 13. In making that statement, however, the Commission foreshadowed the possibility that the definitions under each of the two statutes may differ when it also concluded that it is "a matter of law that the entities and services subject to CALEA *must be based on the CALEA definition* * * * independently of their classification for the separate purposes of the Communications Act." We seek comment on our analysis.

11. In the past, the Commission has never before exercised its § 102(8)(B)(ii) discretion to identify additional entities that fall within CALEA's definition of "telecommunications carrier." Moreover, it has never, until now, solicited comment on the discrete components of this section or on specific classes of entities to which this section might apply. We therefore seek comment on what criteria we should apply to deem an entity a "telecommunications carrier" under the Substantial Replacement Provision and to which services CALEA should apply.

12. The Commission seeks comment on the three articulated components of the Substantial Replacement Provision. First, we seek comment on the phrase "engaged in providing wire or electronic communication switching or transmission service," *see* 47 U.S.C. 1001(8)(B)(ii); *see also* 47 U.S.C. 1001(8)(A). Because of Congress's stated purpose to require compliance with CALEA "with respect to services or facilities that provide a customer or subscriber with the ability to originate, terminate or direct communication," *see* 47 U.S.C. 1002(a), we read the phrase "switching or transmission service" broadly here. Specifically, we interpret "switching" in this section to include routers, softswitches, and other equipment that may provide addressing and intelligence functions for packet-based communications to manage and direct the communications along to their intended destinations. These functions are similar to the switching functions in a circuit-switched network and thus we believe CALEA's explicit inclusion of the word "switching" is meant to include these capabilities. With regard to "transmission," we note that CALEA *does not* limit "transmission" in § 102 to transmission "without change in the form or content of the information as sent or received," as does the Communications Act. Thus, we would interpret the "switching or transmission" component of the Substantial Replacement Provision to include entities that provide the underlying broadband transmission capability of Internet access services. The Commission seeks comment on this analysis and inquire specifically what types of "switching or transmission" satisfy this component of the Substantial Replacement Provision.

13. Second, we consider the meaning of the phrase "a replacement for a substantial portion of the local telephone exchange service." We tentatively conclude that the phrase "a replacement for a substantial portion of the local telephone exchange service" reaches the replacement of any portion

of an individual subscriber's functionality previously provided via POTS, *e.g.*, the telephony portion of dial-up Internet access functionality when replaced by broadband Internet access service. Finally, we seek comment on the meaning of "public interest" under § 102(8)(B)(ii) of CALEA.

14. Law Enforcement seeks a Commission declaration that all forms of broadband Internet access are subject to CALEA. Law Enforcement asserts that these services are so clearly subject to CALEA that the Commission should issue a ruling declaring so. While we agree with commenters that we must develop a more complete record on the substantial factual and legal issues involved before we can make final determinations, we tentatively conclude that facilities-based providers of any type of broadband Internet access, including but not limited to wireline, cable modem, satellite, wireless, and broadband access via the powerline, whether provided on a wholesale or retail basis, are subject to CALEA because they provide replacement for a substantial portion of the local telephone exchange service used for dial-up Internet access service and such treatment is in the public interest. We base this belief on our reading of CALEA and its legislative history as well as the record thus far.

15. In reaching this tentative conclusion, the Commission tentatively determine that such broadband Internet access service providers satisfy each of the three prongs of the Substantial Replacement Provision: broadband Internet access includes the switching (routing) and transmission functionality; it replaces a substantial portion of the local telephone exchange service used for narrowband Internet access; and the public interest factors we consider at a minimum, *i.e.*, the effect on competition, the development and provision of new technologies and services, and public safety and national security, weigh in favor of subjecting these broadband Internet access services to CALEA.

16. There may exist discrete groups of entities for which the public interest may not be served by including them under the Substantial Replacement Provision. As discussed in the NPRM, we will base such determination on the three public interest factors, at a minimum, including: whether it would promote competition, encourage the development of new technologies, and protect public safety and national security. For example, entities that deploy broadband capability to consumers in underserved areas may fall in this category because of the potential deterrent effect it could have on deployment in particular circumstances (negatively impacting the first and second factors, *i.e.*, protecting competition and encouraging the development of new technologies).

17. We do not believe that CALEA's exclusion for information services should alter our tentative conclusion. Congress expressly excluded "persons or entities insofar as they are engaged in providing information services" *see* 47 U.S.C. 1001(6)(B) & (C), from CALEA's definition of "telecommunications carrier." *See* 47 U.S.C. 1001(8)(C)(i); *see also* 47 U.S.C. 1002(b)(2)(A) (stating that CALEA's capability requirements do not apply to information services). (We refer to this as the "Information Services Exclusion.") We also note that § 103(b)(2)(A) of CALEA provides that the CALEA capability requirements do not apply to information services. CALEA's definition of "information services" is very similar to that of the Communications Act," *see* 47 U.S.C. 153(20). For purposes of the Communications Act, the Commission has concluded that cable modem service is an information service and has tentatively concluded that wireline broadband Internet access service is also an information service. Assuming those determinations become final, those services would, nonetheless, have to be evaluated under CALEA's separate definition of "telecommunications carrier" which is broader than the definition in the Communications Act. Where a service provider is found to fall within CALEA's Substantial Replacement Provision it would be deemed a "telecommunications carrier" for purposes of CALEA to which CALEA obligations would apply. If, at the same time, we interpreted CALEA's Information Services Exclusion to apply, it would present an irreconcilable tension; that is, particular service providers would find themselves at the same time subject to CALEA under the Substantial Replacement Provision and exempted from it by virtue of the Information Services Exclusion. We believe that the better reading of the statute is to recognize and give full effect to CALEA's broader definition of "telecommunications carrier" and to interpret the statute to mean that where a service provider is determined to fall within the Substantial Replacement Provision, by definition it cannot be providing an information service for purposes of CALEA.

18. *VoIP Services.* There is a wide array of packet-based services currently using IP as well as numerous ways that VoIP capabilities might be provided to consumers. For example, one VoIP service in particular, which we refer to in this proceeding as "managed" VoIP, may be offered to the general public as a means of communicating with anyone, including parties reachable only through the public switched telephone network ("PSTN"). Other VoIP offerings involve the capability to communicate on a peer-to-peer basis only with other members of a closed user group or groups. Still other VoIP capabilities may be additional features of other services or applications that enable voice communications with a particular user group.

19. We tentatively conclude that providers of managed VoIP services, which are offered to the general public as a means of communicating with any telephone subscriber, including parties reachable only through the PSTN, are subject to CALEA. We believe that such VoIP service providers satisfy each of the three prongs of the Substantial Replacement Provision with respect to their VoIP services. That is, they provide an electronic communication switching or transmission service that replaces a substantial portion of local exchange service for their customers in a manner functionally the same as POTS service; and the public interest factors we consider at a minimum—*i.e.*, the effect on competition, the development and provision of new technologies and services, and public safety and national security—support subjecting these providers to CALEA. We believe there is an overriding public interest in maintaining Law Enforcement's ability to conduct wiretaps of on-going voice communications that are taking place over networks that are rapidly replacing the traditional circuit-switched network, yet providing consumers essentially the same calling capability that exists with legacy POTS service. We understand that basic capabilities essential to Law Enforcement's surveillance efforts, such as access to call management information (*e.g.*, call forwarding, conference call features such as party join and drop) and call set up information (*e.g.*, real time speed dialing information, post-dial digit extraction information) may not be reasonably available to the broadband access provider. Consequently, subjecting only the broadband access provider to CALEA without including managed VoIP service providers could undermine Law Enforcement's surveillance efforts. We seek comment on this analysis.

20. The Commission also seeks comment on our tentative conclusion that providers of non-managed, or disintermediated, communications

should not be subject to CALEA. Non-managed VoIP services, such as peer-to-peer communications and voice enabled Instant Messaging, as currently provided, do not appear to be subject to CALEA for two reasons. First, because they are confined to a limited universe of users solely within the Internet or a private IP-network, they may be more akin to private networks, which Congress expressly excluded from section 103's capability requirements. Therefore, they do not appear to replace a substantial portion of local exchange service; as such they do not appear to fall within the Substantial Replacement Provision. Second, they may be excluded information services under § 103(b)(2)(A). We seek comment on this issue.

21. *Identification of Future Services and Entities Subject to CALEA.* We tentatively conclude that it is unnecessary for us to adopt Law Enforcement's proposal regarding the identification of future services and entities subject to CALEA. We recognize Law Enforcement's need for more certainty regarding the applicability of CALEA to new services and technologies. We expect, however, the Commission's Report and Order in this proceeding to provide substantial clarity on the application of CALEA to new services and technologies that should significantly resolve Law Enforcement's and industry's uncertainty about compliance obligations in the future.

Requirements and Solutions

22. Packet technologies are fundamentally different from the circuit switched technologies that were the primary focus of the Commission's earlier decisions on CALEA. These differences have led to disagreements among Law Enforcement and industry as to how to interpret and apply telecommunications carriers' obligations under § 103 of CALEA. Telecommunications carriers are required, under § 103 of CALEA, to enable LEAs, pursuant to a court order or other lawful authorization, (1) to intercept, to the exclusion of other communications, wire and electronic communications carried by the carrier to or from a subject, and (2) to access call-identifying information that is reasonably available to the carrier, subject to certain conditions. Further, the interception of communications or access to call-identifying information is to be delivered to LEAs in a format that may be transmitted, over the equipment, facilities or services procured by LEAs, to a location other than the provider's premises and in a way that protects the privacy and security of communications and information not authorized to be intercepted or accessed.

23. CALEA defines call-identifying information as "dialing or signaling information that identifies the origin, direction, destination, or termination of each communication generated or received by a subscriber by means of any equipment, facility, or service of a telecommunications carrier," 47 U.S.C. 1001(2). We believe that carriers, manufacturers and Law Enforcement have applied the statutory definition of call-identifying information, as well as the Commission's definitions for the terms origin, destination, direction and termination, in developing standards or proprietary solutions for packet-mode technologies. However, the exact application of these terms is not always clear because call-identifying information may be found within several encapsulated layers of protocols.

24. We seek comment on whether the Commission needs to clarify the statutory term "call-identifying information" for broadband access and VoIP services. We ask that commenters provide specific suggestions for these definitional issues. A more precise understanding of these terms would support the Commission's efforts to encourage carriers' compliance with their CALEA obligations whether in acting on petitions filed under § 107(c) or 109(b) or in pursuing enforcement actions for violations of the Commission's rules. We also invite comment as to how the Commission should apply the term "reasonably available" to broadband access.

25. We tentatively conclude that we should apply the same criteria that we applied to circuit-mode technology—*i.e.* information may not be "reasonably" available if the information is only accessible by significantly modifying a network—to broadband access and VoIP providers. We seek comment on this tentative conclusion. We recognize that, when looking at end-to-end service architectures, it is not always readily apparent where call-identifying information is available. We seek comment on where content and various kinds of call-identifying information are available in the network and further whether the information is reasonably available to the carrier.

26. *Compliance solutions based on use of a "trusted third party."* Telecommunications carriers under CALEA may use a variety of means for making content or call-identifying information available to LEAs. We seek comment on one approach that, although it would not relieve carriers of their obligation to comply with CALEA, may simplify or ease the burden on carriers and manufacturers in providing packet content and call-identifying information. We refer to this approach as the "trusted third party" approach, that is being used today both in the United States and elsewhere. A trusted third party is a service bureau with a system that has access to a carrier's network and remotely manages the intercept process for the carrier. The service bureau may manage CALEA operations for multiple carriers, and the service bureau's system may be completely external to all of those carriers' networks.

27. The trusted third party approach recognizes that, even if a carrier does not process certain call-identifying information, that information may be extracted from that carrier's network and delivered to a LEA. The trusted third party obtains the call content and call-identifying information in either of two ways. The trusted third party could rely on a mediation device to collect separated call content and call-identifying information from various points in the network and to deliver the appropriate information to a LEA. Alternatively, the trusted third party could rely on an external system to collect combined call content and call-identifying information and to deliver the appropriate information to a LEA. We believe that the availability of a trusted third party approach makes call-identifying information "reasonably" available to a telecommunications carrier under § 103(a)(2). We seek comment on this analysis.

28. We seek comment on the feasibility of using a trusted third party approach to extract the content and call-identifying information of a communication from packets. In particular, we seek comment on whether an external system would be an efficient method to extract information from packets. It seems that external systems might provide economies of scale for small carriers. What would be the approximate relative costs of internal versus external systems for packet extraction?

29. We recognize, however, that there may be some tension between relying on a trusted third party model and relying on "safe harbor" standards for complying with CALEA § 103 capability requirements. For example, if a trusted third party approach makes call-identifying information "reasonably" available to a telecommunications carrier, should a standard that requires a carrier to provide only the information it uses to process a packet be considered a "safe harbor" if a LEA would not have all call-identifying information for the communication?

30. Finally, we seek comment on how a telecommunications carrier that relies on a trusted third party would meet its obligations under § 103(a) of CALEA, *e.g.*, to protect the privacy and security of communications and call-identifying information not authorized to be intercepted, as well as to protect information regarding the government's interception of communications and access to call-identifying information.

31. *Compliance solutions based on CALEA "Safe Harbor" standards.* Subsection 107(a)(2) of CALEA states that "[a] telecommunications carrier shall be found to be in compliance with the assistance capability requirements under § 103, and a manufacturer of telecommunications transmission or switching equipment or a provider of telecommunications support services shall be found to be in compliance with section 106, if the carrier, manufacturer, or support service provider is in compliance with publicly available technical requirements or standards adopted by an industry association or standard-setting organization, or by the Commission under subsection (b), to meet the requirements of § 103." *See,* 47 U.S.C. 1001(2). We ask parties to comment on industry standards for packet-mode technologies in an attempt to determine whether any of these standards are deficient and thus preclude carriers, manufacturers and others from relying on them as safe harbors in complying with CALEA § 103. By doing so, however, we do not intend to inhibit the ongoing work by standards organizations, carriers and manufacturers to develop and deploy CALEA-compliant facilities and services. We recognize that CALEA provides that carriers and others may rely on publicly available technical requirements or standards adopted by an industry association or standard-setting organization to meet the requirements of CALEA § 103, unless the Commission takes specific action in response to a petition.

32. *CALEA compliance for satellite networks based on system-by-system agreements.* We note that satellite carriers have used a CALEA approach based on negotiation with LEAs, resulting in private agreements to provide information to LEAs. Satellite networks differ in fundamental ways not only from terrestrial networks but also from each other. These differences arise from unique aspects of the type of satellite used in the network (*e.g.*, non-geostationary vs. geostationary satellites) and the gateway earth stations that may be located both within and outside the United States. System-by-system agreements between LEAs and satellite carriers account for the unique aspects of each system. We tentatively conclude that continued use of system-by-system arrangements is the appropriate method for satellite systems and will aid in meeting CALEA's goals. We seek comment on this tentative conclusion.

CALEA Compliance Extension Petitions

33. We propose to restrict the availability of compliance extensions under § 107(c), particularly in connection with packet-mode requirements, and we clarify the role and scope of CALEA § 109(b), which provides that the Commission may find that compliance with CALEA § 103 is not reasonable achievable, leaving it to the Attorney General to determine whether to pay telecommunications carriers' compliance costs, *see* 47 U.S.C. 1008(b)(2)(A).

34. We recognize that carriers have continued to rely on CALEA § 107(c) when submitting extension requests for packet-mode compliance. We intend to resolve the status of those petitions in this proceeding, but in a way that is not unduly disruptive. Accordingly, we intend to afford all carriers a reasonable period of time in which to comply with, or seek relief from, any determinations that we eventually adopt. We tentatively conclude that a "reasonable period of time" is 90 days and request comment on this tentative conclusion. We may, on less than 90 days notice, require any or all carriers to provide additional information to support their extension requests. We seek comment on all issues identified in the following analysis, as well as any other issues that relate to disposition of pending and future extension requests.

35. Section 107(c) expressly limits extensions to cases where the petitioning carrier proposes to install or deploy, or has installed or deployed, its "equipment, facility, or service *prior to the effective date of § 103 * * *" i.e.*, prior to October 25, 1998. *See* 47 U.S.C. 1006(c)(1). Given this limitation, we believe that a § 107(c) extension is not available to cover equipment, facilities, or services installed or deployed after October 25, 1998. This interpretation of the scope of § 107(c) would likely preclude granting § 107(c) relief in connection with packet-mode applications because, in our experience, most if not all carrier packet-based "equipment, facilit[ies], or service" have been installed or deployed after the § 107(c)-mandated cut-off date. We seek comment on this analysis.

36. Moreover, we believe that carriers face a high burden in making an adequate showing to obtain alternative relief pursuant to § 109(b). Under the requirements of that section, carriers must demonstrate that compliance is not reasonably achievable, and we must evaluate submitted petitions under the criteria set out in § 109(b)(1), including cost and cost-related criteria and an assessment of the effect of any granted extension "on public safety and national security." It would be difficult for a petitioner to make such a showing unless the request was made in connection with precisely identified "equipment, facilities, or services." We seek comment on this analysis.

37. Under this interpretation of the applicability and scope of § 107(c) and 109(b), we believe that many carriers could find it difficult to obtain either CALEA compliance extensions or exemptions in connection with packet requirements. As a result, they may become immediately subject to enforcement action. This outcome could be precisely what Congress intended, because it would encourage carriers to press for the development of CALEA standards by industry-staffed committees and for solutions from manufacturers. Under this reading of the statute, neither § 107(c) nor § 109(b) provides a permanent exemption from CALEA's § 103 compliance mandate. And it reflects a statutory expectation that whenever a carrier replaces or upgrades its network architecture after § 107(c)'s mandated compliance date, it must do so by employing CALEA-compliant equipment, or explain why it could not do so under the stringent requirements of a § 109(b) petition. We seek comment on this interpretation of the relationship of CALEA § 103, 107(c), and 109(b) and the likely effects if we apply it to pending packet-mode § 107(c) extension petitions.

Enforcement of CALEA

38. We consider whether, in addition to the enforcement remedies through the courts available to LEAs under § 108 of CALEA, *see* 47 U.S.C. 1007, the Commission may take separate enforcement action against telecommunications carriers, manufacturers and providers of telecommunications support services that fail to comply with CALEA. The Commission has broad authority to enforce its rules under the Communications Act. Section 229(a) of the Communications Act provides broad authority for the Commission to adopt rules to implement CALEA and, unlike § 229(b), does not limit such rulemaking authority to common carriers. While the "penalties" provision of § 229(d) of the Communications Act refers to CALEA violations "by the carrier," nothing in

§ 229(d) appears to limit the Commission's general enforcement authority under the Communications Act. As such, it appears the Commission has general authority under the Communications Act to promulgate and enforce CALEA rules against carriers as well as non-common carriers. We seek comment on this analysis. We also seek comment on whether CALEA § 108 and/or 201 impose any limitations on the nature of the remedy that the Commission may impose (*e.g.* injunctive relief) and whether CALEA § 106 imposes any limitations on the Commission's enforcement authority over manufacturers and support service providers.

39. We seek comment on how the Commission would enforce the assistance capability requirements under § 103 of CALEA. To facilitate enforcement, we tentatively conclude that, at a minimum, we should adopt the requirements of § 103 as Commission rules. We ask whether, given this tentative conclusion, the lack of Commission-established technical requirements or standards under § 107(b) for a particular technology would affect the Commission's authority to enforce § 103. How would the lack of publicly available technical requirements or standards from a standard-setting organization impact the Commission's authority/ability to enforce § 103? In addition, we ask whether there are other provisions of CALEA, such as § 107(a)'s safe harbor provisions, that the Commission should adopt as rules in order to effectively enforce CALEA. How would the upgrade of a standard by a standard-setting organization impact the application of § 107(a)'s safe harbor provision?

40. We believe it is in the public interest for covered carriers to become CALEA compliant as expeditiously as possible and recognize the importance of effective enforcement of Commission rules affecting such compliance. We seek comment on whether the Commission's general enforcement procedures are sufficient for purposes of CALEA enforcement. The Commission has broad authority to enforce its rules under the Communications Act. It can, for example, issue monetary forfeitures and cease and desist orders against common carriers and non-common carriers alike for violation of Commission rules. Is this general enforcement authority sufficient or should we implement some special procedures for purposes of CALEA enforcement? Would an established enforcement scheme expedite the CALEA implementation process? We seek comment on any other measures we should take into consideration in deciding how best to enforce CALEA requirements.

Cost and Cost Recovery Issues

41. We seek comment on various cost determination and recovery issues that different telecommunications carriers face in complying with CALEA. We seek comment on whether individual carriers should bear responsibility for the costs of CALEA compliance. We further seek comment on specific jurisdictional issues, depending on whether carriers provide wireline or wireless service that may affect our determinations concerning what responsibilities they should have in bearing those costs.

42. CALEA § 109 places financial responsibility on the Federal Government for CALEA implementation costs related to equipment deployed *on or before* January 1, 1995. *See* 47 U.S.C. 1008(a), (d). Where the Federal Government refuses to pay for such modifications, a carrier's pre-1995 deployed equipment and facilities will be considered CALEA compliant until such equipment or facility "is replaced or significantly upgraded or otherwise undergoes major modification" for purposes of normal business operations. *See,* 47 U.S.C. 1008(d). *See also,* CALEA § 108(c)(3), 47 U.S.C. 1007(c)(3). However, for CALEA implementation costs associated with equipment deployed *after* January 1, 1995, § 109 places financial responsibility on the telecommunications carriers unless the Commission determines compliance is not "reasonably achievable." *See,* 47 U.S.C. 1008(b)(1). Based on CALEA's delineation of responsibility for compliance costs, we tentatively conclude that carriers bear responsibility for CALEA development and implementation costs for post-January 1, 1995 equipment and facilities. We seek comment on this analysis.

43. We also seek comment on other cost recovery options that could reduce CALEA-related burdens otherwise imposed on carriers and their customers. Given the public benefits of CALEA-supported surveillance of criminals and terrorists, does it make sense to consider cost recovery devices that more equitably spread costs among the general public? For example, should CALEA costs be recovered directly from telecommunications and other consumers by means of a Commission-mandated, flat monthly charge similar to the current subscriber line charge ("SLC")? Does the Commission have authority to impose such a charge? How would such a charge be developed? Our experience to date evaluating *circuit-based* CALEA-related costs indicates that developing an appropriate cost analysis for packet capabilities could be complex and difficult. We seek comment on how to assess the scope of CALEA-related costs in this proceeding. We ask commenters to submit cost calculations and analysis, and to identify any conditions or factors that may affect our ability to determine the true scope of CALEA-related costs.

44. We seek specific comment about how cost and cost-recovery issues connected with CALEA affect small and rural carriers. Should we adopt specific rules and policies to help ensure that such carriers can become CALEA compliant? Is it sufficient that such carriers have recourse to the CALEA § 109(b) petition process to seek funding from the Attorney General? Would exclusive reliance on CALEA § 109(b) tend to encourage hundreds of rural carriers to file such petitions? If the Attorney General finds, in such a case, that it cannot pay for CALEA compliance upgrades, successful petitioners would be deemed CALEA compliant. Is this result desirable from the perspective of providing for the reasonable needs of LEAs to engage in intercept activities in rural areas?

45. We also seek comment on whether we should distinguish carrier recovery of CALEA-incurred capital costs generally from recovery of specific intercept-related costs. We seek comment on whether CALEA limits the available cost recovery for intercept provisioning, and on whether carriers should be allowed to adjust their charges for such intercept provisioning to cover costs for CALEA-related services, which would include CALEA-related intercept provisioning charges. We seek comment as to whether recovery for capital costs associated with intercept provisioning should be different in the circuit-mode and packet-mode contexts, and if so, why.

46. In 1997, the Commission referred CALEA cost recovery issues to the Federal-State Joint Board on Jurisdictional Separations ("Federal-State Separations Joint Board"). At that time, parties were focused on cost recovery issues related to deployment of CALEA capabilities in circuit-switched networks of telecommunications carriers; standards for CALEA implementation had not yet been developed. Since then, a number of significant technological, marketplace, and regulatory developments have taken place, including the development of standards for circuit-mode and packet-mode CALEA implementation and widespread deployment of packet-

switching capabilities. Meanwhile, the Federal-State Separations Joint Board recommended, and the Commission adopted, an interim freeze on further modifications to the Commission's jurisdictional separations rules. The separations freeze went into effect on July 1, 2001 and is scheduled to end on June 30, 2006, absent further action by the Commission.

47. As a result of the separations freeze, the Federal-State Separations Joint Board has not had the opportunity to consider fully CALEA cost recovery issues and their implications for the Commission's jurisdictional separations rules. We therefore refer to the Federal-State Separations Joint Board the following CALEA-related cost recovery issues: (i) Whether costs for circuit-based capabilities should be separated, and if so, how the associated costs and revenues should be allocated for jurisdictional separations purposes; (ii) whether costs for packet-mode capabilities should be separated, and if so, how the associated costs and revenues should be allocated for jurisdictional separations purposes. We emphasize that our separations rules apply only to incumbent local exchange carriers under the Communications Act, and do not apply to entities that may be deemed telecommunications carriers under CALEA. As such, the Federal-State Separations Joint Board shall focus on the foregoing questions only insofar as they pertain to entities subject to jurisdictional separations.

48. In addition, we ask parties to refresh the record on the CALEA issues identified in the *Separations NPRM, i.e.*, whether costs should be allocated in a new CALEA-specific category or in previously-existing categories, whether revenues received from the Attorney General should be allocated in a particular manner (and if so, how), and whether CALEA-related revenues could be allocated to the jurisdictions based on relative-use factors derived from the relative electronic surveillance requirements of Federal, State, and local LEAs. Finally, because of the national importance of CALEA issues, we request that the Federal-State Separations Joint Board issue its recommended decision no later than one year from the release of this *NPRM*.

Effective Dates of New Rules

49. If the Commission ultimately decides, as discussed in the *NPRM*, that broadband access providers or additional entities are subject to CALEA, entities that heretofore have not been subject to CALEA will have to comply with its requirements. Thus, entities previously identified as information service providers under the Commission's previous decisions would be subject to CALEA and would have to comply with various requirements, including the assistance capability requirements in CALEA § 103, the capacity requirements in CALEA § 104, and the system security requirements in CALEA § 105 and in § 229(b) of the Communications Act.

50. If the Commission ultimately decides that entities that heretofore have not been subject to CALEA will have to comply with its requirements, we seek comment on what would be a reasonable amount of time for those entities to come into compliance with §§ 103 and 105 of CALEA. Should newly-identified entities either come into compliance with or seek relief from § 103 requirements within 90 days, as we propose for carriers that have filed § 107(c) petitions? Or should newly-identified entities have 15 months to come into compliance with § 103, as Law Enforcement suggests, or is some other amount of time reasonable? Regarding compliance with CALEA § 105 and § 229(b) of the Communications Act, should newly-identified carriers comply with the system security requirements previously adopted by the Commission within 90 days, which was the amount of time the Commission provided when it adopted those rules, or is some other amount of time reasonable? Commenters should address factors that would support their suggestions for §§ 103, 105 and 229(b) compliance deadlines.

Ordering Clauses

51. Pursuant to sections 1, 4(i), 7(a), 229, 301, 303, 332, and 410 of the Communications Act of 1934, as amended, and sections 103, 106, 107, and 109 of the Communications Assistance for Law Enforcement Act, 47 U.S.C. 151, 154(i), 157(a), 229, 301, 303, 332, 410, 1002, 1005, 1006, and 1008, the *Notice of Proposed Rulemaking is hereby Adopted.*

52. Pursuant to section 410(c) of the Communications Act of 1934, 47 U.S.C. 410(c), the Federal-State Joint Board on Jurisdictional Separations is requested to review the CALEA cost recovery issues of the NOTICE OF PROPOSED RULEMAKING and to provide recommendations to the Commission.

53. The Joint Petition for Expedited Rulemaking, filed by the Department of Justice, Federal Bureau of Investigation, and Drug Enforcement Administration on March 10, 2004, *Is Granted to the Extent Indicated* in the NPRM.

54. The Commission's Consumer Information and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Initial Regulatory Flexibility Analysis

55. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA"),[1] the Commission has prepared this 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 *Notice of Proposed Rule Making* (*"NPRM"*). 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 on the *NPRM* provided above. The Commission will send a copy of the *Notice of Proposed Rule Making,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration ("SBA").[2] In addition, the *Notice of Proposed Rule Making* (or summaries thereof), including the IRFA, will be published in the **Federal Register**.[3]

A. Need for, and Objectives of, the Proposed Rules

56. The *NPRM* proposes to permit law enforcement agencies ("LEAs") to better perform electronic surveillance of telecommunications carriers under several existing statutes by tentatively concluding that new broadband Internet services and "managed" Voice over Internet Protocol ("VoIP") services—*i.e.*, services that offer voice communications calling capability whereby the VoIP provider acts as a mediator to manage the communication between its end points and to provide, *e.g.*, call set up, connection, termination, and party identification features—are subject to the assistance capability requirements of the 1994 Communications Assistance for Law Enforcement Act ("CALEA"). The *NPRM* also proposes steps to ensure that telecommunications carriers comply with CALEA. However, the *NPRM* tentatively concludes that non-managed VoIP services are not subject to CALEA, and does not propose to establish a pre-approval process for new technologies and services that would determine whether they are subject to CALEA, as

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–112, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1966 (SBREFA).

[2] 5 U.S.C. 603(a).

[3] *Id.*

requested by the Law Enforcement Petition. The Commission believes that these proposals strike an appropriate balance between better permitting LEAs to combat crime and terrorism and the limited scope of CALEA.

B. Legal Basis

57. This proposed action is authorized pursuant to sections 1, 4(i), 7(a), 229, 301, 303, 332, and 410 of the Communications Act of 1934, as amended, and sections 103, 106, 107, and 109 of the Communications Assistance for Law Enforcement Act, 47 U.S.C. 151, 154(i), 157(a), 229, 301, 303, 332, 410, 1002, 1005, 1006, and 1008.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

58. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules.[4] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[5] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[6] 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.[7]

Telecommunications Service Entities

Wireline Carriers and Service Providers

59. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[8] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope.[9] We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

Incumbent Local Exchange Carriers. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[10] According to Commission data,[11] 1,337 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action.

Competitive Local Exchange Carriers, Competitive Access Providers, "Shared-Tenant Service Providers," and "Other Local Service Providers." Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[12] According to Commission data,[13] 609 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 609 carriers, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees. In addition, 16 carriers have reported that they are "Shared-Tenant Service Providers," and all 16 are estimated to have 1,500 or fewer employees. In addition, 35 carriers have reported that they are "Other Local Service Providers." Of the 35, 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, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities that may be affected by our action.

Payphone Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[14] According to Commission data,[15] 761 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 757 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our action.

Interexchange Carriers. Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[16] According to Commission data,[17] 261 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 223 have 1,500 or fewer employees and 38 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our action.

Operator Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the

[4] 5 U.S.C. 603(b)(3), 604(a)(3).

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

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

[7] 15 U.S.C. 632.

[8] *Id.* 632.

[9] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small-business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. *See* 13 CFR 121.102(b).

[10] 13 CFR 121.201, NAICS code 517110 (changed from 513310 in Oct. 2002).

[11] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, Page 5–5 (Aug. 2003) (hereinafter "Trends in Telephone Service"). This source uses data that are current as of December 31, 2001.

[12] 13 CFR 121.201, NAICS code 517110 (changed from 513310 in Oct. 2002).

[13] "Trends in Telephone Service" at Table 5.3.

[14] 13 CFR 121.201, NAICS code 517110 (changed from 513310 in Oct. 2002).

[15] "Trends in Telephone Service" at Table 5.3.

[16] 13 CFR 121.201, NAICS code 517110 (changed from 513310 in Oct. 2002).

[17] "Trends in Telephone Service" at Table 5.3.

category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[18] According to Commission data,[19] 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our action.

Prepaid Calling Card Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[20] According to Commission data,[21] 37 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 36 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by our action.

Wireless Telecommunications Service Providers

60. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging" [22] and "Cellular and Other Wireless Telecommunications." [23] Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year.[24] Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more.[25] Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year.[26] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[27] Thus, under this second category and size standard, the majority of firms can, again, be considered small.

Cellular Licensees. The SBA has developed a small business size standard for wireless firms within the broad economic census category "Cellular and Other Wireless Telecommunications." [28] Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year.[29] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[30] Thus, under this category and size standard, the great majority of firms can be considered small. According to the most recent *Trends in Telephone Service* data, 719 carriers reported that they were engaged in the provision of cellular service, Personal Communications Service ("PCS"), or Specialized Mobile Radio Telephony services, which are placed together in the data.[31] We have estimated that 294 of these are small, under the SBA small business size standard.[32]

Common Carrier Paging. The SBA has developed a small business size standard for wireless firms within the broad economic census categories of "Cellular and Other Wireless Telecommunications." [33] Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year.[34] Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more.[35] Thus, under this category and associated small business size standard, the great majority of firms can be considered small. In the Paging *Third Report and Order*, we developed a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[36] A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[37] The SBA has approved these small business size standards.[38] An auction of

[18] 13 CFR 121.201, NAICS code 517110 (changed from 513310 in Oct. 2002).

[19] "Trends in Telephone Service" at Table 5.3.

[20] 13 CFR 121.201, NAICS code 517310 (changed from 513330 in Oct. 2002).

[21] "Trends in Telephone Service" at Table 5.3.

[22] 13 CFR 121.201, NAICS code 513321 (changed to 517211 in October 2002).

[23] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[24] U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000).

[25] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1000 employees or more."

[26] U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000).

[27] Id. The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1000 employees or more."

[28] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[29] U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000).

[30] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1000 employees or more."

[31] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, page 5–5 (August 2003). This source uses data that are current as of December 31, 2001.

[32] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, page 5–5 (August 2003). This source uses data that are current as of December 31, 2001.

[33] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[34] U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000).

[35] Id. The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1000 employees or more."

[36] Amendment of Part 90 of the Commission's Rules To Provide for the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service, PR Docket No. 89–552, Third Report and Order and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 10943, 11068–70, 62 FR 16004 (April 3, 1997), paras. 291–295.

[37] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from A. Alvarez, Administrator, SBA (Dec. 2, 1998).

[38] "Revision of Part 22 and Part 90 of the Commission's Rules To Facilitate Future Development of Paging Systems," Memorandum Opinion and Order on Reconsideration and Third

Continued

Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000.[39] Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. According to the most recent *Trends in Telephone Service*, 433 carriers reported that they were engaged in the provision of paging and messaging services.[40] Of those, we estimate that 423 are small, under the SBA approved small business size standard.[41]

Wireless Communications Services. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services auction. A "small business" is an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" is an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these small business size standards.[42] The Commission auctioned geographic area licenses in the wireless communications services. In the auction, there were seven winning bidders that qualified as "very small business" entities, and one that qualified as a "small business" entity.

Wireless Telephony. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted earlier, the SBA has developed a small business size standard for "Cellular and Other Wireless Telecommunications" services.[43] Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.[44] According to the most recent *Trends in Telephone Service* data, 719 carriers reported that they were engaged in the provision of wireless telephony.[45] We have estimated that 294 of these are small under the SBA small business size standard.

Broadband Personal Communications Service. The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years.[46] For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years."[47] These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.[48] No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.[49] On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In addition, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

Cable Operators

61. *Cable and Other Program Distribution.* This category includes cable systems operators and other program distribution services. The SBA has developed small business size standard for this census category, which includes all such companies generating $12.5 million or less in revenue annually.[50] According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year.[51] Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein.

Cable System Operators (Rate Regulation Standard). The Commission has developed its own small business size standard for cable system operators, for purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.[52] The most recent estimates indicate that there were 1,439 cable operators who qualified as small cable system operators at the end of 1995.[53] Since then, some of those companies may

Report and Order, 14 FCC Rcd 10030, at paragraphs 98–107 (1999).

[39] Revision of Part 22 and Part 90 of the Commission's Rules To Facilitate Future Development of Paging Systems, Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, 10085 para. 98 (1999).

[40] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, page 5–5 (August 2003). This source uses data that are current as of December 31, 2001.

[41] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, page 5–5 (August 2003). This source uses data that are current as of December 31, 2001.

[42] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from A. Alvarez, Administrator, Small Business Administration (December 2, 1998).

[43] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[44] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[45] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, page 5–5 (August 2003). This source uses data that are current as of December 31, 2001.

[46] *See* Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96–59, Report and Order, 11 FCC Rcd 7824, 61 FR 33859 (July 1, 1996); *see also* 47 CFR 24.720(b).

[47] *See* Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96–59, Report and Order, 11 FCC Rcd 7824, 61 FR 33859 (July 1, 1996).

[48] *See. e.g.*, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, Fifth Report and Order, 9 FCC Rcd 5332, 59 FR 37566 (July 22, 1994).

[49] FCC News, Broadband PCS, D, E and F Block Auction Closes, No. 71744 (released January 14, 1997). *See also* Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, WT Docket No. 97–82, Second Report and Order, 12 FCC Rcd 16436, 62 FR 55348 (October 24,1997).

[50] 13 CFR 121.201, North American Industry Classification System (NAICS) code 513220 (changed to 517510 in October 2002).

[51] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 513220 (issued October 2000).

[52] 47 CFR 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of $100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393 (1995), 60 FR 10534 (Feb. 27, 1995).

[53] Paul Kagan Associates, Inc., *Cable TV Investor*, February 29, 1996 (based on figures for December 30, 1995).

have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are now fewer than 1,439 small entity cable system operators that may be affected by the rules and policies adopted in the NPRM.

Cable System Operators (Telecom Act Standard). The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." [54] The Commission has determined that there are 67,700,000 subscribers in the United States.[55] Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[56] Based on available data, the Commission estimates that the number of cable operators serving 677,000 subscribers or fewer, totals 1,450.[57] The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million,[58] and therefore are unable, at this time, to estimate more accurately the number of cable system operators that would qualify as small cable operators under the size standard contained in the Communications Act of 1934.

Internet Service Providers

62. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers ("ISPs"). ISPs "provide clients access to the Internet and generally provide related services such as Web hosting, Web page designing, and hardware or software consulting related to Internet connectivity." [59] Under the SBA size standard, such a business is small if it has average annual receipts of $21 million or less.[60] According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for the entire year.[61] Of these, 2,659 firms had annual receipts of under $10 million, and an additional 67 firms had receipts of between $10 million and $24, 999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

63. The proposed rules require that telecommunications carriers providing Internet broadband access and managed VoIP services be CALEA-compliant.[62] The proposed rules also limit extensions of compliance deadlines under CALEA § 107(c), which authorizes extensions if technology is not available to carriers to meet the assistance capability requirements of CALEA § 103.[63] We also note that telecommunications carriers, including small entities, may petition the Commission under CALEA § 109(b) and argue that CALEA compliance is not reasonably achievable for a variety of reasons, including a carrier's financial resources.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

64. 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.[64]

We also note that telecommunications carriers, including small entities, may petition the Commission under CALEA § 109(b) and argue that CALEA compliance is not reasonably achievable for a variety of reasons, including a carrier's financial resources. We believe that this provision safeguards small entities from any significant adverse economic impacts of CALEA compliance. We are unaware of any alternatives that would better safeguard small entities, but we solicit comment on any such alternatives.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

65. None.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–20705 Filed 9–22–04; 8:45 am]

BILLING CODE 6712–01–P

[54] 47 U.S.C. 543(m)(2).

[55] See FCC Announces New Subscriber Count for the Definition of Small Cable Operator, Public Notice DA 01–158 (Jan. 24, 2001).

[56] 47 CFR 76.901(f).

[57] *See* FCC Announces New Subscriber Count for the Definition of Small Cable Operators, Public Notice, DA–01–0158 (rel. January 24, 2001).

[58] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to 76.901(f) of the Commission's rules. *See* 47 CFR 76.909(b).

[59] U.S. Census Bureau, "2002 NAICS Definitions: 518111 Internet Service Providers" (Feb. 2004) *www.census.gov.*

[60] 13 CFR 121.201, NAICS code 518111 (changed from previous code 514191, "On-Line Information Services," in Oct. 2002).

[61] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 514191 (issued Oct. 2000).

[62] *See* ¶¶ 1, 13, 20, and 0, *supra.*

[63] *See* ¶¶ 2 and 39, *supra.*

[64] 5 U.S.C. 603(c).

Notices

Federal Register
Vol. 69, No. 184
Thursday, September 23, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section..

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 17, 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.

Animal Plant and Health Inspection Service

Title: Mexicali Valley-Karnal Bunt.
OMB Control Number: 0579–0132.
Summary of Collection: The Department of Agriculture is responsible for preventing plant diseases or insect pests from entering the United States, preventing the spread of pests not widely distributed in the United States, and eradicating those imported when eradication is feasible. The Plant Protection Act authorizes the Department to carry out this mission. Regulations in 7 CFR 319.59 through 319.59–2 restrict the importation into the U.S. of certain seeds, plants, and plant products from certain countries or localities in order to prevent an incursion of Karnal bunt (a fungal disease of wheat) into the U.S. Wheat and other wheat-related articles offered for entry from the Karnal bunt free zone of the Mexicali Valley would need to be accompanied by a phytosanitary certificate issued by the Mexican plant protection authorities. This certificate would state that the wheat or other articles were grown in the designated Karnal bunt free area of the Mexicali Valley.
Need and Use of the Information: The collected information contained on the signed phytosanitary certificate by Mexico's national plant protection official is used to ensure that wheat imported into the U.S. is free of Karnal bunt. If the information is not collected, introduction of Karnal bunt into the United States could cause millions of dollars in damage to U.S. wheat crops, as well as additional millions of dollars to eradicate.
Description of Respondents: Business or other for profit; Individuals or households; Farms.
Number of Respondents: 20.
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 120.

Animal and Plant Health Inspection Service

Title: Animal Welfare; Transportation of Animals on International Carriers.
OMB Control Number: 0579–0247.
Summary of Collection: Under the Animal Welfare Act (AWA) (U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, and carriers and intermediate handlers. The Secretary has delegated the responsibility for administering the AWA to the Administrator of the Animal and Plant Health Inspection Service (APHIS). APHIS intends to begin applying the AWA regulations and standards for the human transportation of animals in commerce to all international carriers operating within the United States, its territories, possessions, or the District of Columbia. APHIS believes that animals being transported by international carriers should be afforded the same protection under the AWA as if domestic carriers were transporting them.
Need and Use of the Information: APHIS will collect information using APHIS forms 7001, United States Interstate and International Certificate of Health Examination for Small Animals and 7011, Application for Registration. The information collected from the forms is necessary for carriers and intermediate handlers to properly care for and deliver the animals to destination in a speedy and humane manner. The information is also used in documenting instances of violations for possible legal action and for locating facilities or person who are evading regulations under the law. If the information were not collected, full enforcement of the AWA would be limited or totally ineffective.
Description of Respondents: Individuals or households; Not-for-profit institutions.
Number of Respondents: 20.
Frequency of Responses: Recordkeeping; Reporting: On occasion.
Total Burden Hours: 175.

Food Safety and Inspection Service

Title: Marking, Labeling, and Packaging of Meat, and Egg Products.
OMB Control Number: 0583–0092.
Summary of Collection: These statues: Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*) mandate that Food Safety and Inspection Service (FSIS) protect the public by ensuring that meat, poultry, and egg products are safe, wholesome,

unadulterated, and properly labeled and packaged. To control the manufacture of marking devices bearing official marks, FSIS requires that official meat and poultry establishments and the manufacturers of such marking devices complete FSIS form 5200–7, Authorization Certificate, and FSIS form 7234–1, Application for Approval of Labels, Marking or Device.

Need and Use of the Information: FSIS will collect information to ensure that meat and poultry product are accurately labeled. FSIS will also collect the following information: Establishment number, company name and address, name of product, action requested of FSIS, size of label, product formulation, special processing procedures, and a signature on the form.

Description of Respondents: Business or other for-profit.

Number of Respondents: 7,444.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 82,348.

Rural Business-Cooperative Service

Title: Value-Added Producer Grants.

OMB Control Number: 0570–0039.

Summary of Collection: The Rural Business-Cooperative Service (RBS), an agency within the USDA Rural Development mission area, will administer the Value-Added Producer Grants Program. The program is authorized by the Agriculture Risk Protection Act of 2000 (Public Law 106–224) as amended by the Farm Security and Rural Investment Act of 2002 (Farm Bill) (Public Law 107–171). The objective of this program is to encourage producers of agricultural commodities and products of agricultural commodities to further refine these products increasing their value to end users of the product. These grants will be used for two purposes: (1) To fund feasibility studies, marketing and business plans, and similar development activities; (2) to use the grant as part of the venture's working capital fund. Grants will only be awarded if projects or ventures are determined to be economically viable and sustainable.

Need and Use of the Information: RBS will use the information collected to determine: (1) Eligibility; (2) the specific purpose for which the funds will be utilized; (3) time frames or dates by which activities are to be accomplished; (4) feasibility of the project; (5) applicants' experience in managing similar activities; and (6) the effectiveness and innovation used to address critical issues vital to value-added ventures development and sustainability. Without this information, there would be no basis on which to award funds.

Description of Respondents: Business or other for-profit.

Number of Respondents: 800.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 34,040.

Rural Utilities Service

Title: Weather Radio Transmitter Grant Program.

OMB Control Number: 0572–0124.

Summary of Collection: The National Weather Service operates an All Hazards Early Warning System that alerts people in areas covered by its transmissions of approaching dangerous weather and other emergencies. The National Weather Service can typically provide warnings of specific weather dangers up to fifteen minutes prior to the event. At present, many rural areas lack National Oceanic and Atmospheric Administration's Weather Radio and Alert System (NOAA) Weather Radio coverage. The Weather Radio Transmitter Grant Program will provide grant funds for use in rural areas and communities of 50,000 or less inhabitant. The grant funds will be processed on a first-come basis until the appropriation is used in its entirety.

Need and Use of the Information: RUS will use the information from the submission to determine the following: (1) That adequate coverage in the area does not already exist and that the proposed coverage will meet the needs of the community; (2) that design requirements are met; and (3) that the funds needed to complete the project are adequate based on the grant and the matching portion from the applicant.

Description of Respondents: Not for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 113.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 678.

Rural Utilities Service

Title: 7 CFR 1777, Section 306C Water & Waste Disposal (WWD) Loans & Grants.

OMB Control Number: 0572–0109.

Summary of Collection: Rural Utilities Service is authorized to make loans and grants under Section 306C of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926c). This program funds facilities and projects in low income rural communities whose residents face significant health risks. These communities do not have access to or are not served by adequate affordable water supply systems or waste disposal facilities. The loans and grants will be available to provide water and waste disposal facilities and services to these communities.

Need and Use of the Information: Eligible applicants submit an application package and other information to Rural Development field offices. Applicants may use the funds in two ways: (1) To develop or improve community water and waste disposal systems; (2) to make loans or grants to individuals for extending service lines to residences, connecting residence plumbing to the applicant's system, or improving residences to use the water or waste disposal system.

Description of Respondents: Not-for-profit institutions; Individuals or households.

Number of Respondents: 1.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 9.

Rural Housing Service

Title: Form RD 1940–59, Settlement Statement.

OMB Control Number: 0575–0088.

Summary of Collection: The Real Estate Settlement Procedures Act (RESPA), as amended, requires the disclosure of real estate settlement costs to real estate buyers and sellers. Disclosure of the nature and costs of a mortgage transaction enables the borrower to be a more informed customer and protects the public from unnecessarily high settlement charges. Failure to collect and disclose the information would be a violation of the RESPA. Form RD 1940–59, "Settlement Statement," provides the buyer and the seller with a statement detailing the actual costs of the settlement services involved in certain Agency financed real estate transactions.

Need and Use of the Information: Form RD 1940–49 is completed by Settlement Agents, Closing Attorneys, and Title Insurance Companies performing the closing of RHS loans and credit sales used to purchase or refinance Section 502 Housing, Rural Rental Housing, and Farm Laboring Housing. The same parties performing the closing of FSA Farm Ownership loans and credit sales complete the form. Without this information, the agency would be unable to determine, if RESPA requirements are met.

Description of Respondents: Business or other profit.

Number of Respondents: 14,909.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 7,455.

Sondra Blakey,

Departmental Information Collection Clearance Officer.

[FR Doc. 04–21352 Filed 9–22–04; 8:45 am]

BILLING CODES 3410–34–P, 3410–DM–P, 3410–XT–P, 3410–15–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–048–1]

Notice of Request for Emergency Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: New information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces that the Animal and Plant Health Inspection Services has submitted to the Office of Management and Budget a request for emergency review and approval of an information collection associated with a national animal identification system.

DATES: We will consider all comments that we receive on or before October 3, 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. 04–048–1 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. 04–048–1.

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. 04–048–1" 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 national animal identification system, contact Mr. Neil Hammerschmidt, Animal Identification Coordinator, Eradication and Surveillance Team, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737; (301) 734–5571, or Dr. John Wiemers, National Animal Identification Coordinator, Eradication and Surveillance Team, National Center for Animal Health Programs, VS, APHIS, 2100 S. Lake Storey Road, Galesburg, IL 61401; (309) 344–1942. 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: National Animal Identification System.

OMB Number: 0579–XXXX.

Type of Request: Emergency approval of a new information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) regulates the importation and interstate movement of animals and animal products and conducts various other activities to protect the health of our Nation's livestock and poultry.

Animal disease outbreaks around the globe over the past decade, and the detection of an imported cow infected with bovine spongiform encephalopathy in Washington State in December 2003, have intensified the public interest in developing a national animal identification program for the purpose of protecting animal health.

Fundamental to controlling any disease threat, foreign or domestic, to the Nation's animal resources is to have a system that can identify individual animals or groups, the premises where they are located, and the date of entry to each premises. Further, in order to achieve optimal success in controlling or eradicating an animal health threat, the timely retrieval of this information and implementation of intervention strategies after confirmation of a disease outbreak is necessary.

While there is currently no nationwide animal identification system in the United States for all animals of a given species, some segments of certain species are required to be identified as part of current program disease eradication activities. In addition, some significant regional voluntary identification programs are in place, and others are currently being developed and tested.

A national animal identification system, being implemented by USDA at present on a voluntary basis, is intended to identify all livestock, as well as record their movements over the course of their lifespans. USDA's goal is to create an effective, uniform, consistent, and efficient national system that, when fully implemented, will allow traces to be completed within 48 hours of detection of a disease, ensuring rapid containment of the disease.

This program will involve a number of information collection and recordkeeping activities including nonproducer participant, individual animal, and animal group identifications; premises identifications; individual transaction records; and group/lot movement records. APHIS has submitted a request to the Office of Management and Budget (OMB) for emergency approval of the information collection activities associated with the national animal identification system.

Please send written comments on the emergency approval request to the following addresses: (1) Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503; and (2) Docket No. 04–048–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 04–048–1 and send your comments within 10 days of publication of this notice. All comments will become a matter of public record.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. 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; Public reporting burden for this collection of information is estimated to average 0.1911198 hours per response.

Respondents: State animal health authorities; federally recognized tribal governments; owner/operators of feedlots, markets, buying stations, and slaughter plants; producers; and nonproducer participants, such as accredited veterinarians, animal identification (ID) number managers (individuals or firms responsible for assigning animal ID numbers to producers), animal identification ID companies (companies that manufacture animal identification tags, microchips, or other animal ID devices), third party service providers (companies that provide herd management, dairy herd improvement, genetic evaluation, and other services to producers), and diagnostic laboratories and livestock buyers/dealers who submit data to the national database.

Estimated annual number of respondents: 495,055.

Estimated annual number of responses per respondent: 10.0991.

Estimated annual number of responses: 4,999,610.

Estimated total annual burden on respondents: 505,560 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.)

Done in Washington, DC, this 17th day of September 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E4–2344 Filed 9–22–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–087–1]

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 swine health protection program.

DATES: We will consider all comments that we receive on or before November 22, 2004.

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

EDOCKET: Go to *http://www.epa.gov/feddocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the "View Open APHIS Dockets" link to locate this document.

Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 04–087–1, 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. 04–087–1.

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. 04–087–1" 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 swine health protection program, contact Dr. John Korslund, Staff Veterinarian (Swine Health), Eradication and Surveillance Team, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale MD 20737; (301) 734–5914. 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: Swine Health Protection.

OMB Number: 0579–0065.

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 preventing the spread of contagious, infectious, or communicable diseases of livestock or poultry from one State to another and for eradicating such diseases from the United States when feasible.

The Swine Health Protection Act prohibits the feeding of garbage to swine unless the garbage has been treated to kill disease organisms. Untreated garbage is one of the primary media through which numerous infectious and communicable diseases can be transmitted to swine. Therefore, APHIS' regulations promulgated under the Swine Health Protection Act, which are located at 9 CFR part 166, require that before garbage may be fed to swine, it must be treated at a facility holding a valid permit to treat the garbage and must be treated according to the regulations.

APHIS requires certain information in order to license (issue a permit to) a facility to operate and in order to monitor the facility for compliance with the regulations. This information is collected from applications for a license to operate a garbage treatment facility, records of the destination and date of removal of all food waste or garbage from the treatment facility, and food waste reports. With this information, we are able to carefully monitor garbage treatment facilities to ensure that they are meeting our requirements. The information provided by these information collection activities is critical in preventing the interstate spread of various swine diseases and, therefore, plays a vital role in our swine health protection program.

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 this information collection. 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 1.2359271 hours per response.

Respondents: Owners/operators (licensees) of garbage treatment facilities, State animal health authorities, and herd owners.

Estimated annual number of respondents: 347.

Estimated annual number of responses per respondent: 3.481268.

Estimated annual number of responses: 1,208.

Estimated total annual burden on respondents: 1,493 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 16th day of September 2004.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E4–2345 Filed 9–22–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 01–009–7]

Wildlife Services; Availability of a Supplemental Environmental Assessment and Decision/Finding of No Significant Impact for Oral Rabies Vaccination Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: We are advising the public that we have prepared a supplemental environmental assessment and proposed decision/finding of no significant impact relative to oral rabies vaccination programs in several States. Since the publication of our original environmental assessment and decision/finding of no significant impact (2001), a subsequent supplemental decision/finding of no significant impact (2002), a supplemental environmental assessment and decision/finding of no significant impact (2003), and an environmental assessment and decision/finding of no significant impact (2004) concerning expansion to National Forest System lands, we have determined there is a need to further expand the oral rabies vaccination program to include 26 States and the District of Columbia to effectively stop the westward and northward spread of the rabies virus across the United States and into Canada. The purpose of the supplemental environmental assessment and proposed decision/finding of no significant impact is to facilitate planning, interagency coordination, and program management and to provide the public with our analysis of potential individual and cumulative impacts of an expanded oral rabies vaccination program.

DATES: We will consider all comments that we receive on or before October 25, 2004. Unless we determine that new substantial issues bearing on the effects of the proposed expansion of the oral rabies vaccination programs have been raised by public comments on this notice, the proposed decision/finding of no significant impact will become final and take effect upon the close of the comment period.

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. 01–009–7, 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. 01–009–7.
- 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. 01–009–7" 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 the documents discussed in this notice, as well as any comments that we receive, 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.

To obtain copies of any of the documents discussed in this notice, contact Tara Wilcox, Operational Support Staff, WS, APHIS, 4700 River Road Unit 87, Riverdale, MD 20737–1234; phone (301) 734–7921, fax (301) 734–5157, or e-mail: *Tara.C.Wilcox@aphis.usda.gov*. When requesting copies, please specify the document or documents you wish to receive.

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

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Slate, National Rabies Program Coordinator, Wildlife Services, APHIS, 59 Chennell Drive, Suite 7, Concord, NH 03301–8548; phone (603) 223–9623.

SUPPLEMENTARY INFORMATION:

Background

The Wildlife Services (WS) program in the Animal and Plant Health Inspection Service (APHIS) cooperates with Federal agencies, State and local governments, and private individuals to research and implement the best methods of managing conflicts between wildlife and human health and safety, agriculture, property, and natural resources. Wildlife-borne diseases that can affect domestic animals and humans are among the types of conflicts that APHIS–WS addresses. Wildlife is the dominant reservoir of rabies in the United States.

On December 7, 2000, a notice was published in the **Federal Register** (65 FR 76606–76607, Docket No. 00–045–1) in which the Secretary of Agriculture declared an emergency and transferred funds from the Commodity Credit Corporation to APHIS–WS for the continuation and expansion of oral rabies vaccination (ORV) programs to address rabies in the States of Ohio, New York, Vermont, Texas, and West Virginia.

On March 7, 2001, we published a notice in the **Federal Register** (66 FR 13697–13700, Docket No. 01–009–1) to

solicit public involvement in the planning of a proposed cooperative program to stop the spread of rabies in the States of New York, Ohio, Texas, Vermont, and West Virginia. The notice also stated that a small portion of northeastern New Hampshire and the western counties in Pennsylvania that border Ohio could also be included in these control efforts, and discussed the possibility of APHIS–WS cooperating in smaller-scale ORV projects in the States of Florida, Massachusetts, Maryland, New Jersey, Virginia, and Alabama. The March 2001 notice contained detailed information about the history of the problems with raccoon rabies in eastern States and with gray fox and coyote rabies in Texas, along with information about previous and ongoing efforts using ORV baits in programs to prevent the spread of the rabies variants or "strains" of concern.

Subsequently, on May 17, 2001, we published in the **Federal Register** (66 FR 27489, Docket No. 01–009–2) a notice in which we announced the availability, for public review and comment, of an environmental assessment (EA) that examined the potential environmental effects of the ORV programs described in our March 2001 notice. We solicited comments on the EA for 30 days ending on June 18, 2001. We received one comment by that date. The comment was from an animal protection organization and supported APHIS' efforts toward limiting or eradicating rabies in wildlife populations. The commenter did not, however, support the use of lethal monitoring methods or local depopulation as part of an ORV program.

Finally, on August 30, 2001, we published a notice in the **Federal Register** (66 FR 45835–45836, Docket No. 01–009–3) in which we advised the public of APHIS' decision and finding of no significant impact (FONSI) regarding the use of oral vaccination to control specific rabies virus strains in raccoons, gray foxes, and coyotes in the United States. That decision allows APHIS–WS to purchase and distribute ORV baits, monitor the effectiveness of ORV programs, and participate in implementing contingency plans that may involve the reduction of a limited number of local target species populations through lethal means (*i.e.*, the preferred alternative identified in the EA). The decision was based upon the final EA, which reflected our review and consideration of the comments received from the public in response to our March 2001 and May 2001 notices and information gathered during planning/scoping meetings with State health departments, other State and local agencies, the Ontario Ministry of Natural Resources, and the Centers for Disease Control and Prevention.

Following the August 2001 publication of our original decision/FONSI, we determined there was a need to expand ORV programs to include the States of Kentucky and Tennessee in order to effectively stop the westward spread of raccoon rabies. Accordingly, we prepared a supplemental decision/FONSI to document the potential effects of expanding the programs. We published a notice announcing the availability of the supplemental decision/FONSI in the **Federal Register** on July 5, 2002 (67 FR 44797–44798, Docket No. 01–009–4).

Following the publication of the supplemental decision/FONSI in July 2002, we determined the need to further expand the ORV program to include the States of Georgia and Maine to effectively prevent the westward and northward spread of the rabies virus across the United States and into Canada. To facilitate planning, interagency coordination, and program management and to provide the public with our analysis of potential individual and cumulative impacts of the expanded ORV programs, we prepared a supplemental EA that addressed the inclusion of Georgia and Maine, as well as the 2002 inclusion of Kentucky and Tennessee, in the ORV program. In addition, we prepared a new decision/FONSI based on the supplemental EA that was published in the **Federal Register** on June 30, 2003 (68 FR 38669–38670, Docket No. 01–009–5).

Following the publication of the supplemental EA and decision/FONSI in June 2003, we determined the need to further expand the ORV program to portions of National Forest System lands, excluding Wilderness Areas, within several eastern States. APHIS–WS involvement was expanded to include National Forest System lands located within the States of Maine, New York, Vermont, New Hampshire, Pennsylvania, Ohio, Virginia, West Virginia, Tennessee, Kentucky, Alabama, Georgia, Florida, North Carolina, South Carolina, Massachusetts, Maryland, and New Jersey. Numerous National Forest System lands are located within current and potential ORV barrier zones. To effectively combat this strain of the rabies virus, it became increasingly important to bait these large land masses. We prepared an EA, in cooperation with the USDA-Forest Service, which addressed the expansion of National Forest System lands in the ORV program. In addition, we prepared a decision/FONSI based on the EA that was published in the **Federal Register** on February 20, 2004 (69 FR 7904–7905, Docket No. 01–009–6).

Recently, we have determined the need to further expand the ORV program to include 26 States and the District of Columbia to effectively prevent the westward and northward spread of the rabies virus across the United States and into Canada. The States where APHIS–WS involvement would be continued or expanded include: Alabama, Connecticut, Delaware, Florida, Georgia, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, and West Virginia. The programs' primary goals are to stop the spread of specific raccoon (eastern States), gray fox (Texas), and coyote (Texas) rabies variants or "strains" of the rabies virus.

The August 2001 EA and decision/FONSI, the July 2002 supplemental decision/FONSI, the June 2003 supplemental EA and decision/FONSI, the February 2004 EA and decision/FONSI, and this supplemental EA and decision/FONSI for expanded ORV program activities in 26 States and the District of Columbia that are the subject of this notice have been 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 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 16th day of September 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E4–2346 Filed 9–22–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket 04–095–1]

Big Cat Symposia; Animal Care

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of informational meetings.

SUMMARY: This is a notice to animal exhibitors, dealers, transporters, researchers, animal protection groups, industry groups, and other interested persons that we are holding a series of educational symposia to present current information on the care and maintenance of exotic big cats. This notice provides the agenda for the symposia and information on the location and dates of the final two symposia.

DATES: The next symposium will be held in Bridgeton, MO, on Wednesday, October 27, 2004. The following symposium will be held in Riverdale, MD, on Wednesday, December 8, 2004. Each symposium will be held from 8 a.m. to 5 p.m. Registration information is provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

ADDRESSES: The symposia will be held at the following locations:

1. Bridgeton, MO: Crowne Plaza St. Louis Airport Hotel, 11228 Lone Eagle Drive, Bridgeton, MO 63044, (314) 291–6700.

2. Riverdale, MD: USDA Center at Riverside, 4700 River Road, Riverdale, MD 20737, (301) 734–7833.

FOR FURTHER INFORMATION CONTACT: For further information on the agenda of the symposia, contact Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7833.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS), Animal Care, has been hosting a series of educational symposia on the care and maintenance of exotic big cats. The symposia are designed to provide a forum for information dissemination on various topics that are key to the successful management and handling of exotic big cats. These symposia have been held in locations across the country to facilitate attendance by most of our regulated parties that maintain these animals.

The first of these meetings was held on March 26, 2003, in Fort Worth, TX. On April 30, 2003, the second meeting was held in Las Vegas, NV. The third meeting was held November 19, 2003, in Columbus, OH, and the fourth on January 7, 2004, in Sarasota, FL. The final two symposia of this series will be held at the Crowne Plaza St. Louis Airport Hotel, 11228 Lone Eagle Drive, Bridgeton, MO, on October 27, 2004, and at the USDA Center at Riverside, 4700 River Road, Riverdale, MD, on December 8, 2004.

The symposia have been developed to provide current information and ideas on a variety of topics. Each symposium will, with the exception of possible minor modifications, follow the same agenda. The symposia will start with general session, followed by breakout sessions allowing more interaction between speakers and attendees. The agenda for these symposia is:

7:30 a.m. to 8:30 a.m.—Registration.
8 a.m. to 11:30 a.m.—General Session:
  Welcome.
  Nutrition.
  Veterinary Care and Tranquilization.
  Transportation.
  New Training Methods.
11:30 a.m. to 1 p.m.—Lunch (on own).
1 p.m. to 2:30 p.m.—Concurrent Breakout Session #1:
  Explaining APHIS Regulations.
  Nutrition.
  Training.
2:45 p.m. to 4:15 p.m.—Concurrent Breakout Session #2:
  Transportation/Good and Not so Good.
  Veterinary Care Issues.
  Heat Budgets and Shade (avoiding overheating and overcooling).
4:15 p.m. to 5 p.m.—Questions and Answers and Closing.

Notice of these symposia is being sent to current Animal Welfare Act licensees with exotic big cats and may be viewed on the Animal Care Web site at *http://www.aphis.usda.gov/ac*. Copies of the brochure prepared for the symposia can be requested by calling our headquarters at (301) 734–7833 or by e-mailing the request to *ACE@aphis.usda.gov*.

Please note that these symposia are being held to provide and disseminate information on the care and maintenance of big exotic cats under the Animal Welfare Act. There will be no opportunity at these symposia to submit formal comments on proposed rules or other regulatory initiatives.

Registration

As seating for each symposium is limited, we request that you preregister by calling (301) 734–7833 or by e-mailing Animal Care at *ACE@aphis.usda.gov*. Please identify the symposium you will be attending and provide your name, number of attendees, phone number, e-mail address, or other contact address. This information is needed so that we may inform registrants in a timely manner in the event of any changes to the meeting schedule. The deadline for preregistration is October 1, 2004, for the Bridgeton symposium, and December 1, 2004, for the Riverdale symposium. On-site registration will take place from 7:30 a.m. to 8:30 a.m. on the date of each symposium.

Travel and Lodging Information

All attendees are responsible for making their own travel and lodging arrangements. No rooms have been reserved for attendees at symposium hotels or any other hotels.

Parking and Security Procedures for Riverdale Symposium

Please note that a fee of $2.25 is required to enter the parking lot at the USDA Center at Riverside. The machine accepts $1 bills or quarters.

Picture identification is required to be admitted into the building. Upon entering the building, visitors should inform security personnel that they are attending the Big Cat symposium.

Done in Washington, DC, this 17th day of September 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E4–2343 Filed 9–22–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

East Locust Creek Watershed, Putnam and Sullivan Counties, MO

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: Pursuant to section 102(2)(C) of the Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, North Central Missouri Regional Water Commission, the Locust Creek Watershed District, and the Sullivan County Soil and Water Conservation District give notice that an environmental impact statement (EIS) is being prepared for East Locust Creek Watershed, Putnam and Sullivan Counties, Missouri.

FOR FURTHER INFORMATION CONTACT: Roger A. Hansen, State Conservationist, or Harold L. Deckerd, Assistant State Conservationist, 601 Business Loop 70 West, Parkade Center, Suite #250, Columbia, MO 65203, (573) 876–0900.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Roger Hansen, NRCS State Conservationist, has determined that the preparation and review of an

environmental impact statement (EIS) is needed for this project.

This project involves construction of a multiple-purpose reservoir as a supplement to the on-going Public Law 83–566 East Locust Creek Watershed project. The project supplement will include one rural water supply reservoir with additional purposes of flood protection, recreation, and fish and wildlife habitat enhancement.

A draft EIS will be prepared and circulated for review by agencies and the public. The Natural Resources Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft EIS. A field investigation is scheduled for September 27 and 28, 2004, and additional planning Meetings will be scheduled as needed. Further information on the proposed action may be obtained from Harold Deckerd, Assistant State Conservationist, at the above address or telephone number.

Dated: September 16, 2004.

Roger A. Hansen,

State Conservationist.

[FR Doc. 04–21390 Filed 9–22–04; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

President's Export Council: Meeting of the President's Export Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The President's Export Council (PEC) will hold a full Council meeting to discuss topics related to export expansion. The meeting will include discussion of trade priorities and initiatives, the World Trade Organization, PEC subcommittee activity and proposed letters of recommendation. The PEC was established on December 20, 1973, and reconstituted May 4, 1979, to advise the President on matters relating to U.S. trade. It was most recently renewed by Executive Order 13316.

DATES: September 29, 2004.

TIME: 9 a.m. to 11 a.m.

ADDRESSES: Room 2237, Rayburn House Office Building, Washington, DC 20515. This program is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be submitted no later than September 20, 2004, to J. Marc Chittum, President's Export Council, Room 4043, Washington, DC 20230 (Telephone: 202–482–1124). Seating is limited and will be on a first come, first served basis.

FOR FURTHER INFORMATION CONTACT: J. Marc Chittum, President's Export Council, Room 4043, Washington, DC 20230 (Phone: 202–482–1124), or visit the PEC Web site, *http://www.ita.doc.gov/td/pec.*

Dated: September 20, 2004.

J. Marc Chittum,

Staff Director and Executive Secretary, President's Export Council.

[FR Doc. 04–21468 Filed 9–21–04; 12:05 pm]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 083104A]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Operation of an Offshore Oil and Gas Platform in the Beaufort Sea

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

ACTION: Notice of receipt of application for an incidental take authorization; request for comments and information.

SUMMARY: NMFS has received a request from BP Exploration (Alaska), 900 East Benson Boulevard, Anchorage, AK 99519 (BP) for renewal of an authorization to take small numbers of marine mammals incidental to operation of an offshore oil and gas platform at the Northstar facility in the Beaufort Sea in state waters. NMFS is considering whether to propose new regulations that would govern the incidental taking of small numbers of marine mammals under a Letter of Authorization (LOA) issued to BP. In order to promulgate regulations and issue an LOA, NMFS must determine that these takings will have a negligible impact on the affected species and stocks of marine mammals. NMFS invites comment on the application and suggestions on the content of the regulations.

DATES: Comments and information must be postmarked no later than October 25, 2004.

ADDRESSES: Comments on the application should be addressed to Steve Leathery, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning one of the contacts listed here. The mailbox address for providing email comments is *PR1.083104A@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: 083104A. Please use only one method for submitting comments. NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size. A copy of the application containing a list of the references used in this document may be obtained by writing to this address or by telephoning the contact listed here and is also available at:*http://www.nmfs.noaa.gov/prot_res/PR2/Small_Take/smalltake_info.htm#applications.*

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, 301–713–2055, ext. 128 or Brad Smith, NMFS, (907) 271–5006.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*)(MMPA) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if the Secretary finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and regulations are prescribed setting forth the permissible methods of taking and the requirements pertaining to the monitoring and reporting of such taking.

NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." Except for certain categories of activities not pertinent here, the MMPA defines "harassment" as any act of pursuit, torment, or annoyance which:

(i) has the potential to injure a marine mammal or marine mammal stock in the wild

[Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

In 1999, BP petitioned NMFS to issue regulations governing the potential taking of small numbers of whales and seals incidental to oil and gas development and operations in arctic waters of the United States. That petition was submitted pursuant to section 101(a)(5)(A) of the MMPA. Regulations were promulgated by NMFS on 25 May 2000 (65 FR 34014). These regulations authorize the issuance of annual LOAs for the incidental, but not intentional, taking of small numbers of marine mammals of six species in the event that such taking occurred during construction and operation of an oil and gas facility in the Beaufort Sea offshore from Alaska. The six species are the ringed seal (*Phoca hispida*), bearded seal (*Erignathus barbatus*), spotted seal (*Phoca largha*), bowhead whale (*Balaena mysticetus*), gray whale (*Eschrichtius robustus*), and beluga whale (*Delphinapterus leucas*). To date, LOAs have been issued on September 18, 2000 (65 FR 58265, September 28, 2000), December 14, 2001 (66 FR 65923, December 21, 2001), December 9, 2002 (67 FR 77750, December 19, 2002), and on December 4, 2003 (68 FR 68874, December 10, 2003). The current LOA expires on December 3, 2004. A fifth LOA will be requested by BP later in 2004 to cover the period through May 25, 2005, when the current regulations expire.

On August 30, 2004, BP requested a renewal of five-year regulations governing the take of small numbers of marine mammals incidental to operation of an offshore oil and gas platform at the Northstar facility in the Beaufort Sea in state waters. A copy of this application can be found at: *http://www.nmfs.noaa.gov/prot_res/PR2/Small_Take/smalltake_info.htm#applications*. The following sections summarize the information contained in the application.

Description of the Activity

BP is currently producing oil from an offshore development in the Northstar Unit. This development is the first in the Beaufort Sea that makes use of a subsea pipeline to transport oil to shore and then into the Trans-Alaska Pipeline System. The Northstar facility was built in State of Alaska waters approximately 6 miles (9.6 kilometers (km)) north of Point Storkersen and slightly less than 3.5 miles (5.5 km) from the closest barrier island. It is located adjacent to Prudhoe Bay, and is approximately 54 miles (87 km) northeast of Nuiqsut, an Inupiat community. The main facilities associated with Northstar include a gravel island work surface for drilling and oil production facilities, and two pipelines connecting the island to the existing infrastructure at Prudhoe Bay. One pipeline transports crude oil to shore, and the second imports gas from Prudhoe Bay for gas injection and power generation at Northstar. Permanent living quarters and supporting oil production facilities are also located on the island. The construction of Northstar began in early 2000 and continued through 2001. Well drilling began on December 14, 2000, and oil production commenced on October 31, 2001. The well-drilling program ended in May, 2004 and the drill rig is expected to be demobilized by barge during the 2004 or 2005 open-water period. Although future drilling is not specifically planned, additional wells or well work-over may be required at some time in the future. Oil production will continue beyond the period of the requested authorization.

Description of Marine Mammals Affected by the Activity

The following six species of seals and cetaceans can be expected to occur in the region of proposed activity and be affected by the Northstar facility: ringed, spotted and bearded seals, and bowhead, gray and beluga whales. General information on these species can be found in NMFS Stock Assessment Reports. These documents are available at: *http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html#Stock Assessment Reports*. More detailed information on these 6 species can be found in BP's application, which is available at: *http://www.nmfs.noaa.gov/prot_res/PR2/Small_Take/smalltake_info.htm#applications*.

In addition to these six species for which an incidental take authorization is sought, other species that may occur rarely in the Alaskan Beaufort Sea include the harbor porpoise (*Phocoena phocoena*), killer whale (*Orcinus orca*), narwhal (*Monodon monoceros*), and hooded seal (*Cystophora cristata*). Because of the rarity of these species in the Beaufort Sea, BP does not expect individuals of these species to be exposed to, or affected by, any activities associated with the planned Northstar activities. As a result, BP has not requested these species be included under its incidental take authorization. Two other marine mammal species found in this area, the Pacific walrus (*Odobenus rosmarus*) and polar bear (*Ursus maritimus*), are managed by the U.S. Fish and Wildlife Service (USFWS). Potential incidental takes of those two species will be the subject of a separate incidental take application by BP to the USFWS.

Potential Effects on Marine Mammals

The potential impacts of the planned offshore oil development at Northstar on marine mammals involve both acoustic and non-acoustic effects. The presence of facilities and personnel, and the unlikely occurrence of an oil spill, are potential sources of non-acoustic effects. Acoustic effects involve sounds produced by activities such as power generation and oil production on Northstar Island, heavy equipment operations on ice, impact hammering, drilling, and camp operations. Some of these sounds were more prevalent during the construction and drilling periods, and sound levels emanating from Northstar are expected to be reduced during the ongoing production period. During average ambient conditions, some activities are expected to be audible to marine mammals at distances up to 10 km (5.4 nautical miles (nm)) away. However, because of the poor transmission of on-island sounds into the water, and their low effective source levels, sounds from production operations are not expected to disturb marine mammals at distances beyond a few kilometers from the Northstar development.

Responses by pinnipeds to noise are highly variable. Responses observed to date by ringed seals during the ice-covered season are limited to short-term behavioral changes in close proximity to activities at Northstar. During the open-water season responses by ringed seals are expected to be even less than during the ice-covered season. A major oil spill is unlikely (please see response to comments 2 and 3 in 66 FR 65923 (December 21, 2001) for a discussion on potential for an oil spill to affect marine mammals in the Beaufort Sea), but the impact of an oil spill on seals could be lethal to some heavily oiled pups or adults. However, even in the unlikely event of a major spill, the overall impacts to seal populations would be minimal due to the small fraction of the population that would be exposed to, and seriously affected by, recently spilled oil.

Responses to Northstar by migrating bowhead and beluga whales would be short-term and limited due to the typically small proportion of whales

that migrate near Northstar and the relatively low levels of underwater sounds propagating seaward from the island at most times. The limited deflection effects that may occur would happen mainly when vessels are operating for prolonged periods near Northstar. An oil spill is unlikely and, if one occurred, it is even less likely to disperse into the main migration corridor for either whale species. The effects of oiling on bowhead and beluga whales are unknown, but could include fouling of baleen, irritation of the eye, skin, and respiratory tract (if heavily oiled).

Potential Impacts on Subsistence Use of Marine Mammals

Inupiat hunters emphasize that all marine mammals are sensitive to noise, and, therefore, they make as little noise as possible when hunting. Bowhead whales often show avoidance or other behavioral reactions to strong underwater noise near industrial activities, but often tolerate the weaker noise received when the same activities are occurring farther away. Various studies have provided information about these sound levels and distances (Richardson and Malme, 1993; Richardson et al., 1995a,b; Miller et al., 1999). However, scientific studies done to date have limitations, as discussed in part by Moore and Clarke (1992) and in Minerals Management Service (MMS, 1997). Inupiat whalers believe that some migrating bowheads are diverted by noises at greater distances than have been demonstrated by scientific studies (e.g., Rexford, 1996; MMS, 1997) The whalers have also mentioned that bowheads sometimes seem more skittish and more difficult to approach when industrial activities are underway in the area. There is also concern about the persistence of any deflection of the bowhead migration corridor, and the possibility that sustained deflection might influence subsistence farther "downstream" during the fall migration.

Underwater sounds associated with drilling and production operations have lower source levels than do the seismic pulses and drillship sounds that have been the main concern of the Inupiat hunters. Sounds from vessels supporting activities at Northstar will attenuate below ambient noise levels at closer distances than do seismic or drillship sounds. Thus, reaction distances for whales approaching Northstar are expected to be considerably shorter than those for whales approaching seismic vessels or drillships (BPXA, 1999).

Recently, there has been concern among Inupiat hunters that barges and other vessels operating within or near the bowhead migration corridor may deflect whales for an extended period (J.C. George, NSB-DWM, pers. comm to Williams). It has been suggested that, if the headings of migrating bowheads are altered through avoidance of vessels, the whales may subsequently maintain the "affected" heading well past the direct zone of influence of the vessel. This might result in progressively increasing deflection as the whale progresses west. However, crew boats and barges supporting Northstar remain well inshore of the main migration corridor, so this type of effect is unlikely to occur in response to Northstar-related vessel traffic.

Potential effects on subsistence could result from direct actions of oil development upon the biological resources or from associated changes in human behavior. For example, the perception that marine mammals might be contaminated or "tainted" by an oil spill could affect subsistence patterns whether or not marine mammals are actually contaminated. The BP application discusses both aspects in greater detail.

In past years, a Plan of Cooperation was negotiated between BP, the Alaska Eskimo Whaling Commission, and the North Slope Borough, and discussions regarding future agreements are on-going. A new Plan will address concerns relating to subsistence harvest of marine mammals in the region surrounding Northstar.

Mitigation

Mitigation proposed by BP includes avoidance of seal lairs by 100 m (328 ft) if new activities occur on the floating sea ice after 20 March or such other date in March specified by NMFS. In addition, BP proposes to mitigate potential acoustic effects that might occur due to exposure of whales or seals to strong pulsed sounds. If BP needs to conduct an activity capable of producing pulsed underwater sound with levels ≥180 or ≥190 dB re 1 µPa (rms) at locations where whales or seals could be exposed, BP proposes to monitor safety zones defined by those levels. Activities producing underwater sound levels ≥180 or ≥190 dB re 1 µPa (rms) would be temporarily shut down if whales and seals, respectively, occur within the relevant radii. The purposes of these mitigation measures are to minimize impacts to marine mammals and their habitat, and to ensure the availability of marine mammals for subsistence purposes.

Monitoring

The results of intensive studies and analyses to date (Richardson and Williams (eds), 2004) suggest that the biological effects of Northstar are subtle and equivocal, and small in the context of natural variation of the marine ecosystem.

The monitoring proposed by BP includes some research components to be implemented annually and others to be implemented on a contingency basis. Basking and swimming ringed seals would be counted annually by Northstar personnel in a systematic fashion to document the long-term stability of ringed seal abundance and habitat use near Northstar. BP proposes to monitor the bowhead migration in 2005 and subsequent years using two Directional Autonomous Seafloor Acoustic Recorders (DASARs) to record near-island sounds and two to record whale calls. If BP needs to conduct an activity capable of producing pulsed underwater sound with levels ≥180 or ≥190 dB re 1 µPa (rms) at locations where whales or seals could be exposed, BP proposes to monitor safety zones defined by those levels. The monitoring proposed would be used in estimating the numbers of marine mammals that may be disturbed (i.e., taken by Level B harassment), incidental to operations of Northstar.

Reporting

BP proposes to submit a single annual monitoring report, with the first report to cover the activities from May through October 2005, and subsequent reports to cover activities from November of one year through October of the next year. BP proposes that the first report, concerning May-October 2005, would be due on June 1, 2006. For subsequent years, it is proposed that the annual report (to cover monitoring during a 12–month November-October period) would be submitted on June 1st of the following year.

The annual reports would provide summaries of BP's Northstar activities. These summaries would include the following: dates and locations of ice-road construction, on-ice activities, vessel/hovercraft operations, oil spills, emergency training, and major repair or maintenance activities thought to alter the variability or composition of sounds in a way that might have detectable effects on ringed seals or bowhead whales. The annual reports would also provide details of ringed seal and bowhead whale monitoring, the monitoring of Northstar sound via the nearshore DASAR, estimates of the numbers of marine mammals exposed to project activities, descriptions of any

observed reactions, and documentation of any apparent effects on accessibility of marine mammals to subsistence hunters.

BP also proposes to submit a single comprehensive report on the monitoring results from mid–2005 to mid–2009 no later than 240 days prior to expiration of the regulations, i.e., by September 2009. That date assumes the regulations will become effective in May 2005 and expire in May 2010.

If specific mitigation is required for activities on the sea ice initiated after 20 March (requiring searches with dogs for lairs), or during the operation of strong sound sources (requiring visual observations and shut-down), then a preliminary summary of the activity, method of monitoring, and preliminary results would be submitted within 90 days after the cessation of that activity. The complete description of methods, results and discussion would be submitted as part of the annual report.

Any observations concerning possible injuries, mortality, or an unusual marine mammal mortality event would be transmitted to NMFS within 48 hours.

Request for Information

This notice is being published in conformance with NMFS regulations at 50 CFR 104(b)(1)(ii). NMFS requests interested persons to submit comments, information, and suggestions concerning the request and the structure and content of the regulations to allow the taking. NMFS will consider this information in developing proposed regulations. Prior to submitting comments, NMFS recommends reviewers of this document first read the responses to comments for the current regulations (see 65 FR 34014, May 25, 2000 and 66 FR 65923, December 21, 2001). If NMFS proposes regulations to allow this take, interested parties would be provided with a 45–day comment period within which to submit comments on the proposed rule.

Dated: September 17, 2004.

Laurie K. Allen,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–21400 Filed 9–22–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091604B]

Endangered Species; File No. 1486 and File No. 1505

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

ACTION: Receipt of applications for permits.

SUMMARY: Notice is hereby given of the following actions regarding permits for scientific research on shortnose sturgeon (*Acipenser brevirosturm*): NMFS has received a permit application from the South Carolina Department of Natural Resources, Freshwater Fisheries Section (Mr. Doug Cooke, Principal Investigator), P.O. Drawer 190, 305 Black Oak Road, Bonneau, SC 29431 (File No. 1505). NMFS has received a request to modify a permit application from Mr. Harold M. Brundage, Environmental Research and Consulting, Inc., 112 Commons Court, Chadds Ford, PA 19317 (File No. 1486).

DATES: Written or telefaxed comments must be received on or before October 25, 2004.

ADDRESSES: The applications and related documents are available for review upon written request or by appointment in the following office(s):

All documents: Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376.

For File No. 1486: Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371; and

For File No. 1505: Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

Written comments or requests for a public hearing on these applications should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on the particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing email comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: either File No. 1486 or File No. 1505.

FOR FURTHER INFORMATION CONTACT: Jennifer Jefferies or Dr. Tammy Adams, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permits are requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

File No. 1510: The South Carolina Department of Natural Resources seeks authorization to sample and track shortnose sturgeon in South Carolina coastal waters. Annually, up to 50 fish would be captured via gill nets, trot lines, and trawls, measured, weighed, PIT and dart tagged, tissue sampled for genetic testing and the fish subsequently released. A subset of 20 fish annually would also have a fin ray removed for aging studies, be outfitted with a radio/sonic transmitter and tracked and/or have gastric lavage performed on them. Additionally, the researchers would utilize drift nets and deploy buffer pads to collect up to 200 shortnose sturgeon eggs annually. A second study would be conducted specifically in the Santee-Cooper River system: annually, up to 48 fish would be captured via gill nets, trot lines, and trawls, measured, weighed, PIT and dart tagged, tissue sampled for genetic testing, blood sampled, sexed via laparascopy and the fish subsequently released. This research would be conducted for five years from issuance of the permit. A total of 2 incidental mortalities annually are requested.

File No. 1486: A notice of receipt of an application from Mr. Harold Brundage to conduct scientific research on shortnose sturgeon was published on May 27, 2004 (69 FR 30287). Mr. Brundage sought authorization to sample and track shortnose sturgeon in the Delaware River/Bay and Chesapeake Bay for five years. Annually, up to 3,500 fish in the Delaware system and up to 130 fish in the Chesapeake Bay were to be captured via gill nets and trawls, measured, weighed, PIT and floy T-bar tagged, tissue sampled, and the fish subsequently released. Additionally, up to 60 of the total fish sampled annually

in the Delaware system only were to also receive an internal sonic transmitter. The permit has not been issued yet but Mr. Brundage has amended his application to include the use of laparascopic techniques to assess the health and determine the sex of up to 50 fish annually in the Delaware system and Chesapeake Bay. This number is the total requested across both systems and is a subset of the fish listed above for capture. The laparascopic activities would be in addition to the activities listed above.

Dated: September 17, 2004.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–21401 Filed 9–22–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091304B]

Marine Mammals; File No. 87–1743

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

ACTION: Issuance of permit and notice of request for additional species.

SUMMARY: Notice is hereby given that Dr. Daniel Costa, Department of Biology and Institute of Marine Sciences, University of California, Santa Cruz, California 95064 has been issued a permit to conduct scientific research on northern elephant seals (*Mirounga angustirostris*). Notice is also given that California sea lions (*Zalophus californianus*) may be incidentally harassed during the research, and this activity is requested for inclusion in the permit.

DATES: Written, telefaxed, or e-mail comments must be received on or before October 25, 2004.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376.

Written comments or requests for a public hearing should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile to (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing email comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the applicable document identifier: File No. 87–1743.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: On April 7, 2004, notice was published in the **Federal Register** (69 FR 18352) that a request for a scientific research permit to take northern elephant seals had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216). The original notice and application did not include incidental harassment of California sea lions, which is requested for inclusion in the permit.

The permit authorizes continuation of a long-term study examining northern elephant seal population growth and status, mating and reproductive strategies, behavioral and physiological adaptations for diving, general physiology and metabolism, energetics of reproduction and foraging, sleep apnea, and sensory capacities. The permit will expire five years after the date of issuance.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an environmental assessment was prepared analyzing the effects of the research activities. After a Finding of No Significant Impact, the determination was made that it was not necessary to prepare an environmental impact statement.

Dated: September 17, 2004.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–21402 Filed 9–22–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 04–31]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/OPS–ADMIN, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 04–31 with attached transmittal and policy justification.

Dated: September 17, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

13 SEP 2004
In reply refer to:
I- 04/008876

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 04-31, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Israel for construction services estimated to cost $350 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

JEFFREY B. KOHLER
LIEUTENANT GENERAL, USAF
DIRECTOR

Enclosures:
1. Transmittal No. 04-31
2. Policy Justification

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 04-31

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser: Israel**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 0 million
Other	$350 million
TOTAL	$350 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: defense services for the continued construction of two infantry training bases and a storage and logistics base for a reserve-armored division. The U.S. Army Corps of Engineers will provide planning, design, acquisition, construction administration, and management services for this program.**

(iv) **Military Department: Army (HAK)**

(v) **Prior Related Cases, if any: FMS case HAC - $200 million - 28Mar00**

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none**

(viii) **Date Report Delivered to Congress: 13 SEP 2004**

* **as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Israel – Planning, Design, and Construction Services

The Government of Israel has requested a possible purchase of defense services for the continued construction of two infantry training bases and a storage and logistics base for a reserve-armored division. The U.S. Army Corps of Engineers will provide planning, design, acquisition, construction administration, and management services for this program. The estimated cost is $350 million.

The construction of the proposed bases is part of United States assistance to Israel in support of the Wye River Memorandum, a Middle East Peace agreement signed on October 23, 1998 (hereafter referred to as the "Wye River Accords").

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been, and continues to be, an important force for political stability and economic progress in the Middle East.

The implementation of the Wye River Accords necessitates that certain Israeli Defense Forces' military facilities, along with their respective units, be relocated from occupied territory in the West Bank. By providing military facilities in Israel, the proposed sale of defense construction services will assist Israel in relocating these military units. As the proposed sale will provide only facilities for relocating military units, it should have no adverse impact on the regional military balance.

The proposed sale partially implements United States commitments made to Israel in connection with the Wye River Accords.

The prime contractors for these additional facilities will be selected under a separate solicitation. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of 25 U.S. Government representatives to Israel for six years. There will be technical specialists on temporary basis to participate in training, program management and technical review.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 04–21322 Filed 9–22–04; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee location change.

SUMMARY: On Wednesday, July 14, 2004 (69 FR 42135) the Department of Defense announced closed meetings, of the Defense Science Board (DSB) Task Force on Critical Homeland Infrastructure Protection. The location of the October 4–5, 2004 meetings has been changed from SAIC, 4001 N. Fairfax Drive, Arlington, VA, 22201, to Altria Corp. Services, 120 Park Avenue, NY, 10017.

Dated: September 17, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–21320 Filed 9–22–04; 8:45 am]
BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Notice of Meeting

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on High Performance Microchip Supply will meet in closed session on September 21–22, 2004, at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. The Task Force will assess the implications of the movement of manufacturing capability and design of high performance microchips and will address the Department of Defense's (DoD) ability to obtain radiation hardened microchips, the ability to produce limited quantities of special purpose microchips in a timely and secure manner, and the ability to produce microchips in a timely manner to meet emerging needs.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology &

Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. Specifically, the Task Force will look at root causes associated with the migration of the manufacturing capability of high performance semiconductors; policies or technology investments that DoD, either alone or in conjunction with other U.S. Government agencies, can pursue which will influence the migration of manufacturing to foreign shores; alternatives to the creation of trusted foundries based on U.S. territory; whether testing is a viable alternative and if so, the level of assurance testing will provide to guarantee that only intended functions are built into the microchip; alternative manufacturing techniques which may allow overseas fabrication of the microchips and subsequent interconnect development in the U.S.; and further technologies which the U.S. may invest in to replace the current microchip technology.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. app. 2), it has been determined that these Defense Science Board Task Force meeting concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

Due to scheduling difficulties, there is insufficient time to provide timely notice required by section 10(a)(2) of the Federal Advisory Committee Act and subsection 101–6.1015(b) of the GSA Final Rule on Federal Advisory Committee Management, 41 CFR part 101–6, which further requires publication at least 15 calendar days prior to the meeting.

Dated: September 17, 2004.

L.M. Bynum,

[FR Doc. 04–21321 Filed 9–22–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

United States Marine Corps

Privacy Act of 1974; System of Records

AGENCY: United States Marine Corps, DoD.

ACTION: Notice to delete records systems.

SUMMARY: The U.S. Marine Corps (USMC) is deleting two systems of records notices from its inventory of records systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: The deletion will be effective on October 25, 2004 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Headquarters, U.S. Marine Corps, FOIA/PA Section (CMC–ARSE), 2 Navy Annex, Room 1005, Washington, DC 20380–1775.

FOR FURTHER INFORMATION CONTACT: Ms. Tracy D. Ross at (703) 614–4008.

SUPPLEMENTARY INFORMATION: The U.S. Marine Corps' records system notices for records systems 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 U.S. Marine Corps proposes to delete two systems of records notices from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The deletions 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 new or altered systems reports.

Dated: September 17, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

MMN00002

SYSTEM NAME:

Listing of Retired Marine Corps Personnel (August 17, 1999, 64 FR 44698).

REASON:

Records are now under the cognizance of the Defense Finance and Accounting Service (DFAS) and are being maintained under the DFAS Privacy Act system of records notice T7347b, entitled 'Defense Military Retiree and Annuity Pay System'.

MMN00016

SYSTEM NAME:

Accident and Injury Reporting System (April 26, 2002, 67 FR 20746).

REASON:

Records are now being maintained under the Department of the Navy Privacy Act system of records NM05100–4, entitled 'WESS Occupational>Injuries/Illnesses System'. This notice applies to all organizational elements of the Department of the Navy (DON), including the Marine Corps.

[FR Doc. 04–21326 Filed 9–22–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Common Request

AGENCY: Department of the Air Force.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Headquarters Air Force Services Agency (HQ AFSVA) announces a continuation of use to the existing Air Force Form (AF) 3211, Customer Comment Card and seeks public comment of the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 12, 2004.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to HQ AFSVA/SVOHL, Lodging Branch, 10100 Reunion Place, Suite 401, San Antonio, TX 78216–4138, ATTN: TSgt Pamela D. Cook.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call HQ AFSVA/SVOHL at (210) 652–8875 or by fax at (210) 652–7041.

Title, Form Number, and OMB Number: Customer Comments, AF Form 3211, OMB Number 0701–0146.

Needs and Uses: Each guest of Air Force Lodging and its contract lodging operations are provided access to AF Form 3211. The AF Form 3211 gives each guest the opportunity to comment on facilities and services received. Completion and return of the form is optional. The information collection requirement is necessary for Wing leadership to assess the effectiveness of their Lodging program.

Affected Public: AFI 34–246, Air Force Lodging Program, specifies who is an authorized guest in Air Force

Lodging. Some examples of the public include construction contractors and special guests of the Installation Commander.

Annual Burden: 16.67.

Number of Respondents: 200.

Responses per Respondent: 1.

Average Burden per Response: 5 minutes.

Frequency: On Occasion.

SUPPLEMENTARY INFORMATION: Respondents are authorized guests of Air Force Lodging. The AF Forms 3211 can be used for assessing background documentation/supporting material for all types of management decisions. Higher headquarters also reviews them during lodging assistance and Innkeeper Award competitions.

Pamela Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 04–21368 Filed 9–22–04; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Department of the Air Force, DoD.

ACTION: Notice.

In compliance with section 3506(c) (2) (A) of the Paperwork Reduction Act of 1995, the United States Air Force Academy, Office of the USAF Academy Admissions Liaison, announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 22, 2004.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Karen E. Parker, Director, Admissions Liaison, U.S. Air Force Academy Liaison Office, USAFA/CCL, Room 4C174, 1040 Air Force Pentagon, Washington, DC 20330–1040.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address.

Title, Form Number, and OMB Number: DD Form 1870, "Nomination for Appointment to the United States Military Academy, Naval Academy and Air Force Academy", OMB Number 0701–0026.

Needs and Uses: The information collection requirement is necessary in order to receive nominations from all Members of Congress, Vice President, Delegates to Congress, and the Governor and Resident Commissioner of Puerto Rico annually to each of the three service academies as legal nominating authorities. This information collection which results in appointments made to the academies is in compliance with 10 U.S.C. 4342, 6954, 9342 and 32 CFR part 901.

Affected Public: Individuals and households.

Annual Burden: 8100.

Number of Respondents: 16200.

Responses per Respondent: 1.

Average Burden per Response: 30 minutes.

Frequency: One time annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Department of Defense Form 1870, Nomination for Appointment to the United States Military Academy, Naval Academy and Air Force Academy, is used solely by legal nominating authorities who by Federal law are entitled to make appointments to the three service military academies. The form is used by all three service academies. The nomination form allows for nominating authorities to select by checking one box as to which academy is being provided with the name of a nominee. The completed form provides the required information for a nomination to be processed. Eligibility information concerning the nominees is information that is also included on the form. The nominating authority identifies himself/herself and must date and sign the form to make it a legally acceptable form. The form includes the three addresses of the service academies in order that the form may be returned to the proper academy.

Pamela Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 04–21369 Filed 9–22–04; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Aircraft Conversion of the 167th Airlift Wing (AW) of West Virginia Air National Guard (ANG), Eastern West Virginia Regional Airport (EWVRA), Martinsburg, WV

ACTION: Record of Decision (ROD).

SUMMARY: On September 3, 2004, the United States Air Force signed the ROD for the Proposed Aircraft Conversion of the 167th AW of West Virginia ANG, EWVRA, Martinsburg, West Virginia. The Department of the Air Force is issuing the ROD to convert from the existing transport fleet of C–130H aircraft used by the 167 AW of WV ANG to the larger C–5 aircraft. The action that will be implemented consists of: (1) Conversion from the C–130H to the C–5 aircraft; (2) acquisition of land (approximately 135 acres) via lease; and (3) construction of facilities on the existing and acquired parcels. When implemented, this action will result in construction of new aircraft hangers and related maintenance and training facilities, lengthening of Runway 08/26, and closure of Runway 17/35.

The decision was based on matters discussed in the ROD, the Final EIS, inputs from the public and regulatory agencies, and other relevant factors. The Final EIS was made available on July 30, 2004 in the **Federal Register**: (Volume 69, Number 146, Page 5708) with a waiting period ending August 30, 2004. The Air Force was the National Environmental Policy Act (NEPA) lead agency with the Federal Aviation Administration (FAA) acting as a Cooperating Agency under NEPA. The ROD documents only the decision of the Air Force with respect to the proposed Air Force actions analyzed in the Final EIS.

FOR FURTHER INFORMATION CONTACT: Ray Detig, Air National Guard Readiness Center/Civil Engineering Directorate, (301) 836–8120, or Pat Vokoun, Headquarters United States Air Force, (703) 604–5263.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 04–21367 Filed 9–22–04; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Request for Public Review and Comment of Changes to the Navstar GPS Space Segment/User Segment L5 Interface Specification (IS)

AGENCY: Department of the Air Force, DoD.

ACTION: Notice and request for review/comment of changes to IS–GPS–705.

SUMMARY: This notice informs the public that the Global Positioning System (GPS) Joint Program Office (JPO) proposes to revise IS–GPS–705, Navstar GPS Space Segment/User Segment L5 Interfaces. This proposal is designated as PIRN–705–001. One of the main subjects of this revision effort is an introduction of new Improved Clock & Ephemeris (ICE) navigation message that will be broadcast with L5 signal. The proposal can be viewed and downloaded at the following Web site: *http://gps.losangeles.af.mil*. Click on "System Engineering", then "Public Interface Control Working Group (ICWG)". Reviewers should save the document to a local memory location prior to opening and performing the review.

ADDRESSES: Submit comments to SMC/GPERC, 2420 Vela Way, Suite 1467, El Segundo CA 90245–4659. A comment matrix is provided for your convenience at the web site and is the preferred method of comment submittal. Comments may be submitted to the following Internet address: *smc.gperc@losangeles.af.mil*. Comments may also be sent by fax to 1–310–363–6387.

DATES: The suspense date for comment submittal is 15 September 2004.

FOR FURTHER INFORMATION CONTACT: GPERC at 1–310–363–2883, GPS JPO System Engineering Division, or write to the address above.

SUPPLEMENTARY INFORMATION: The civilian and military communities use the Global Positioning System, which employs a constellation of 24 satellites to provide continuously transmitted signals to enable appropriately configured GPS user equipment to produce accurate position, navigation, and time information.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 04–21365 Filed 9–22–04; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Request for Public Review and Comment of Changes to the Navstar GPS Space Segment/Navigation User Segment Interface Control Document (ICD)

AGENCY: Department of the Air Force, DoD.

ACTION: Notice and request for review/comment of changes to ICD–GPS–200C.

SUMMARY: This notice informs the public that the Global Positioning System (GPS) Joint Program Office (JPO) proposes to revise ICD–GPS–200, Navstar GPS Space Segment/Navigation User Interfaces. This proposal changes the document identifier from ICD–GPS–200 to Interface Specification (IS)–GPS–200. In addition, this revision will increment the revision letter from C to D, resulting in IS–GPS–200 Revision D. One of the main subjects of this revision effort is an introduction of new Improved Clock & Ephemeris (ICE) navigation message that will be broadcast with L2 C signal. These proposed changes are described in a Draft IS–GPS–200D, dated 9 July 2004. This draft document is an updated version of the draft document previously released in February 2004. The draft document can be viewed and downloaded at the following Web site: *http://gps.losangeles.af.mil*. Click on "System Engineering", then "Public Interface Control Working Group (ICWG)". Reviewers should save the document to a local memory location prior to opening and performing the review.

ADDRESSES: Submit comments to SMC/GPERC, 2420 Vela Way, Suite 1467, El Segundo CA 90245–4659. A comment matrix is provided for your convenience at the web site and is the preferred method of comment submittal. Comments may be submitted to the following Internet address: *smc.gperc@losangeles.af.mil*. Comments may also be sent by fax to 1–310–363–6387.

DATES: The suspense date for comment submittal is 30 October 2004.

FOR FURTHER INFORMATION CONTACT: GPERC at 1–310–363–2883, GPS JPO System Engineering Division, or write to the address above.

SUPPLEMENTARY INFORMATION: The civilian and military communities use the Global Positioning System, which employs a constellation of 24 satellites to provide continuously transmitted signals to enable appropriately configured GPS user equipment to produce accurate position, navigation, and time information.

Pamela D. Fitzgerald,

Air Force Federal Register Officer.

[FR Doc. 04–21366 Filed 9–22–04; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming Center for Systems Engineering Audit meeting. The purpose of the meeting is review the curriculum and programs of the Center for Systems Engineering. Portions of this meeting may be closed to the public in accordance with section 552b of title 5, United States Code, specifically subparagraphs (c)(1) and (4) thereof.

DATES: September 8, 2004.

ADDRESSES: Washington, DC.

FOR FURTHER INFORMATION CONTACT: Maj Berg, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington, DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 04–21370 Filed 9–22–04; 8:45 am]

BILLING CODE 5001–05–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Army is proposing to amend two systems of records notices in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on October 25, 2004 unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/Privacy Division, U.S. Army Records

Management and Declassification Agency, ATTN: AHRC–PDD–FPZ, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 428–6504.

SUPPLEMENTARY INFORMATION: The Department of the Army 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: September 17, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0025–55 AHRC

SYSTEM NAME:

Freedom of Information Act Program Files (January 6, 2004, 69 FR 790).

CHANGES:

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Director, U.S. Army Records Management and Declassification Agency, Freedom of Information/Privacy Division, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22315–3905.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Director, U.S. Army Records Management and Declassification Agency, Freedom of Information/Privacy Division, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22315–3905.

For verification purposes, individual should provide enough information to permit locating the record.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Director, U.S. Army Records Management and Declassification Agency, Freedom of Information/Privacy Division, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22315–3905.

For verification purposes, individual should provide enough information to permit locating the record.'

* * * * *

A0025–55 AHRC

SYSTEM NAME:

Freedom of Information Act Program Files.

SYSTEM LOCATION:

Headquarters, Department of the Army, staff and field operating agencies, major commands, installations and activities receiving requests to access records pursuant to the Freedom of Information Act or to declassify documents pursuant to E.O. 12958, National Classified Security Information, as amended. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who requests an Army record under the Freedom of Information Act, or requests mandatory review of a classified document pursuant to E.O. 12958, National Classified Security Information, as amended.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's request, related papers, correspondence between office of receipt and records custodians, Army staff offices and other government agencies; retained copies of classified or other exempt materials; and other selective documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, Freedom of Information Act, as amended by Pub. L. 93–502; 5 U.S.C. 301, Departmental Regulations, 10 U.S.C. 3013, Secretary of the Army; Army Regulation 25–55, The Department of the Army Freedom of Information Act Program; and E.O. 12958, National Classified Security Information, as amended.

PURPOSE(S):

To control administrative processing of requests for information either pursuant to the Freedom of Information Act or to E.O. 12958, National Classified Security Information, as amended, including appeals from denials.

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:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By requester's surname.

SAFEGUARDS:

All records are maintained in areas accessible only to authorized personnel who have official need in the performance of their assigned duties. Automated records are further protected by assignment of users identification and password to protect the system from unauthorized access. User identification and passwords are changed at random times.

RETENTION AND DISPOSAL:

Records reflecting granted requests are destroyed after 2 years. When requests have been denied, records are retained for 6 years; and if appealed, records are retained 6 years after final denial by the Army or 3 years after final adjudication by the courts, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Director, U.S. Army Records Management and Declassification Agency, Freedom of Information/Privacy Division, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22315–3905.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Director, U.S. Army Records Management and Declassification Agency, Freedom of Information/Privacy Division, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22315–3905.

For verification purposes, individual should provide enough information to permit locating the record.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Director, U.S. Army Records Management and

Declassification Agency, Freedom of Information/Privacy Division, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22315—3905.

For verification purposes, individual should provide enough information to permit locating the record.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records,and for contesting contents and appealing initial agency determinations are published in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army organizations, Department of Defense components, and other federal, state, and local government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

During the course of a FOIA action, exempt materials from 'other' systems of records may in turn become part of the case records in this system. To the extent that copies of exempt records from those 'other' systems of records are reentered into this FOIA case record, the Department of the Army hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary systems of records which they are a part.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

A0340–21 AHRC

SYSTEM NAME:

Privacy Case Files (January 6, 2004, 69 FR 790).

CHANGES:

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Director, U.S. Army Records Management and Declassification Agency, ATTN: Freedom of Information/Privacy Division, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22315–3905.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the U.S. Army Records Management and Declassification Agency, Freedom of Information/Privacy Division, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22315–3905.

For verification purposes, individual should provide full name, date and place of birth, current address and other personal information necessary to locate the record.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking access to information about themselves contained in this system should address written inquiries to the office that processed the initial inquiry, access request, or amendment request.

Individual may obtain assistance from the U.S. Army Records Management and Declassification Agency, Freedom of Information/Privacy Division, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22315–3905.

For verification purposes, individual should provide full name, date and place of birth, current address and other personal information necessary to locate the record.'

* * * * *

AO340–21 AHRC

SYSTEM NAME:

Privacy Case Files.

SYSTEM LOCATION:

These records exist at Headquarters, Department of the Army, staff and field operating agencies, major commands, installations and activities receiving Privacy Act requests. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

Records also exist in offices of Access and Amendment Refusal Authorities when an individual's request to access and/or amend his/her record is denied. Upon appeal of that denial, record is maintained by the Department of the Army Privacy Review Board.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who request information concerning themselves which is in the custody of the Department of the Army or who request access to or amendment of such records in accordance with the Privacy Act of 1974, as amended.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents notifying requesters of the existence of records on them, providing or denying access to or amendment of records, acting on appeals or denials to provide access or amend records, and providing or developing information for use in litigation; Department of the Army Privacy Review Board minutes and actions; copies of the requested and amended or unamended records; statements of disagreement; and other related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552a, the Privacy Act of 1974, as amended; 5 U.S.C. 301, Departmental Regulations, 10 U.S.C. 3013, Secretary of the Army; and Army Regulation 340–21, The Army Privacy Program.

PURPOSE(S):

To process and coordinate individual requests for access and amendment of personal records; to process appeals on denials of requests for access or amendment to personal records by the data subject against agency rulings; and to ensure timely response to requesters.

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:

The Dod 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Paper records in file folders and on electronic storage media.

RETRIEVABILITY:

By name of requester on whom the records pertain.

SAFEGUARDS:

Records are accessed by custodian of the record system and by persons responsible for servicing the record system in performance of their official duties. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Approved requests, denials that were not appealed, denials fully overruled by appellate authorities and appeals adjudicated fully in favor of requester are destroyed after 4 years. Appeals denied in full or in part are destroyed after 10 years, provided legal proceedings are completed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, U.S. Army Records Management and Declassification Agency, ATTN: Freedom of Information/Privacy Division, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22315–3905.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the U.S. Army Records Management and Declassification Agency, Freedom of Information/Privacy Division, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22315–3905.

For verification purposes, individual should provide full name, date and place of birth, current address and other potential information necessary to locate the record.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the office that processed the initial inquiry, access request, or amendment request. Individual may obtain assistance from the U.S. Army Records Management and Declassification Agency, Freedom of Information/Privacy Division, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22315–3905.

For verification purposes, individual should provide full name, date and place of birth, current address and other personal information necessary to locate the record.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army organizations, Department of Defense components, and other Federal, state, and local government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

During the course of a Privacy Act (PA) action, exempt materials from 'other' systems of records may become part of the case records in this system of records. To the extent that copies of exempt records from those 'other' systems of records are entered into these PA case records, the Department of the Army hereby claims the same exemptions for the records as they have in the original primary systems of records which they are a part.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) published in 32 CFR part 505. For additional information contact the system manager.

[FR Doc. 04–21324 Filed 9–22–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to delete systems of records.

SUMMARY: The Department of the Navy is deleting two systems of records notices in its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 662a), as amended.

DATES: This proposed action will be effective without further notice on October 25, 2004 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy 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 deletions are set forth below. The proposed deletions 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: September 17, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N07210–1

SYSTEM NAME:

Losses of Public Funds File (February 22, 1993, 58 FR 10798).

Reason: Records are now under the cognizance of the Defense Finance and Accounting Service (DFAS) and are being maintained under the DFAS Privacy Act system of records notice T7332, entitled 'Defense Debt Management System (DDMS)' last published on June 27, 2002, at 67 FR 43292.

N07300–1

SYSTEM NAME:

Relief for Losses of Public Funds/SBP Annuitants for Overpayment of Benefits (February 22, 1993, 58 FR 10807).

Reason: Records are now under the cognizance of the Defense Finance and Accounting Service (DFAS) and are being maintained under the DFAS Privacy Act system of records notice T7332, entitled 'Defense Debt Management System (DDMS)' last published on June 27, 2002, at 67 FR 43292 and T7347b, entitled 'Defense Military Retiree and Annuity Pay System' last published on February 20, 2003, at 68 FR 8230.

[FR Doc. 04–21325 Filed 9–22–04; 8:45 am]

BILLING CODE 5001–06–M

DELAWARE RIVER BASIN COMMISSION

Notice of Proposed Rulemaking; Amendments to the Water Quality Regulations, Water Code and Comprehensive Plan To Classify the Lower Delaware River as Special Protection Waters

AGENCY: Delaware River Basin Commission.

SUMMARY: The Commission will hold a public hearing to receive comments on proposed amendments to the Commission's Water Quality Regulations, Water Code and Comprehensive Plan to classify as Special Protection Waters the reach of the main stem Delaware River known as the "Lower Delaware." The Lower Delaware extends from the southern boundary of the Delaware Water Gap National Recreation Area at River Mile ("RM") 209.5 to the head of tide at Trenton, New Jersey, RM 133.4.

Background

The Special Protection Waters regulations, consisting of Section 3.10.3.A.1. of the Water Quality Regulations (also, "Regulations"), are intended to maintain the quality of interstate waters where existing water quality is better than the established stream quality objectives. They consist in large part of a series of policies relating to: water quality management (§ 3.10.3.A.2.b.), allowable discharges (§ 3.10.3.A.2.c.), wastewater treatment facilities (§ 3.10.3.A.2.d.), the control of non-point sources of pollution (§ 3.10.3.A.2.e.), and inter-governmental responsibilities (§ 3.10.3.A.2.f.). Other sections of the rule include definitions (§ 3.10.3.A.2.a.), a list of waters classified as Special Protection Waters

(§ 3.10.3.A.2.g.), a table defining existing water quality with numeric values for a series of different parameters in each of the river sections classified as Special Protection Waters (Table 1), and a table describing the location of the Boundary and Interstate Special Protection Waters Control Points, which are the locations used to assess water quality for purposes of defining and protecting existing water quality (Table 2).

To be protected as Special Protection Waters, stream reaches must be classified as either "Outstanding Basin Waters" or "Significant Resource Waters." "Outstanding Basin Waters" are defined as "interstate and contiguous intrastate waters that are contained within the established boundaries of national parks; national wild, scenic and recreational rivers systems; and/or national wildlife refuges that are classified by the Commission under Subsection 2.g.1). [of the Regulations] as having exceptionally high scenic, recreational and ecological values that require special protection" (§ 3.10.3.A.2.a.1.). "Significant Resource Waters" are defined as "interstate waters classified by the Commission under Subsection 2.g.2. [of the Regulations] as having exceptionally high scenic, recreational, ecological, and/or water supply uses that require special protection" (§ 3.10.3.A.2.a.2.).

In accordance with Section 3.10.3.A.2. of the Regulations, the Delaware Riverkeeper Network submitted to the Commission in April 2001 a nomination petition requesting that the Commission classify the Lower Delaware River as Special Protection Waters. The Commission initiated a five-year monitoring program in May of 2000 to characterize existing water quality in the Lower Delaware. Four years of data have been collected and analyzed. Data collection and analysis for the fifth year will be completed in 2004.

A series of studies, plans, and policies and a Federal designation document the scenic, recreational, ecological and water supply values and uses of the Lower Delaware and support the goal of preserving these qualities. The four years of data and findings set forth in the report entitled, Delaware Eligibility Determination for DRBC Declaration of Special Protection Waters (DRBC, August 2004) demonstrate that water quality in the Lower Delaware River generally is better than the water quality criteria. The Lower Delaware National Wild & Scenic River Study Report (National Park Service, Northeast Region, 1999) documents that the Lower Delaware River includes islands, wetlands, and diverse ecosystems that support rare and endangered plant and animal species and constitute scenic and recreational amenities. The Lower Delaware River Management Plan (Lower Delaware River Wild and Scenic River Study Task Force and Local Government Committee, with assistance from the National Park Service, August 1997) (LDRMP) contains goals relating to water quality, natural resources, historic resources, recreation, economic development and open space preservation for the Lower Delaware River. Goal 1 of the LDRMP calls for maintaining, and where practical, improving existing water quality in the main stem of the Lower Delaware River and its tributaries. On November 1, 2000, the President of the United States signed Public Law 106–418, designating portions of the Lower Delaware River as part of the National Wild and Scenic Rivers System. The system was established by Congress in 1968 to preserve the character of rivers with "outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural or other similar values" and to ensure that designated rivers remain free-flowing (Pub. L. 106–418, 106th Congress). The Water Resources Plan for the Delaware River Basin (DRBC Watershed Advisory Committee, September 2004) ("Basin Plan"), which is supported by each of the Commission's signatories, directs, "[w]here water quality is better than standards for the protection of aquatic life and wildlife, implement anti-degradation regulations, policies and/or other mechanisms to maintain or improve existing water quality."

Proposed Amendments

The Commission proposes to amend the Special Protection Waters regulations by adding one section of the main stem Delaware River to the list of stream reaches classified as Outstanding Basin Waters (*see* § 3.10.3.A.2.g.1) and two sections of the main stem Delaware River to the list of stream reaches classified as Significant Resource Waters (*see* § 3.10.3.A.2.g.2). The section of the main stem proposed to be classified as "Outstanding Resource Waters" is the reach extending from RM 171.4, a point just south of the Gilbert Generating Station in Holland Township, New Jersey, to RM 141.8, at Washington Crossing, Pennsylvania. The sections of the main stem proposed to be classified as "Significant Resource Waters" extend from RM 209.5, the downstream boundary of the Delaware Water Gap National Recreation Area, to RM 171.4, the location of which is noted above, and from RM 141.8 at Washington Crossing, Pennsylvania, to RM 133.4, the location of the head of tide at Trenton, New Jersey.

The proposed amendments do not at this time include additions to Table 1, defining existing water quality in each classified reach with numeric values for a series of different parameters, or to Table 2, describing the location of the Boundary and Interstate Special Protection Waters Control Points. These amendments will be made at a later date, when analysis of a fifth year of water quality data for the Lower Delaware has been completed. Thus, the Commission proposes to add to Section 3.10.3.A.2.g. a new section 6)., providing that the regulations that depend for enforcement upon the use of approved numeric values for existing water quality will not apply, under the proposed amendments, to regulated activities within the drainage area of the Lower Delaware River and that all other provisions of Section 3.10.3.A.2. shall apply for the Lower Delaware River upon the effective date of the proposed amendments. Provisions of the Special Protection Waters regulations that will apply within the drainage area to the Lower Delaware River include but are not limited to the following: Subsections 3.10.3.A.2.c.1. through 3., in part requiring an analysis of alternatives to new or expanded discharges; Subsections 3.10.3A.2.d.1. through 7., setting forth requirements for wastewater treatment facilities; and Subsections 3.10.3A.2.e.1. and 2., conditioning project approval on the existence of an approved Non-Point Source Pollution Control Plan for the project area and requiring that approval of a new or expanded withdrawal and/or wastewater discharge project be subject to the condition that new connections to the project system be limited to service areas regulated by non-point source control plans approved by the Commission.

DATES: The public hearing will be held on October 27, 2004, at approximately 2 p.m. as part of the Commission's regularly scheduled business meeting. This time is approximate because the Commission will conduct hearings on several dockets (project approvals) beforehand, beginning at approximately 1:30 p.m. The hearing will continue until all those who wish to testify are afforded an opportunity to do so. In the event all those who wish to testify cannot be heard on October 27, the hearing will be continued at a date, time and location to be announced by the Commission Chair that day. Persons wishing to testify at the hearing are asked to register in advance with the Commission Secretary by phoning 609–

883–9500, extension 224. Written comments will be accepted through Tuesday, November 30, 2004.

ADDRESSES: The public hearing will be held in the Kirby Auditorium of the National Constitution Center, 525 Arch Street, Independence Mall, Philadelphia. Written comments should be addressed to the Commission Secretary as follows: by e-mail to *paula.schmitt@drbc.state.nj.us*; by fax to Commission Secretary—dial 609–883–9522; by U.S. Mail to Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628–0360; or by overnight mail to Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628–0360.

FOR FURTHER INFORMATION CONTACT: The full text of the draft resolution containing the proposed rule change, a map illustrating the proposed stream classifications for the Lower Delaware, a map illustrating the Wild and Scenic Rivers System designations in the Lower Delaware, and reports about the Lower Delaware will be posted no later than October 1, 2004, on the Commission's Web site, *http://www.drbc.net*. The Commission will hold two informational meetings on the proposed rulemaking. One meeting will be held on Thursday, October 14, 2004, from 7 to 9 p.m. at the Delaware and Raritan Canal Commission office at the Prallsville Mills Complex, 33 Risler Street (Route 29) in Stockton, New Jersey. Another will be held on Wednesday, October 20, 2004, from 7 to 9 p.m. in Room 315 of the Acopian Engineering Building at Lafayette College, located on High Street in Easton, Pennsylvania. Directions to the meeting locations will be posted on the Commission's Web site, *http://www.drbc.net*, in advance of the meeting dates. Please contact Commission Secretary Pamela Bush, 609–883–9500 ext. 203, with questions about the proposed rule or the rulemaking process.

Dated: September 17, 2004.

Pamela M. Bush,

Commission Secretary.

[FR Doc. 04–21350 Filed 9–22–04; 8:45 am]

BILLING CODE 6360–01–P

DELAWARE RIVER BASIN COMMISSION

Notice of Proposed Rulemaking; Proposed Amendment of the Water Quality Regulations, Water Code and Comprehensive Plan To Establish Pollutant Minimization Plan Requirements for Point and Non-Point Source Discharges of Toxic Pollutants

AGENCY: Delaware River Basin Commission.

SUMMARY: The Delaware River Basin Commission ("Commission" or "DRBC") will hold a public hearing to receive comments on a proposed amendment to the Commission's Water Quality Regulations, Water Code and Comprehensive Plan to establish pollutant minimization plan requirements for point and non-point source discharges of toxic pollutants following issuance of a total maximum daily load (TMDL) under section 303(d) of the Clean Water Act (CWA) by either a member state or the U.S. Environmental Protection Agency (EPA), or issuance of an assimilative capacity determination by the Commission.

A TMDL establishes the maximum loading of a pollutant that a water body can receive without causing an impairment of the water quality standard, which includes designated uses, water quality criteria calculated to protect those uses, and antidegradation requirements. When water quality standards are not attained, despite the technology-based control of industrial and municipal wastewater (point sources), the CWA requires that the impaired waters be identified on the state's Section 303(d) list and that a TMDL be developed for the pollutant or pollutants causing the impairment. A determination of the assimilative capacity of a water body for a given pollutant under Section 4.30.7 of the Commission's Water Quality Regulations is similar to the establishment of maximum total loading for a water body in a TMDL. The Commission may issue an assimilative capacity determination whenever a stream quality objective (the Commission's term for a numeric water quality criterion) is not being attained.

A TMDL or assimilative capacity determination does not in and of itself result in any improvement in water quality. Rather, the total loading or assimilative capacity must be allocated among the various sources contributing to the water quality impairment, and each discharger must reduce its discharge to achieve its allocated load. For point source discharges, the individual load allocation typically is converted to an effluent limitation in a National Pollutant Discharge Elimination System (NPDES) permit issued under section 402 of the Clean Water Act. For non-point sources, the load allocation typically is achieved through Best Management Practices (BMPs).

For certain toxic pollutants in water bodies within the Delaware River Basin, ambient and/or effluent monitoring shows that loadings are many times higher than the levels required to ensure that water quality standards are met. Substantial reductions in loadings of such pollutants from all point and non-point sources are needed to protect the designated uses. However, the process of developing and allocating a total load or determining the assimilative capacity of the water body for the pollutant may take the regulatory agencies many years. As has become apparent in the case of the TMDL for polychlorinated biphenyls (PCBs) in the Delaware Estuary, issued by EPA on December 15, 2003 on behalf of the states of Delaware, New Jersey, and Pennsylvania, it may be many more years before the states are able to incorporate implementing provisions into NPDES permits for point sources and require implementing BMPs for non-point sources. For PCBs, and possibly for other persistent bioaccumulative toxic chemicals, still more time—in some cases decades—will be needed before dischargers achieve sufficient load reductions to achieve the water quality standards. The proposed rule is intended to accelerate real improvements in water quality by authorizing the Commission to require point and non-point source dischargers to initiate load reduction efforts sooner. No numeric targets are proposed. Rather, the rule is based on concepts of pollution prevention and sustainability and the recognition that dischargers that are familiar with their own operations may be best situated to identify opportunities for achieving prompt loading reductions in a cost-effective manner. To comply with the rule, dischargers must plan and implement measures for achieving the maximum practicable reduction of pollutant discharges to the air, soil, and water.

The proposed rule is primarily a gap-filling measure. For point sources, it will cease to apply to any discharge upon the next issuance by the state or EPA of a NPDES permit or permit renewal with respect to that discharge. For non-point discharges, the Commission's intention is to apply the rule only where existing state and federal programs will not ensure

implementation of the TMDL or assimilative capacity determination.

The rule has four principal parts. Section A addresses the scope of the rule—both the pollutants and the entities intended to be regulated. Section B sets forth procedures for submission, review, implementation, and continuation of Pollutant Minimization Plans ("PMPs" or "plans") required under the rule, including the relationship of the rule to the NPDES permit program. Section C lists the elements required to be included in a PMP, and Section D sets forth the requirement that dischargers submit a report annually, quantifying changes in pollutant loadings since initiation of the PMP and describing measures under way or completed to reduce loadings. Additional sections include a waiver provision and a provision for the development of guidance to assist dischargers in developing PMPs under the rule.

Scope of the Proposed Rule. The scope of the proposed rule is limited to toxic chemicals listed in Section A.1 of the rule. The proposed rule lists one pollutant—PCBs—for which the EPA issued a TMDL for the Delaware Estuary on December 15, 2003. Additional pollutants may be added to the rule only through notice and comment rulemaking.

Classes of dischargers or individual dischargers proposed to be subject to the rule may be added by amendment or by a directive of the Commission's Executive Director, upon approval by the Commission. Two classes of PCB dischargers are initially proposed to be included: those listed in Group 1 of Tables 3–2 through 3–5 of Appendix 3 of the document, U.S. Environmental Protection Agency Regions II and III, Total Maximum Daily Loads for Polychlorinated Biphenyls (PCBs) for Zones 2–5 of the Tidal Delaware River (December 15, 2003); and those listed in Group 2 of the same tables in the event that the presence of PCB congeners is confirmed through monitoring in accordance with the requirements set forth in Appendix 3 of the same document.

Procedures for Submission, Review, Implementation and Continuation of PMPs. The proposed rule requires dischargers to submit a PMP to the Commission and the permitting agency, if any, within three months of publication of a final rule or issuance of a directive by the Executive Director. The Commission staff, in consultation with the permitting agency staff (if applicable), will review each PMP for completeness, and the Executive Director will issue a completeness determination, either confirming that a PMP contains all components required by the rule, or identifying deficiencies in the PMP. Where a deficiency is identified, a discharger has 30 days to submit a revised PMP reflecting a good faith effort to cure the deficiency. The rule sets forth procedures for subsequent revisions if necessary, and allows the Executive Director to seek penalties against a discharger for repeated failure to comply, or grant a waiver from a requirement of the rule for good cause shown. The discharger must commence implementation of its plan as submitted within 60 days of receipt of a determination of completeness.

Upon issuance of a final new or renewed NPDES permit by EPA or a member state after the imposition of a PMP requirement under the proposed rule, the permit supersedes any provisions of the PMP that relate to the NPDES-permitted discharge.

PMPs for point source discharges will receive a thorough substantive review at the time of NPDES permit issuance or reissuance. Due to limited agency resources, earlier substantive review of PMPs by the Commission or the member states is authorized but not required. The rule provides that if the Commission determines at any time that a PMP is not likely to achieve the maximum practicable reduction of pollutant discharges to the air, soil, or water, it may require the discharger to submit a revised PMP to more aggressively reduce pollutant loading.

The initial term of the PMP is to be five years. The term of any PMP that is not superseded by a NPDES permit within five years may be extended by the Executive Director, following a review by the Commission staff in consultation with the staff of the appropriate state environmental agency.

Plan Elements. Interested parties are referred to the text of the rule for the required elements of a PMP. Notably, these elements include strategies for tracking down unknown sources of the pollutant, as well as for minimizing releases of the pollutant where sources are found. Plans also must include a description of the procedures to be used to measure, demonstrate and report progress in reducing potential and actual discharges of the pollutant, including annual sampling and analysis of discharges using a prescribed analytical method if one is listed in the rule. In the case of PCBs, dischargers are required to measure loadings annually using EPA Method 1668, Revision A. Dischargers are encouraged to use less complex and expensive analytical methods where possible for purposes of screening or identifying pollutant sources.

Annual Report. Annual sampling and reporting using a uniform method are required in order for dischargers and regulators to determine the effectiveness of a PMP in reducing pollutant loadings to a waterway.

DATES: The public hearing will be held on October 27, 2004 at 11 a.m. as part of the Commission's regularly scheduled business meeting. The hearing will end 60 to 90 minutes later, at the discretion of the Commission chair. If necessary, the hearing will be continued at a date and location announced by the Commission chair, until all those who wish to testify are afforded an opportunity to do so. Persons wishing to testify at the hearing are asked to register in advance with the Commission Secretary by phoning (609) 883–9500, extension 224. Written comments will be accepted through Friday, November 19, 2004.

ADDRESSES: The full text of the proposed rule will be posted no later than October 1, 2004 on the Commission's Web site, *http://www.drbc.net.* The public hearing will be held in the Kirby Auditorium at the National Constitution Center, 525 Arch Street, Independence Mall, Philadelphia. Written comments should be addressed to the Commission Secretary as follows: by e-mail to *paula.schmitt@drbc.state.nj.us*; by fax to (609) 883–9522; by U.S. Mail to Commission Secretary, DRBC, PO Box 7360, West Trenton, NJ 08628–0360; or by overnight mail to Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628–0360.

FOR FURTHER INFORMATION CONTACT: Please contact Commission Secretary Pamela Bush, (609) 883–9500 ext. 203, with questions about the proposed rule or the rulemaking process.

Dated: September 17, 2004.

Pamela M. Bush,

Commission Secretary.

[FR Doc. 04–21351 Filed 9–22–04; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education Overview Information; International Research and Studies Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.017A.

Dates:

Applications Available: September 24, 2004.

Deadline for Transmittal of Applications: November 12, 2004.

Eligible Applicants: Public and private agencies, organizations, institutions, and individuals.

Estimated Available Funds: The Administration has requested $1,904,083 for new awards under this program for FY 2005. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $55,000–$160,000 per year.

Estimated Average Size of Awards: $112,000.

Estimated Number of Awards: 17.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The International Research and Studies Program provides grants to conduct research and studies to improve and strengthen instruction in modern foreign languages, area studies, and other international fields.

Priorities: In accordance with 34 CFR 75.105(b)(2)(ii), these priorities are from eligible projects described in the regulations for this program (34 CFR 660.10, 660.34).

Invitational Priorities: For FY 2005 these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1:

Research, surveys, studies or the development of instructional materials that are nonbiased, factually accurate and solicitous of diverse views, and that serve to enhance international understanding for use at the elementary and secondary education levels, or for use in teacher education programs.

Invitational Priority 2:

The development of instructional materials that are nonbiased, factually accurate and solicitous of diverse views on the Middle East, Central Asia, and South Asia or the languages spoken in these regions.

Program Authority: 20 U.S.C. 1125.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations in 34 CFR part 655. (c) The regulations in 34 CFR part 660.

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: The Administration has requested $1,904,083 for new awards under this program for FY 2005. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $55,000–$160,000 per year.

Estimated Average Size of Awards: $112,000.

Estimated Number of Awards: 17.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* Public and private agencies, organizations, institutions, and individuals.

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:* Mr. Jose L. Martinez, U.S. Department of Education, 1990 K Street, NW., room 6010, Washington, DC 20006–8521. Telephone: (202) 502–7635 or by e-mail: *jose.martinez@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 a copy of the application package in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

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.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the narrative to the equivalent of 25 pages, using the following standards:

- A "page" is 8.5″×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. However, you may single-space 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). However, you may use a 10-point font in charts, tables, figures, and graphs.

The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract or the appendices. However, you must include your complete response to the selection criteria in the application narrative.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: September 24, 2004.

Deadline for Transmittal of Applications: November 12, 2004.

We do not consider an application that does not comply with the deadline requirements.

We are requiring that applications for grants under this program be submitted 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 electronically through the e-GRANTS system or to request a waiver of the electronic submission requirement, please refer to Section IV. 6., *Other Submission Requirements,* in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* We are requiring that applications for grants under this program be submitted electronically, unless the applicant requests a waiver of this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the International Research and Studies Program—CFDA Number 84.017A must be submitted electronically using 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*.

Unless a waiver of the electronic submission requirement has been requested by the applicant in accordance with the procedures in this section, all portions of the application must be submitted electronically.

If you are unable to submit an application through the e-GRANTS system, you must submit a written request for a waiver of the electronic submission requirement. In your request, you should explain the reason or reasons that prevent you from using the Internet to submit your application. You should address this request to: Mr. Jose L. Martinez, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., 6th floor, Washington, DC 20006–8521. Please submit the request no later than two weeks before the application deadline date. Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

If, within two weeks of the application deadline date, you are unable to submit an application electronically, you must submit a paper application in accordance with the mail or hand delivery instructions described in this notice. The paper application must include a written request for a waiver documenting the reasons that prevented you from using the Internet to submit your application.

When using e-Application to complete the application, you will be entering data online. Do not e-mail an electronic copy of any part of a grant application to us. The data that is entered online will be saved into a database.

If you participate in e-Application, please note the following:

- You must submit the 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 the application in electronic format, nor will we penalize you if you request a waiver and submit the application in paper format because you were prevented from submitting the application electronically as required.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424) and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you submit your application to the Department, 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 you submit your electronic application, you must 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. 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. The applicant's Project Director is a registered user of e-Application and has 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.

b. *Submission of Paper Applications by Mail.*

If you have requested a waiver of the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your paper application to the Department. The original and two copies of the application must be mailed on or before the application deadline date to the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.017A), 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 the application through the U.S. Postal Service, please note that 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 post marked 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, applicants should check with their local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you have requested a waiver of the electronic submission requirement, you (or a courier service) may deliver the paper application to the Department by hand. The original and two copies of your application must be hand-delivered on or before the application deadline date to the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.017A), 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 the 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 34 CFR sections 655.31, 660.31, 660.32, and 660.33.

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. Grantees are required to use the electronic data instrument *Evaluation of Exchange, Language, International, and Area Studies* (EELIAS) system to complete the final report. Instructional materials electronically formatted as CDs, DVDs, videos, computer diskettes and books produced by the grantee, as part of the grant approved activities are also acceptable as final reports.

VII. Agency Contact

For Further Information Contact: Mr. Jose L. Martinez, U.S. Department of Education, 1990 K Street, NW., room 6010, Washington, DC 20006–8521. Telephone: (202) 502–7635 or by e-mail: *jose.martinez@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 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: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*

Dated: September 20, 2004.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. E4–2355 Filed 9–22–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Fulbright-Hays Group Projects Abroad Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA)

Number: 84.021A

DATES: *Applications Available:* September 23, 2004.

Deadline for Transmittal of Applications: November 2, 2004.

Deadline for Intergovernmental Review: January 3, 2005.

Eligible Applicants: (1) Institutions of higher education, (2) State departments of education, (3) Private nonprofit educational organizations, and (4) Consortia of these entities.

Estimated Available Funds: The Administration has requested $4,312,450 for new awards for this program for FY 2005. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $50,000–$80,000 for short-term seminars, curriculum development or group research or study; $50,000–$310,000 for advanced overseas intensive language projects.

Estimated Average Size of Awards: $70,696.

Maximum Award: We will reject any application that proposes a budget exceeding $100,000 for a single budget period of 12 months for short-term seminars, curriculum development, or group research or study. We will reject any application that proposes a budget exceeding $325,000 for a single budget period of 12 months for advanced overseas intensive language projects. The Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register.**

Estimated Number of Awards: 61.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Fulbright-Hays Group Projects Abroad (GPA) Program supports overseas projects in training, research, and curriculum development in modern foreign languages and area studies for groups of teachers, students, and faculty engaged in a common endeavor. Projects may include short-term seminars, curriculum development, or group research or study. This competition will support advanced overseas intensive language projects.

Priorities: In accordance with 34 CFR 75.105(b)(2)(ii), these priorities are from the regulations for this program (34 CFR 664.32).

Absolute Priority

For FY 2005 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Specific geographic regions of the world: A group project funded under this priority must focus on one or more of the following geographic regions of the world: Africa, East Asia, South Asia, Southeast Asia and the Pacific, the Western Hemisphere (Central and South America, Mexico, and the Caribbean), East Central Europe and Eurasia, and the Near East.

Within this absolute priority, we are establishing the following competitive preference and invitational priorities.

Competitive Preference Priority

For FY 2005 this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i), 664.30(b), and 664.31(g) we award up to an additional five (5) points to an application, depending on how well the application meets this priority.

This priority is:

Short-term seminars that develop and improve foreign language and area studies at elementary and secondary schools.

Invitational Priority

For FY 2005 this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Group Study projects that provide opportunities for nationally recruited undergraduate students to study in a foreign country for either a semester or a full academic year.

Program Authority: 22 U.S.C. 2452.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

(b) The regulations for this program in 34 CFR part 664.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants, redistributed as fellowships to individual beneficiaries in accordance with 34 CFR 662.2 and 662.3. As part of its FY 2005 budget request, the Administration proposed to continue to allow funds to be used to support the participation of individuals who plan to apply their language skills and knowledge of countries vital to the United States national security in fields outside teaching, including government, the professions, or international development. Therefore, institutions may propose projects for visits and study in foreign countries by individuals in these fields, in addition to those planning a teaching career. However, authority to use funds for participants outside of the field of teaching depends on final Congressional action. Applicants will be given an opportunity to amend their applications if such authority is not provided.

Estimated Available Funds: The Administration has requested $4,312,450 for new awards for this program for FY 2005. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $50,000–$350,000.

Estimated Average Size of Awards: $70,696.

Maximum Award: We will reject any application that proposes a budget exceeding $350,000 for a single budget period of 12 months. The Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 61.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. Eligible Applicants: (1) Institutions of higher education, (2) State departments of education, (3) Private nonprofit educational organizations, and (4) Consortia of these entities.

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

Dr. Lungching Chiao, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., 6th floor, Washington, DC 20006–8521. Telephone: (202) 502–7624 or by e-mail: *lungching.chiao@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 a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

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.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit part III to the equivalent of no more than 40 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. However, you may single space 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). However, you may use a 10-point font in charts, tables, figures, and graphs.

The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; the one-page abstract; or the appendices. However, you must include your complete response to the selection criteria in the application narrative.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. Submission Dates and Times:

Applications Available: September 23, 2004.

Deadline for Transmittal of Applications: November 2, 2004.

We do not consider an application that does not comply with the deadline requirements.

We are requiring that applications for grants under this program be submitted 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 electronically through the e-GRANTS system or to request a waiver of the electronic submission requirement,

please refer to Section IV. 6. Procedures for Submitting Applications in this notice.

Deadline for Intergovernmental Review: January 3, 2005.

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 program.

5. Funding Restrictions

We reference regulations outlining funding restrictions in the Applicable Regulations section of this notice.

6. Procedures for Submitting Applications

We are requiring that applications for grants under this program be submitted electronically, unless the applicant requests a waiver of this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the Fulbright-Hays Groups Projects Abroad Program—CFDA Number 84.021A must be submitted electronically using 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.*

Unless a waiver of the electronic submission requirement has been requested by the applicant in accordance with the procedures in this section, all portions of the application must be submitted electronically.

If you are unable to submit an application through the e-GRANTS system, you must submit a written request for a waiver of the electronic submission requirement. In your request, you should explain the reason or reasons that prevent you from using the Internet to submit your application. You should address this request to: Dr. Lungching Chiao, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., 6th floor, Washington, DC 20006–8521. Please submit the request no later than two weeks before the application deadline date. Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

If, within two weeks of the application deadline date, you are unable to submit an application electronically, you must submit a paper application in accordance with the mail or hand delivery instructions described in this notice. The paper application must include a written request for a waiver documenting the reasons that prevented you from using the Internet to submit your application.

When using e-Application to complete the application, you will be entering data online. Do not e-mail an electronic copy of any part of a grant application to us. The data that is entered online will be saved into a database.

If you participate in e-Application, please note the following:

- You must submit the 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 the application in electronic format, nor will we penalize you if you request a waiver and submit the application in paper format because you were prevented from submitting the application electronically as required.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424) and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you submit your application to the Department, 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 you submit your electronic application, you must 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. 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. The applicant's Project Director is a registered user of e-Application and has 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.

b. Submission of Paper Applications by Mail

If you have requested a waiver of the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your paper application to the Department. The original and two copies of the application must be mailed on or before the application deadline date to the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.021A), 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 the application through the U.S. Postal Service, please note that 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 post marked 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, applicants should check with their local post office.

c. Submission of Paper Applications by Hand Delivery

If you have requested a waiver of the electronic submission requirement, you (or a courier service) may deliver the paper application to the Department by hand. The original and two copies of your application must be hand-delivered on or before the application deadline date to the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.021A), 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 the 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 from 34 CFR 664.31 and are as follows: The selection criteria for this program are as follows: (a) Plan of operation (25 points), (b) quality of key personnel (15 points), (c) budget and cost effectiveness (10 points), (d) evaluation plan (10 points), (e) adequacy of resources (5 points), (f) impact (15 points), (g) relevance to institutional development (5 points), (h) need for overseas experiences (10 points), and (i) the extent to which the proposed project addresses the competitive preference priority (5 points).

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. The applicant is required to use the electronic data instrument *Evaluation of Exchange, Language, International, and Area Studies* (EELIAS) system to complete the final report.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Dr. Lungching Chiao, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., 6th floor, Washington, DC 20006–8521. Telephone: (202) 502–7624 or by e-mail: *lungching.chiao@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 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: *http://www.ed.gov/news/fedregister*. To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: September 20, 2004.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. E4–2356 Filed 9–22–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Undergraduate International Studies and Foreign Language Program Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA)

Number: 84.016A.

DATES: *Applications Available:* September 23, 2004.

Deadline for Transmittal of Applications: November 9, 2004.

Deadline for Intergovernmental Review: January 10, 2005.

Eligible Applicants: (1) Institutions of higher education; (2) combinations of institutions of higher education; (3) partnerships between nonprofit educational organizations and institutions of higher education; and (4) public and private nonprofit agencies and organizations, including professional and scholarly associations.

Estimated Available Funds: The Administration has requested

$2,190,000 for new awards for this program for FY 2005. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $50,000–$140,000.

Estimated Average Size of Awards: $75,517.

Maximum Award: We will reject any application that proposes a budget exceeding $140,000 for a single budget period of 12 months. The Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 29.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Undergraduate International Studies and Foreign Language (UISFL) Program provides grants to strengthen and improve undergraduate instruction in international studies and foreign languages.

Priorities: In accordance with 34 CFR 75.105(b)(2)(ii), the following competitive preference priority is from the regulations for this program (34 CFR 658.35).

Competitive Preference Priority

For FY 2005 this priority is a competitive preference priority. Under 34 CFR 75.105 (c)(2)(i) we award up to an additional five points to an application, depending on the extent to which the application meets this priority.

This priority is:

Applications that: (a) Require entering students to have successfully completed at least two years of secondary school foreign language instruction; (b) require each graduating student to earn two years of postsecondary credit in a foreign language or have demonstrated equivalent competence in the foreign language; or (c) in the case of a two-year degree granting institution, offer two years of postsecondary credit in a foreign language.

Invitational Priorities

Under this competition, we are particularly interested in applications that address the following priorities. For FY 05 these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

Invitational Priority 1

Applications that propose projects that provide in-service training for K–12 teachers in foreign languages and international studies and strengthen instruction in international studies and foreign languages in teacher education programs.

Invitational Priority 2

Applications that propose educational projects that include activities focused on the targeted world areas of Central and South Asia, the Middle East, Russia, the Independent States of the former Soviet Union, and Africa and that are integrated into the curricula of the home institutions or organizations.

Program Authority: 20 U.S.C. 1124.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 84, 85, 86, 97, 98 and 99. The regulations in 34 CFR parts 655 and 658.

Note: The regulations in 34 CFR part 79 apply to all applications 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: The Administration has requested $2,190,000 for new awards for this program for FY 2005. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process, if Congress appropriates funds for this program.

Estimated Range of Awards: $50,000—$140,000.

Estimated Average Size of Awards: $75,517.

Maximum Award: We will reject any application that proposes a budget exceeding $140,000 for a single budget period of 12 months. The Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 29.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. Eligible Applicants

(1) Institutions of higher education; (2) combinations of institutions of higher education; (3) partnerships between nonprofit educational organizations and institutions of higher education; and (4) public and private nonprofit agencies and organizations, including professional and scholarly associations.

2. Cost Sharing or Matching

Matching requirement: Under title VI, part A, section 604(a)(3) of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1124(a)(3), UISFL Program grantees must provide matching funds in either of the following waysaves\notices.xml (a) Cash contributions from the private sector equal to one-third of the total project costs; or (b) a combination of institutional and non-institutional cash or in-kind contributions equal to one-half of the total project costs. The Secretary may waive or reduce the required matching share for institutions that are eligible to receive assistance under part A or part B of title III, or under title V of the HEA.

IV. Application and Submission Information

1. Address to Request Application Package: Christine Corey, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., room 6069, Washington, DC 20006–8521. Telephone: (202) 502–7629 or by e-mail: *christine.corey@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 a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

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. Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the narrative to the equivalent of no more than 40 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. However, you may single space 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). However, you may use a 10-point font in charts, tables, figures, and graphs.

The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; the one-page abstract; or the appendices. However, you must include your complete response to the selection criteria in the application narrative.

We will reject your application if—

• You apply these standards and exceed the page limit; or

• You apply other standards and exceed the equivalent of the page limit.

3. Submission Dates and Times

Applications Available: September 23, 2004.

Deadline for Transmittal of Applications: November 9, 2004.

We do not consider an application that does not comply with the deadline requirements.

We are requiring that applications for grants under this program be submitted 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 electronically through the e-GRANTS system or to request a waiver of the electronic submission requirement, please refer to Section IV. 6. Other Submission Requirements in this notice.

Deadline for Intergovernmental Review: January 10, 2005.

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 program.

5. Funding Restrictions

We reference regulations outlining funding restrictions in the Applicable Regulations section of this notice.

Other Submission Requirements

We are requiring that applications for grants under this program be submitted electronically, unless the applicant requests a waiver of this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the Undergraduate International Studies and Foreign Language Program—CFDA Number 84.016A must be submitted electronically using 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.*

Unless a waiver of the electronic submission requirement has been requested by the applicant in accordance with the procedures in this section, all portions of the application must be submitted electronically.

If you are unable to submit an application through the e-GRANTS system, you must submit a written request for a waiver of the electronic submission requirement. In your request, you should explain the reason or reasons that prevent you from using the Internet to submit your application. You should address this request to: Christine Corey, U.S. Department of Education, 1990 K Street, NW., room 6069, Washington, DC 20006–8521. Please submit the request no later than two weeks before the application deadline date. Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

If, within two weeks of the application deadline date, you are unable to submit an application electronically, you must submit a paper application in accordance with the mail or hand delivery instructions described in this notice. The paper application must include a written request for a waiver documenting the reasons that prevented you from using the Internet to submit your application.

When using e-Application to complete the application, you will be entering data online. Do not e-mail an electronic copy of any part of a grant application to us. The data that is entered online will be saved into a database.

If you participate in e-Application, please note the following:

• You must submit the 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 the application in electronic format, nor will we penalize you if you request a waiver and submit the application in paper format because you were prevented from submitting the application electronically as required.

• You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424) and all necessary assurances and certifications.

• Your e-Application must comply with any page limit requirements described in this notice.

• After you submit your application to the Department, 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 you submit your electronic application, you must 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. 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. The applicant's Project Director is a registered user of e-Application and has 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.

b. Submission of Paper Applications by Mail

If you have requested a waiver of the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your paper application to the Department. The original and two copies of the application must be mailed on or before the application deadline date to the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 86.016A), 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 the application through the U.S. Postal Service, please note that 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 post marked 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, applicants should check with their local post office.

c. Submission of Paper Applications by Hand Delivery

If you have requested a waiver of the electronic submission requirement, you (or a courier service) may deliver the paper application to the Department by hand. The original and two copies of your application must be hand-delivered on or before the application deadline date to the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.016A), 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 the 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.

You may access the electronic grant application for the Undergraduate International Studies and Foreign Language program at: *http://e-grants.ed.gov.*

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 658.31 through 658.34. The following criteria are used to evaluate all applications: (a) Plan of operation (10 points); (b) quality of key personnel (10 points); (c) budget and cost effectiveness (10 points); (d) adequacy of resources (10 points); (e) evaluation plan (5 points). The following additional criteria are applied to applications submitted by an institution of higher education or a combination of such institutions: (a) Commitment to international studies (15 points); (b) elements of proposed international studies program (15 points); (c) need for and prospective results of proposed program (10 points). The following additional criterion is applied to applications from organizations and associations: need for and potential impact of the proposed project in improving international studies and the study of modern foreign languages at the undergraduate level (30 points).

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. The applicant is required to use the electronic data instrument Evaluation of Exchange, Language, International, and Area Studies, (EELIAS), system to complete the final report.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Christine Corey, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., room 6069, Washington, DC 20006–8521. Telephone: (202) 502–7629 or by e-mail: *christine.corey@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 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: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: September 20, 2004.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. E4–2357 Filed 9–22–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Business and International Education; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.153A.

Dates:

Applications Available: September 23, 2004.

Deadline for Transmittal of Applications: November 9, 2004.

Deadline for Intergovernmental Review: January 10, 2005.

Eligible Applicants: Institutions of higher education that enter into agreements with business enterprises, trade organizations or associations that are engaged in international economic activity—or a combination or consortium of these enterprises—for the purposes of pursuing the activities authorized under this program.

Estimated Available Funds: The Administration has requested $2,216,934 for new awards for this program for FY 2005. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $50,000–$110,000.

Estimated Average Size of Awards: $79,176.

Maximum Award: We will reject any application that proposes a budget exceeding $110,000 for a single budget period of 12 months. The Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 28.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Business and International Education program provides grants to enhance international business education programs and to expand the capacity of the business community to engage in international economic activities.

Priority: In accordance with 34 CFR 75.105(b)(2)(ii), this priority is from the regulations for this program (34 CFR 661.32).

Invitational Priority: For FY 2005 this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is: Applications from institutions of higher education that propose educational projects that include activities focused in the targeted world areas of Central and South Asia, the Middle East, Russia, the Independent States of the former Soviet Union, and Africa. These projects should be integrated into the curricula of the home institution or institutions.

Program Authority: 20 U.S.C. 1130a–1130b(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, 98, and 99. (b) The regulations in 34 CFR parts 655 and 661.

Note: The regulations in 34 CFR part 79 apply to all applications 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: The Administration has requested $2,216,934 for new awards for this program for FY 2005. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $50,000–$110,000.

Estimated Average Size of Awards: $79,176.

Maximum Award: We will reject any application that proposes a budget exceeding $110,000 for a single budget period of 12 months. The Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 28.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

III. Eligibility Information

1. *Eligible Applicants:* Institutions of higher education that enter into agreements with business enterprises, trade organizations or associations that are engaged in international economic activity—or a combination or consortium of these enterprises—for the purposes of pursuing the activities authorized under this program.

2. *Cost Sharing or Matching:* The matching requirement is described in section 613(d) of the Higher Education Act of 1965, as amended (20 U.S.C. 1130a(d)). The Higher Education Act states that the applicant's share of the total cost of carrying out a program supported by a grant under this program must be no less than 50 percent of the total cost of the project in each fiscal year. The non-Federal share of the cost may be provided either in-kind or in cash.

IV. Application and Submission Information

1. *Address to Request Application Package:* Ms. Tanyelle Richardson, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., room 6017, Washington, DC 20006–8521. Telephone: (202) 502–7626 or by e-mail: *tanyelle.richardson@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 a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

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.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the section of the narrative that addresses the selection criteria to the equivalent of no more than 40 pages, using the following standards:

- A "page" is 8.5″ × 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. However, you may single space 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). However, you may use a 10-point font in charts, tables, figures, and graphs.

The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; the one-page abstract; or the appendices. However, you must include your complete response to the selection criteria in the application narrative.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: September 23, 2004.

Deadline for Transmittal of Applications: November 9, 2004.

We do not consider an application that does not comply with the deadline requirements.

We are requiring that applications for grants under this program be submitted 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 electronically through the e-GRANTS system or to request a wavier of the electronic submission requirement, please refer to Section IV.6. *Other Submission Requirements* in this notice.

Deadline for Intergovernmental Review: January 10, 2005.

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 program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:*

We are requiring that applications for grants under this program be submitted electronically, unless the applicant requests a waiver of this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Business and International Education Program—CFDA Number 84.143A must be submitted electronically using 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.*

Unless a waiver of the electronic submission requirement has been requested by the applicant in accordance with the procedures in this section, all portions of the application must be submitted electronically.

If you are unable to submit an application through the e-GRANTS system, you must submit a written request for a waiver of the electronic submission requirement. In your request, you should explain the reason or reasons that prevents you from using the Internet to submit your application. You should address this request to: Ms. Tanyelle Richardson, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., 6th floor, Washington, DC 20006–8521. Please submit the request no later than two weeks before the application deadline date. Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

If, within two weeks of the application deadline date, you are unable to submit an application electronically, you must submit a paper application in accordance with the mail or hand delivery instructions described in this notice. The paper application must include a written request for a waiver documenting the reasons that prevented you from using the Internet to submit your application.

When using e-Application to complete the application, you will be entering data online. Do not e-mail an electronic copy of any part of a grant application to us. The data that is entered online will be saved into a database.

If you participate in e-Application, please note the following:

- You must submit the 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 the application in electronic format, nor will we penalize you if you request a waiver and submit the application in paper format because you were prevented from submitting the application electronically as required.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424) and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you submit your application, to the Department, 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 you submit your electronic application, you must 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. 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. The applicant's Project Director is a registered user of e-Application and has 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.

b. *Submission of Paper Applications by Mail.*

If you have requested a waiver of the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your paper application to the Department. The original and two copies of the application must be mailed on or before the application deadline date to the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.153A), 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 the application through the U.S. Postal Service, please note that 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 post marked 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, applicants should check with their local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you have requested a waiver of the electronic submission requirement, you (or a courier service) may deliver the paper application to the Department by hand. The original and two copies of your application must be hand-delivered on or before the application deadline date to the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.153A), 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 the 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

1. *Selection Criteria:* The selection criteria for this program are in 34 CFR 661.31 and are as follows: (a) Need for the project (20 points); (b) plan of operation (30 points); (c) qualifications of key personnel (10 points); (d) budget and cost effectiveness (15 points); (e) evaluation plan (15 points); and (f) adequacy of resources (10 points).

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. The applicant is required to use the electronic data instrument Evaluation of Exchange, Language, International and Areas Studies (EELIAS) system to complete the final report.

VII. Agency Contact

For Further Information Contact: Ms. Tanyelle Richardson, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., room 6017, Washington, DC 20006–8521. Telephone: (202) 502–7626 or by e-mail: *tanyelle.richardson@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 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: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code

of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: September 20, 2004.

Sally L. Stroup,

Assistant Secretary, for Postsecondary Education.

[FR Doc. E4–2358 Filed 9–22–04; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: United States Election Assistance Commission.

ACTION: Notice of public meeting agenda.

DATE AND TIME: Thursday, September 30, 2004, 10 a.m.–12 Noon.

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

AGENDA: The Commission will receive updates on the following: Title II Requirements Payments, HAVA College Program; proceedings at the Technical Guidelines Development Committee Subcommittee meetings at the National Institute of Standards and Technology. The Commission will also receive presentations from panel participants in a discussion regarding the administration of provisional ballots.

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

DeForest B. Soaries, Jr.,

Chairman, U.S. Election Assistance Commission.

[FR Doc. 04–21538 Filed 9–21–04; 3:37 pm]

BILLING CODE 6820–YN–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board Chairs Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB) Chairs. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register.**

DATES: Thursday, October 7, 2004, 8:30 a.m.–5 p.m., Friday, October 8, 2004, 8:30 a.m.–12 p.m.

ADDRESSES: Red Lion Hanford House, 802 George Washington Way, Richland, WA 99352, Phone: (509) 946–7611.

FOR FURTHER INFORMATION CONTACT: Jay Vivari, Program Management Specialist (EM30.1), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–5143.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the EMSSAB is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Thursday, October 7, 2004:

8:30 a.m.—Welcome; introductions; meeting expectations (Waisley; Lowe, Mabie).
8:45 a.m.—Round Robin 1: Top Three Issues for Each Site-Specific Advisory Board.
10 a.m.—Break.
10:15 a.m.—Round Robin 2: Site-Specific Advisory Boards' Organizational Challenges.
11:30 a.m.—Potential National Stakeholders Workshop.
11:45 a.m.—Public comment period.
Noon—Lunch.
1 p.m.—Hanford's Role in the Department of Energy's Complex and How Stakeholders Influence That Role.
1:45 p.m.—Round Robin 3: Current Developments Related to Interdependencies Among Department of Energy Sites for Waste Disposition.
2:30 p.m.—Break.
2:45 p.m.—Hanford Panel: Perspectives on Shipping and Receiving Waste at Hanford.
3:45 p.m.—Facilitated discussion—Vulnerabilities of the Current Waste Disposition Plan and Ramification for All Intersite Transfers.
4:30 p.m.—Public comment period.
4:45 p.m.—Next steps.

Friday, October 8, 2004:

8:30 a.m.—Opening.
8:45 a.m.—Department of Energy headquarters organizational changes, fiscal year 2005 budget, and the outlook for fiscal year 2006/ Waisley.
9:15 a.m.—Potential National Stakeholders Workshop (continued).
9:45 a.m.—Break.
10 a.m.—Panel discussion—Ongoing Transition from Environmental Management to Legacy Management at Rocky Flats and Fernald.
10:30 a.m.—Facilitated discussion.
11:30 a.m.—Public comment period.
11:45 a.m.—Meeting wrap-up.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jay Vivari at the address above or by telephone at (202) 586–5143. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the end of the meeting.

Minutes: Minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday except Federal holidays. Minutes will also be available by calling Jay Vivari at (202) 586–5143.

Issued at Washington, DC on September 16, 2004.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–21384 Filed 9–22–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER04–582–000, ER04–582–001, ER04–582–002, and ER04–582–003]

Hartford Steam Company; Notice of Issuance of Order

September 16, 2004.

Hartford Steam Company (Hartford) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed rate schedule provides for wholesale sales of energy, capacity, and ancillary services at market-based rates. Hartford also requested waiver of various Commission regulations. In particular, Hartford requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Hartford.

On September 10, 2004, 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 Hartford 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, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest, is October 12, 2004.

Absent a request to be heard in opposition by the deadline above, Hartford 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 Hartford, 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 Hartford'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 e-Library 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. E4–2328 Filed 9–22–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2744–038]

N.E.W. Hydro, Incorporated; Notice of Filing of Settlement Agreement Regarding License Article 401

September 16, 2004.

On July 16, 2004, N.E.W. Hydro, Incorporated (licensee) filed an Offer of Settlement regarding implementation of license article 401 for the Menominee and Park Mill Project (FERC No. 2744). License article 401 requires, in part, that the licensee consult with state and federal natural resource agencies and develop a study to assess the impacts of project operation on fish resources. The hydroelectric project is located on the Menominee River in Marinette County, Wisconsin and Menominee County, Michigan.

The Offer of Settlement addresses fish entrainment and mortality at the project with respect to implementation of article 401 of the license for the project. The Offer of Settlement was filed with the Federal Energy Regulatory Commission (FERC), by the licensee, on behalf of the signing parties that included: the U.S. Fish and Wildlife Service; the Wisconsin Department of Natural Resources; the Michigan Department of Natural Resources; and the Michigan Hydro Relicensing Coalition.

The settlement includes: (1) Provisions for the licensee to fund a fish passage/protection fund; (2) an agreement that it is not anticipated that any additional requirements during the remaining term of the license would appear to be necessary; (3) an agreement to enter into good faith negotiations aimed at a settlement of all issues concerning the relicensing of the project; (4) commitment by the licensee to request, from FERC, an accelerated relicensing of the project; and (5) a provision for dispute resolution processes in the event a disagreement arises from the interpretation of the terms and conditions of the settlement.

The Offer of Settlement can be viewed and printed from FERC's Web page: *http://www.ferc.gov*. Click on e-Library and follow the instructions. In the box titled, "Docket Number" enter: P–2744. If you have any questions regarding this notice, please contact Mr. Thomas LoVullo at (202) 502–8900 at the Federal Energy Regulatory Commission.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–2322 Filed 9–22–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–409–000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

September 16, 2004.

Take notice that on September 3, 2004, Northwest Pipeline Corporation (Northwest) filed a prior notice request pursuant to sections 157.205 and 157.208 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act, and Northwest's blanket certificate issued in Docket No. CP82–433–000, for authorization to increase the maximum operating pressure (MOP) of its Astoria Lateral in Cowlitz County, Washington and Columbia County, Oregon from 809 psig to 932 psig in order to facilitate physical receipts of natural gas from Northwest Natural Gas Company (Northwest Natural) at the Deer Island receipt point.

Northwest's bi-directional Astoria Lateral is connected to Northwest's 30-inch mainline loop which has an MOP of 960 psig and historical operating pressures near 800 psig. The lateral is also connected to Northwest's lower pressure 26-inch mainline which is currently in an idle status at the Astoria Lateral interconnect due to Office of Pipeline Safety restrictions. To facilitate firm receipts from the Deer Island receipt point into Northwest's 30-inch mainline loop, Northwest proposes to uprate the MOP of the Astoria Lateral from 809 psig to 932 psig. Under design day conditions on Northwest facilities and assuming Northwest Natural modifies its compression facilities at the Deer Island interconnect to provide supply at 932 psig, the higher lateral operating pressures would enable Northwest to receive up to approximately 115 Mdth/d on a firm basis from the Deer Island receipt point.

Northwest states that increasing the MOP of the Astoria Lateral from 809 psig to 932 psig will not require any new facilities or any ground disturbance. Therefore, Northwest believes that the project will have no significant impact on the quality of the

human environment, including sensitive environmental areas.

Any questions regarding this application should be directed to Gary Kotter, Manager, Certificates, at (801) 584–7117, Northwest Pipeline Corporation, PO Box 58900, Salt Lake City, Utah 84158.

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 Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676, or for TTY, (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 855.214) 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, therefore, 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.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–2327 Filed 9–22–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 362–004]

Ford Motor Company; Notice of Availability of Environmental Assessment

September 16, 2004.

In accordance with the National Environmental Policy Act of 1969 and Part 380 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380, FERC Order No. 486, 52 FR 47897, the Office of Energy Projects Staff (staff) reviewed the application for a new license for the Ford Hydroelectric Project, located on the Mississippi River in the city of St. Paul in Ramsey County, Minnesota, and prepared an environmental assessment (EA) for the project. The project uses a Federal dam and occupies 11.2 acres of Federal lands.

In this EA, the staff analyzes the potential environmental effects of the existing project and concludes that licensing the project, with staff's recommended measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

A copy of the EA and 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 "FERRIS" 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.

Any comments should be filed by October 15, 2004, and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please refer to "Ford Hydroelectric Project, FERC Project No. 362–004" on all comments.

Comments may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link. The Commission strongly encourages electronic filings.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–2323 Filed 9–22–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

September 16, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No:* 2533–036.

c. *Date Filed:* September 10, 2004.

d. *Applicants:* Missota Paper Company, LLC (Transferor); BM Paper Co, LLC (Transferee).

e. *Name and Location of Project:* The Brainerd Hydroelectric Project is located on the Mississippi River in Crow Wing County, Minnesota.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

g. *Applicant Contacts:* For Transferor: Danny Alexander, 1801 Mill Avenue, NE., Brainerd, MN 56401, (847) 290–7993. For Transferee: Elizabeth W. Whittle, Nixon Peabody, LLC, 401 Ninth Street, NW., Suite 900, Washington, DC 20004, (202) 585–8338.

h. *FERC Contact:* James Hunter, (202) 502–6086.

i. *Deadline for filing comments, protests, and motions to intervene:* October 18, 2004.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the Project Number (P–2533–036) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in 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 documents on that resource agency.

j. *Description of Application:* The applicants seek Commission approval to transfer the Brainerd Project license

from Missota Paper Company, LLC to BM Paper Co, LLC, which is purchasing the hydroelectric project and the associated factory assets in order to expand the paper-making business for itself and its affiliated companies.

k. 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 "FERRIS" link. Enter the docket number (P–2533) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. Comments, Protests, or Motions To Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

n. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

o. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–2321 Filed 9–22–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

September 16, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of license to delete certain non-jurisdictional transmission facilities from license.

b. *Project No:* 405–060.

c. *Date Filed:* September 1, 2004.

d. *Applicant:* PECO Energy Company and Susquehanna Power Company.

e. *Name of Project:* Conowingo.

f. *Location:* The project is located on the Susquehanna River in York and Lancaster Counties, Pennsylvania, and Harford and Cecil Counties in Maryland.

g. *Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* A. Karen Hill, Vice President, Federal Regulatory Affairs, Excelon Business Service Company, 101 Constitution Avenue, Washington, DC 20001. Tel: (202) 347–8092 or e-mail address: *Karen.hill@exceloncorp.com.*

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Vedula Sarma at (202) 502–6190, or e-mail address:*vedula.sarma@ferc.gov.*

j. *Deadline for filing comments and or motions:* October 18, 2004.

k. *Description of Request:* PECO Energy Company and Susquehanna Power Company propose to delete from license 10.3 miles of transmission lines including associated rights-of-way, extending from project's powerhouse to East Nottingham Township, Chester County, Pennsylvania.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. 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. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web

site at *http://www.ferc.gov* under the "e-Filing" link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–2324 Filed 9–22–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of Exemption and Soliciting Comments, Motions To Intervene, and Protests

September 16, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of exemption to relocate the damaged powerhouse of the Burton Creek Project to a safe location.

b. *Project No:* 7577–010.

c. *Date Filed:* August 31, 2004.

d. *Applicant:* Burton Creek Hydro, Inc.

e. *Name of Project:* Burton Creek Project.

f. *Location:* The project is located on the Burton Creek in Lewis County, Washington.

g. *Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Gene Peters, PO Box 401, Glenoma, WA 98336; (360) 498–5519.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Vedula Sarma at (202) 502–6190, or e-mail address: *vedula.sarma@ferc.gov.*

j. *Deadline for filing comments and or motions:* October 18, 2004.

k. *Description of Request:* Burton Creek Hydro, Inc. proposes to relocate the powerhouse damaged by a landslide to a safe location. The existing penstock would be extended approximately 800 feet in the bypass reach to a new powerhouse location. The exemptee proposes to use the same equipment, and utilize same amount of water except for 0.5 cfs to increase the volume of water in the bypass to 2 cfs as required by the State of Washington Department of Fish and Wildlife. Power output of the project may increase by 50 kW due to static head.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. 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. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–2325 Filed 9–22–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–274–000]

Kern River Gas Transmission Company, Notice of Informal Settlement Conference

September 16, 2004.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 10 a.m. (e.s.t.) on Tuesday, September 28, 2004, continuing through Wednesday, September 29, 2004 at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Thomas J. Burgess (202) 502–6058.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–2320 Filed 9–22–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–542–000]

Texas Eastern Transmission, L.P.; Notice of Informal Settlement Conference

September 16, 2004.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 2 p.m. (e.s.t.) on Wednesday, September 22, 2004, at the office of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible

settlement of the above-reference docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Cynthia Govan at *Cynthia.Govan@ ferc.gov* (202) 502–8745.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–2326 Filed 9–22–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7817–5]

Environmental Financial Advisory Board; Notice of Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of request for nominations.

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites nominations of qualified candidates to be considered for appointments to fill several vacancies on the Environmental Financial Advisory Board. The Board seeks to maintain diverse representation across sectors and geographic locations. Tribal representatives and non-profit environmental group representatives are encouraged to apply. Nominees who demonstrate expertise in commercial banking, environmental engineering, accounting and/or auditing, and/or financial insurance are also encouraged to apply. In addition to this notice, other sources may be utilized in the solicitation of nominees.

The deadline for receiving nominations is Friday, October 29, 2004. Appointments will be made by the Deputy Administrator of the Environmental Protection Agency and will be announced during January 2005. Nominees' qualifications will be assessed under the mandates of the Federal Advisory Committee Act, which requires Committees to maintain diversity across a broad range of constituencies, sectors, and groups.

Nominations for membership must include a resume describing the professional and educational qualifications of the nominee as well as experience. Contact details should include full name and title, business mailing address, telephone, fax, and e-mail address. A supporting letter of endorsement is encouraged but not required.

ADDRESSES: Submit nomination materials by postal mail, electronic mail or fax to: Vanessa Bowie, Membership Coordinator, Environmental Financial Advisory Board, EPA, Office of the Chief Financial Officer, 1200 Pennsylvania Avenue, NW. (2731R), Washington, DC 20460, e-mail *bowie.vanessa@epa.gov,* phone (202) 564–5186, fax (202) 565–2587.

FOR FURTHER INFORMATION CONTACT: Vanessa Bowie at (202) 564–5186.

SUPPLEMENTARY INFORMATION: The Environmental Financial Advisory Board meets two times each calendar year (two days per meeting) at different locations within the continental United States. Board members typically contribute approximately 1–3 hours per month to the Board's work. The Board membership services are voluntary. Travel and per diem expenses are covered by EPA in accordance with Federal Travel Regulations for invitational travelers.

The Board was chartered in 1989 under the Federal Advisory Committee Act to provide advice and recommendations to EPA on the following issues:

(a) Reducing the cost of financing environmental facilities and discouraging polluting behavior;

(b) Creating incentives to increase private investment in the provision of environmental services and removing or reducing constraints on private involvement imposed by current regulations;

(c) Developing new and innovative environmental financing approaches and supporting and encouraging the use of cost-effective existing approaches;

(d) Identifying approaches specifically targeted to small community financing; and

(e) Increasing the capacity issue of state and local governments to carry out their respective environmental programs under current Federal tax laws.

The following criteria will be used to evaluate nominees:

- Residence in the continental United States;
- Professional knowledge of, and experience with, environmental financing activities;
- Senior level-experience that fills a gap in Board representation, or brings a new and relevant dimension to its deliberations;
- Demonstrated ability to work in a consensus-building process with a wide range of representatives from diverse constituencies; and
- Willingness to serve a term as an actively-contributing member, with possible re-appointment to a second term.

Dated: September 16, 2004.

Joseph L. Dillon,

Director, Office of Enterprise Technology and Innovation.

[FR Doc. 04–21389 Filed 9–22–04; 8:45 am]

BILLING CODE 6560–50–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the President's Council of Advisors On Science and Technology

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for a meeting of the President's Council of Advisors on Science and Technology (PCAST) and describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act.

Dates and Place: October 5, 2004, Washington, DC. The meeting will be held in the Horizon Ballroom of the Ronald Reagan Building at the International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC 20001.

Type of Meeting: Open. Further details on the agenda will be posted on the PCAST Web site at: *http://www.ostp.gov/PCAST/pcast.html.*

Proposed Schedule and Agenda: The President's Council of Advisors on Science and Technology is scheduled to meet in open session on Tuesday October 5, 2004, at approximately 8:30 a.m. The PCAST will hold a Workshop on Transatlantic Research and Development Cooperation. The workshop will examine the many formal and informal mechanisms that exist to facilitate the advancement of science through joint research with foreign colleagues throughout Europe. The purpose of this workshop is to identify contemporary issues related to transatlantic cooperation at the individual, academic, corporate and national levels. PCAST will use the proceedings of this workshop to identify topics that merit further examination by the Council. Several members of the European Union Research Advisory Board are expected to join PCAST during the session. The workshop will end at approximately 5 p.m.

Additional information on the workshop will be posted at the PCAST Web site at: *http://www.ostp.gov/PCAST/pcast.html.*

Public Comments: There will be time allocated for attendees to join in the discussion of the above agenda items. *Public comment time is designed for substantive and relevant commentary, not for business marketing purposes.* Written comments are also welcome at any time prior to or following the meeting. Please notify Stan Sokul, PCAST Executive Director, at (202) 456–6070, or fax your comments to (202) 456–6021.

FOR FURTHER INFORMATION CONTACT: For additional information regarding time, place and agenda, please call Stan Sokul at (202) 456–6070, prior to 3 p.m. on Friday, October 1, 2004. Information will also be available at the PCAST Web site at: *http://www.ostp.gov/PCAST/pcast.html.* Please note that public seating for this meeting is limited and is available on a first-come, first-served basis.

SUPPLEMENTARY INFORMATION: The President's Council of Advisors on Science and Technology was established by Executive Order 13226, on September 30, 2001. The purpose of PCAST is to advise the President on matters of science and technology policy and to assist the President's National Science and Technology Council in securing private sector participation in its activities. The Council members are distinguished individuals appointed by the President from non-Federal sectors. The PCAST is co-chaired by Dr. John H. Marburger, III, the Director of the Office of Science and Technology Policy, and by E. Floyd Kvamme, a Partner at Kleiner Perkins Caufield & Byers.

Ann Mazur,

Assistant Director for Budget and Administration, Office of Science and Technology Policy.

[FR Doc. 04–21418 Filed 9–22–04; 8:45 am]

BILLING CODE 3170–W4–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE AND TIME: Tuesday, September 28, 2004 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Wednesday, September 29, 2004 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: Oral hearing will be open to the public.

MATTER BEFORE THE COMMISSION: Rev. Alfred C. Sharpton and Sharpton 2004.

* * * * *

DATE AND TIME: Thursday, September 30, 2004 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 2004–29: Representative Todd Akin and Todd Akin for Congress, by counsel Cleta Mitchell.

Advisory Opinion 2004–32: Spirit Airlines, Inc., by Yvonne L. Ramos, Assistant General Counsel and Director Governmental & Community Affairs.

Advisory Opinion 2004–35: Kerry-Edwards 2004, by counsel Marc Elias.

Final Rules and Explanation and Justification on Inaugural Committees.

Candidate Debates—Notice of Disposition of Petition for Rulemaking.

Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Robert Biersack, Acting Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 04–21466 Filed 9–21–04; 11:06 am]

BILLING CODE 6715–01–M

FEDERAL LABOR RELATIONS AUTHORITY

Membership of the Federal Labor Relations Authority's Senior Executive Service Performance Review Board

AGENCY: Federal Labor Relations Authority.

ACTION: Notice.

SUMMARY: Notice is hereby given of the members of the Performance Review Board.

DATES: September 23, 2004.

FOR FURTHER INFORMATION CONTACT: Jill M. Crumpacker, Director, Policy & Performance Management; Federal Labor Relations Authority (FLRA); 1400 K Street, NW.; Washington, DC 20424–0001; (202) 218–7945.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of title 5, U.S.C. requires that each agency establish, in accordance with the regulations prescribed by the Office of Personnel Management, one or more Performance Review Boards. The Boards shall review and evaluate the initial appraisal of a senior executive.

The following persons will serve on the FLRA's FY 2004 Performance Review Board:

- Barbara Reed Bradford, Deputy Director, U.S. Trade and Development Agency.
- Doris Brown, Human Resources Officer, International Trade Commission, Department of Commerce.
- Jill M. Crumpacker, Director, Policy & Performance Management, Federal Labor Relations Authority.
- David A. Dobbs, Deputy Assistant Inspector General for Aviation, Office of the Inspector General, Department of Transportation.
- Joe Schimansky, Executive Director, Federal Service Impasses Panel, Federal Labor Relations Authority.

Authority: 5 U.S.C. 4134(c)(4)

Dated: September 20, 2004.

Jill M. Crumpacker,

Director, Policy & Performance Management.

[FR Doc. 04–21381 Filed 9–22–04; 8:45 am]

BILLING CODE 6727–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the

nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 18, 2004.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Vision Bancshares, Inc., Ada, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of First Ada Bancshares, Inc., Ada, Oklahoma, and The First National Bank and Trust Company of Ada, Ada, Oklahoma.

In connection with this application, Applicant also has applied to acquire Witherspoon Finance Company, Inc., Ada, Oklahoma, and thereby engage in credit insurance agency activities and consumer finance activities, pursuant to sections 225.18(b)(1), (b)(11)(i), and (b)(11)(ii) of Regulation Y.

B. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105–1579:

1. Community First Bancorporation, Inc., Kennewick, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of Community First Bank, Kennewick, Washington.

Board of Governors of the Federal Reserve System, September 17, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–21364 Filed 9–22–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 18, 2004.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Vision Bancshares, Inc., Ada, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of First Ada Bancshares, Inc., Ada, Oklahoma, and The First National Bank and Trust Company of Ada, Ada, Oklahoma.

In connection with this application, Applicant also has applied to acquire Witherspoon Finance Company, Inc., Ada, Oklahoma, and thereby engage in credit insurance agency activities and consumer finance activities, pursuant to sections 225.18(b)(1), (b)(11)(i), and (b)(11)(ii) of Regulation Y.

B. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105–1579:

1. Community First Bancorporation, Inc., Kennewick, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of Community First Bank, Kennewick, Washington.

Board of Governors of the Federal Reserve System, September 20, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–21406 Filed 9–22–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 18, 2004.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Lindoe, Inc., Ordway, Colorado; to acquire up to 14.99 percent of the voting shares of Southern Colorado National Bancorp, Inc., and thereby indirectly acquire voting shares of Southern Colorado National Bank, both of Pueblo, Colorado.

Board of Governors of the Federal Reserve System, September 20, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–21407 Filed 9–22–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 8, 2004.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045–0001:

1. Community Bank System, Inc., Dewitt, New York; to engage *de novo* through its subsidiary Benefit Plans Administrative Services, Inc., Utica, New York, in employee benefits consulting and incidental activities, pursuant to section 225.28(b)(9)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, September 17, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–21363 Filed 9–22–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 8, 2004.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045–0001:

1. Community Bank System, Inc., Dewitt, New York; to engage *de novo* through its subsidiary Benefit Plans Administrative Services, Inc., Utica, New York, in employee benefits consulting and incidental activities, pursuant to section 225.28(b)(9)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, September 20, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–21405 Filed 9–22–04; 8:45 am]

BILLING CODE 6210–01–S

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 October 25, 2004.

ADDRESSES: Written comments should be submitted to: John Kraemer, at the Office of Information and Regulary Affairs, OMB at the following e-mail 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 effect of the grants streamlining efforts.

Results of these surveys will be used in future program planning initiatives 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.*, e-mail, 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	D.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: September 16, 2004.

Carolyn M. Clancy,

Director.

[FR Doc. 04–21339 Filed 9–22–04; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0408]

Regulatory Site Visit Training Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration's (FDA's) Center for Biologics Evaluation and Research (CBER) is announcing the initiation of a Regulatory Site Visit Training Program. This program is intended to give CBER's regulatory review staff, compliance staff, and other relevant staff an opportunity to visit biologics facilities. The visit is intended to provide first hand experience to CBER staff and to give a better understanding of the biologics industry, including its challenges and its operations. The purpose of this notice is to invite biologics companies interested in participating in this program to contact CBER for more information.

DATES: Submit a written or electronic requests for participation in this program by October 25, 2004.

ADDRESSES: If your biologics facility is interested in offering a site visit or learning more about this training opportunity for CBER staff, you should submit a request to participate in this program to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic requests to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Lonnie Warren-Myers, Division of Manufacturers Assistance and Training, Center for Biologics Evaluation and Research (HFM–49), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–2000, FAX: 301–827–3079, e-mail: *cbertrainingsuggestions@cber.fda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

CBER regulates biological products including blood and blood products, vaccines, and cellular and gene therapies. CBER is committed to advancing the public health through innovative regulations that help ensure the safety, effectiveness, and timely delivery to patients of biological products. CBER has initiated various training and development programs to promote high performance of its regulatory review staff, compliance staff, and other relevant CBER staff. CBER seeks to continuously enhance and update review efficiency and quality as well as the quality of its regulatory efforts and interactions. CBER is initiating the Regulatory Site Visit Training Program to provide CBER staff the opportunity to visit biologics facilities to observe first-hand the industry's biologic development and manufacturing processes and thereby obtain better understanding of the biologics industry and its operations.

Further, this program is intended to improve CBER's understanding of current practices, regulatory impacts and needs, and improve communication between CBER staff and industry. The first phase of the program will focus on blood, plasma, and fractionation industries including transfusion centers, although other industries may be considered including vaccines, cellular and gene therapy, and tissues.

II. The Regulatory Site Visit Training Program

A. Regulatory Site Visits

In this program, over a period of time to be agreed upon with the biologics facility, small groups (five or less) of CBER staff may observe operations of biologics manufacturing, packaging, pathology/toxicology laboratory testing, and regulatory affairs operations. These visits, or any part of the program, are not intended as a mechanism to inspect, assess, judge, or perform a regulatory enforcement function, but are meant to improve mutual understanding and to

provide an avenue for open dialog between the biologics industry and CBER.

B. Site Selection

All travel expenses associated with the site visits will be the responsibility of CBER. Therefore, selection of potential biologics facilities will be based on the coordination of CBER's priorities for staff training and the limited available resources for this program.

Dated: September 16, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–21318 Filed 9–22–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0371]

Guidance for Industry and Food and Drug Administration Staff: Class II Special Controls Guidance Document: Serological Assays for the Detection of Beta-Glucan; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "Class II Special Controls Guidance Document: Serological Assays for the Detection of Beta-Glucan." This class II special controls guidance document describes a means by which beta-glucan serological assays used for the detection of invasive fungal infection may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to reclassify beta-glucan serological assays into class II (special controls). This guidance document is immediately in effect as the special control for beta-glucan serological assays, but it remains subject to comment in accordance with the agency's good guidance practices (GGPs).

DATES: Submit written or electronic comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies on a 3.5" diskette of the guidance document entitled "Class II Special Controls Guidance Document: Serological Assays for the Detection of Beta-Glucan" to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Freddie M. Poole, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2096, ext. 111.

SUPPLEMENTARY INFORMATION:

I. Background

Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to reclassify beta-glucan serological assays into class II (special controls) under section 513(f)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(f)(2)). FDA is taking this action in response to a March 22, 2004, petition submitted by the Associates of Cape Cod, Inc., that requested classification of the beta-glucan serological assay under section 513(f)(2) of the act. This guidance document will serve as the special control for the beta-glucan serological assay devices. Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act (21 U.S.C. 360(k)) for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification. Because of the timeframes established by section 513(f)(2) of the act, FDA has determined, under § 10.115(g)(2) (21 CFR 10.115(g)(2)), that it is not feasible to allow for public participation before issuing this guidance as a final guidance document. Therefore, FDA is issuing this guidance document as a level 1 guidance document that is immediately in effect. FDA will consider any comments that are received in response to this notice to determine whether to amend the guidance document.

II. Significance of Guidance

This guidance is being issued consistent with FDA's GGPs (§ 10.115). The guidance represents the agency's current thinking on beta-glucan serological assays for the detection of invasive fungal infection. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

To receive "Class II Special Controls Guidance Document: Serological Assays for the Detection of Beta-Glucan" by fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1825) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

To receive "Class II Special Controls Guidance Document: Serological Assays for the Detection of Beta-Glucan," you may either send a fax request to 301–443–8818 to receive a hard copy of the document, or send an e-mail request to *gwa@cdrh.fda.gov* to receive a hard copy or an electronic copy. Please use the document number (1825) to identify the guidance you are requesting.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available

on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets.*

IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (the PRA). The collections of information addressed in the guidance document have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (21 CFR part 807, subpart E, OMB control number 0910–0120). The labeling provisions addressed in the guidance have been approved by OMB under OMB control number 0910–0485.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 10, 2004.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 04–21317 Filed 9–22–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Medicaid Mental Health Services Program and Analytic Reports—New

The Substance Abuse and Mental Health Services Administration (SAMHSA) will conduct a survey of state Medicaid directors to learn about the relationships between state mental health authorities and state Medicaid agencies in each state and the District of Columbia. In addition, SAMHSA will ask about the administration of Medicaid mental health services, the development of Medicaid mental health policy, mental health services statistics generated by Medicaid programs, and the characteristics of mental health-related data maintained by Medicaid agencies and used by mental health and other state agencies.

The survey will contact state Medicaid directors in all fifty states (and the District of Columbia) and will gather information on the following five survey domains: Organizational structure; Medicaid mental health services policy infrastructure; Medicaid mental health services, rates, and funding; Medicaid mental health providers; and, Data.

The survey will identify and describe, at the state level, how Medicaid mental health policy is developed; whether Medicaid mental health services and providers are treated differently from other Medicaid services and providers, and if so, how; and the availability of data and reports on Medicaid mental health service use and/or expenditures.

This information collection supports the New Freedom Initiative, one of SAMHSA's current priorities. As part of this effort, the President launched the New Freedom Commission on Mental Health to address the problems in the current mental health system. The Commission noted that fragmentation of responsibility for mental health services is a serious problem at the state level. Two of the Commission's 19 recommendations for the improvement of the mental health system were aimed at this problem. One was directed to states (create a comprehensive state mental health plan) and the other to the federal government (align relevant federal programs to improve access and accountability for mental health services). This survey is aimed at providing information that can help in carrying out these recommendations by further illuminating the relationships between state Medicaid and mental health agencies in the development and implementation of mental health policy.

Telephone interviews will be conducted with state Medicaid directors. Each interview will last one hour. Because of the open-ended nature of many of the survey questions and the general reluctance of state Medicaid directors to complete detailed paper or electronic surveys, we propose to conduct all the interviews by telephone, unless interviewees prefer to respond to a paper or electronic version.

ESTIMATES OF ANNUALIZED HOUR BURDEN

Number of respondents	Responses per respondent	Hours per response	Total hour burden
51	1	1	51

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, 1 Choke Cherry Road, Rockville, MD 20850. Written comments should be received by November 22, 2004.

Dated: September 16, 2004.

Anna Marsh,

Executive Officer, SAMHSA.

[FR Doc. 04–21372 Filed 9–22–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2004–0005]

Revised Privacy Impact Assessment and Privacy Policy; US–VISIT Program

AGENCY: Department of Homeland Security.

ACTION: Notice; Privacy Impact Assessment and Privacy Policy.

SUMMARY: The Department of Homeland Security (Department) intends to modify the United States Visitor and Immigrant Status Indicator Technology Program (US–VISIT) to expand coverage to include Visa Waiver Program entrants into this entry and exit system and to include the 50 busiest land ports of entry, and to modify the business process by which the Department shares information with other Federal law enforcement agencies. Accordingly, the original privacy impact assessment (PIA) for US–VISIT, which was published in the **Federal Register** on January 16, 2004, has been amended to reflect these changes in accordance with the E-Government Act of 2002, and is being made available to the public by this notice and in conjunction with the Interim Final Rule of August 31, 2004, United States Visitor and Immigrant Status Indicator Technology Program ("US–VISIT") Authority to Collect Biometric Data From Additional Travelers and Expansion to the 50 Most Highly Trafficked Land Border Ports of Entry, published at 69 FR 53318.

ADDRESSES: Written comments about this revised PIA for the US–VISIT Program, Increment 2, may be submitted to the DHS Privacy Office, Attn: US–VISIT PIA, Increment 2, U.S. Department of Homeland Security, Washington, DC 20528, fax (202) 298–5201, or e-mail at *privacy@dhs.gov*. If submitting comments by e-mail, please include the words "US–VISIT PIA" in the subject line.

Additional comments may be made through the e-docketing system by referencing docket number [DHS–2004–0005] at *http://docket.epa.gov/edkfed/index.jsp*.

FOR FURTHER INFORMATION CONTACT: Steve Yonkers, Privacy Officer, US–VISIT, Border and Transportation Security, U.S. Department of Homeland Security, Washington, DC 20528, telephone (202) 298–5200, fax (202) 298–5201, e-mail *usvisitprivacy@dhs.gov*.

Dated: September 14, 2004.

Nuala O'Connor Kelly,

Chief Privacy Officer.

BILLING CODE 4910–15–P

US-VISIT Program Privacy Policy

September 14, 2004

US-VISIT

United States
Visitor and Immigrant Status Indicator Technology
Program Office

US-VISIT Program
Privacy Policy

1. What is the purpose of the US-VISIT program?

The United States Visitor Immigrant Status Indicator Technology (US-VISIT) is a United States Department of Homeland Security (DHS) program that enhances the country's entry and exit system. It enables the United States to record the entry into and exit out of the United States of foreign nationals requiring a visa to travel to the U.S., creates a secure travel record, and confirms their compliance with the terms of their admission.

The US-VISIT program's goals are to:

a. Enhance the security of our citizens and visitors;

b. Facilitate legitimate travel and trade;

c. Ensure the integrity of the immigration system; and

d. Protect the privacy of our visitors.

The US-VISIT initiative involves collecting biographic and travel information and biometric identifiers (fingerscans and a digital photograph) from covered individuals to assist border officers in making admissibility decisions. The identity of covered individuals will be verified upon their arrival and departure.

2. Who is affected by the program?

Individuals subject to the requirements and processes of the US-VISIT program ("covered individuals") are foreign nationals entering and exiting the U.S. through identified ports of entry. U.S citizens and Legal Permanent Residents (LPRs) are currently exempt from the requirements of US-VISIT. Foreign nationals who later become LPRs or U.S citizens will no longer be covered by US-VISIT, but the information about them collected by US-VISIT will be retained, as will information collected about LPRs and U.S. citizens who used foreign travel documents to enter or exit the U.S.

3. What information is collected?

The US-VISIT program collects biographic, travel, travel document, and biometric information (photographs and fingerscans) pertaining to covered individuals. No personally identifiable information is collected other than that which is necessary and relevant for the purposes of the US-VISIT program.

4. How is the information used?

The information that US-VISIT collects is used to verify the identity of covered individuals when entering or leaving the U.S. This enables U.S. authorities to more effectively identify covered individuals that:

- Are known to pose a threat or are suspected of posing a threat to the security of the United States;
- Have violated the terms of their admission to the United States; or
- Are wanted for commission of a criminal act in the United States or elsewhere.

Personal information collected by US-VISIT will be used only for the purposes for which it was collected, unless other uses are specifically authorized or mandated by law.

5. Who will have access to the information?

The personal information collected and maintained by US-VISIT is accessed by employees of DHS—Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), and United States Citizenship and Immigration Services (USCIS) – and Department of State who need the information to carry out mission-related responsibilities. In accordance with DHS's policy published on January 4, 2004 on the DHS website and in the Federal Register on January 16, 2004, DHS also shares this information with federal, state, local, tribal, and foreign government law enforcement agencies.

6. How will the information be protected?

Personal information will be kept secure and confidential and will not be discussed with, nor disclosed to, any person within or outside the US-VISIT program other than as authorized by law and in the performance of official duties, and as described above. Careful safeguards, including appropriate security controls, compliance audits, and memoranda of understanding with non-DHS agencies will ensure that the data is not used or accessed improperly. In addition, the DHS Chief Privacy Officer will review pertinent aspects of the program to ensure that proper safeguards are in place. Roles and responsibilities of DHS employees, system owners and managers, and third parties who manage or access information in the US-VISIT program include:

6.1 DHS Employees

As users of US-VISIT systems and records, DHS employees shall:

- Access records containing personal information only when the information is needed to carry out their official duties.

- Disclose personal information only for legitimate business purposes and in accordance with applicable laws, regulations, and US-VISIT policies and procedures.

6.2 US-VISIT System Owners/Managers

System Owners/Managers shall:

- Follow applicable laws, regulations, and US-VISIT program and DHS policies and procedures in the development, implementation, and operation of information systems under their control.
- Conduct a risk assessment to identify privacy risks and determine the appropriate security controls to protect against the risk.
- Ensure that only personal information that is necessary and relevant for legally mandated or authorized purposes is collected.
- Ensure that all business processes that contain personal information have an approved Privacy Impact Assessment. Privacy Impact Assessments will meet appropriate OMB and DHS guidance and will be updated as the system progresses through its development stages.
- Ensure that all personal information is protected and disposed of in accordance with applicable laws, regulations, and US-VISIT program and DHS policies and procedures.
- Use personal information collected only for the purposes for which it was collected, unless other purposes are explicitly mandated or authorized by law.
- Establish and maintain appropriate administrative, technical, and physical security safeguards to protect personal information.

6.3 Third Parties

Third parties, including other law enforcement entities, who may have access to information collected by US-VISIT shall comply with requirements of memoranda of understanding drafted to address, among other matters, privacy issues, or shall follow the same privacy protection guidance as DHS employees.

7. How long is information retained?

Personal information collected by US-VISIT will be retained and destroyed in accordance with applicable legal and regulatory requirements.

8. Who to contact for more information about the US-VISIT program

Individuals whose personal information is collected and used by the US-VISIT program may, to the extent permitted by law, examine their information and request correction of inaccuracies. Individuals who believe US-VISIT holds inaccurate information about them, or who have questions or concerns relating to personal information and US-VISIT, should contact the US-VISIT Privacy Officer, US-VISIT Program, Department of Homeland Security, Washington, DC 20528 or at usvisitprivacy@dhs.gov Further information on the US-VISIT program is also available at www.dhs.gov/us-visit.

US-VISIT Program, Increment 2
Privacy Impact Assessment

In Conjunction with the Interim Final Rule of August 31, 2004

September 14, 2004

US-VISIT

United States
Visitor and Immigrant Status Indicator Technology
Program Office

US-VISIT Program, Increment 2 (Including VWP)

Privacy Impact Assessment

1. Introduction

The United States Congress has directed the Executive Branch to establish an integrated entry and exit data system to accomplish the following[1]:

1. Record the entry into and exit out of the United States of covered individuals;
2. Verify the identity of covered individuals; and
3. Confirm compliance by covered individuals with the terms of their admission into the United States.

The Department of Homeland Security (DHS) is complying with this congressional mandate through the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) Program.

The primary goals of US-VISIT are to:

- Enhance the security of our citizens and visitors;
- Facilitate legitimate travel and trade;
- Ensure the integrity of our immigration system; and
- Protect the privacy of our visitors.

The first phase of US-VISIT, referred to as Increment 1, captured entry and exit information about nonimmigrant visitors whose records are not subject to the Privacy Act. Rather than establishing an entirely new information system, DHS integrated and enhanced the capabilities of existing systems to capture this data. In an effort to make the program transparent, as well as to address any privacy concerns arising as a result of the program, DHS's Chief Privacy Officer directed that a Privacy Impact Assessment (PIA) be performed in accordance with the guidance issued by the Office of Management and Budget (OMB) on September 26, 2003, and that the PIA be updated as necessary to reflect future changes. This update of the initial PIA of January 4, 2003[2] is prompted by:

1. The inclusion of Visa Waiver Program (VWP) travelers in this entry and exit system;
2. The expansion of US-VISIT to the 50 busiest U.S. land border POEs; and

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[1] Congress enacted several statutory provisions concerning an entry/exit program, including provisions in: The Immigration and Naturalization Service Data Management Improvement Act of 2000 (DMIA), Public Law 106-215; The Visa Waiver Permanent Program Act of 2000 (VWPPA), Public Law 106-396; The U.S.A. PATRIOT Act, Public Law 107-56; and The Enhanced Border Security and Visa Entry Reform Act ("Border Security Act"), Public Law 107-173.

[2] The initial privacy impact assessment was published in the *Federal Register* of January 4, 2004, but was amended to correct a technical error (an incorrect telephone number) on January 16, 2004. See 68 FR 2608 (Jan. 16, 2004).

3. Changes in the business processes used by DHS to share information with Federal law enforcement agencies.

The principal impact of these changes is expansion of the pool of individuals subject to US-VISIT requirements and processes, and changes in the means of access used by DHS to share information with other law enforcement agencies.

2. System Overview

• What information is to be collected

Individuals subject to the principal data collection requirements and processes (including biometric collection and watch list checks) of the US-VISIT Program are nonimmigrant visa holders and VWP entrants traveling through air, sea, and the 50 busiest U.S. land border POEs. In addition, US-VISIT supports validation of the U.S.-issued travel documents of immigrant and nonimmigrant visa holders. Collectively, these constitute US-VISIT "covered individuals." DHS regulations and related regulatory actions published in the *Federal Register* further describe coverage of the program. Recent *Federal Register* publications describing US-VISIT include:

- Department of Homeland Security; Implementation of the United States Visitor and Immigrant Status Indicator Technology Program ("US-VISIT"); Biometric Requirements, 69 FR 468 (January 5, 2004).

- Department of Homeland Security; United States Visitor and Immigrant Status Indicator Technology Program (''US–VISIT''); Authority to Collect Biometric Data From Additional Travelers and Expansion to the 50 Most Highly Trafficked Land Border Ports of Entry, 69 FR 53318 (August 31, 2004).

The information to be collected from these individuals may include complete name, date of birth, gender, country of citizenship, passport number and country of issuance, country of residence, travel document type (e.g., visa), number, date and country of issuance, complete U.S. destination address, arrival and departure information, a digital photograph, and digital fingerprints. US-VISIT will capture and store this information using existing systems that record this information from travel documents and directly from covered individuals.)[3]

• Why the information is being collected

In numerous statutes, Congress has indicated that an entry/exit program must be put in place to verify the identity of covered individuals who enter or leave the United States. In keeping with this expression of congressional intent, and in furtherance of the mission of DHS, information is being collected about visitors to enhance national security while facilitating legitimate travel and trade. US-VISIT collects, maintains, and shares information in order to determine whether the individual:

- Should be prohibited from entering the U.S.;

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[3] Individuals may have biometric identifiers captured to compare against biometrics on US-issued travel documents at the time of entry, but these identifiers are not stored and processed by US-VISIT.

- Can receive, extend, change, or adjust immigration status;
- Has overstayed or otherwise violated the terms of their admission;
- Should be apprehended or detained for law enforcement action; and
- Needs special protection/attention (e.g., Refugees).

- **Opportunities individuals will have to decline to provide information or to consent to particular uses of the information and how individuals grant consent**

The admission into the United States of any covered individual—including VWP individuals—will be contingent upon submission of the information required by US-VISIT, including biometric identifiers. A covered individual who declines to provide required biometrics is inadmissible to the United States.[4] An individual who declines to provide required biometrics may withdraw his or her application for admission, or be subject to removal proceedings. DHS has instituted procedures to process and admit individuals who are physically unable to provide the required biometrics.

US-VISIT has its own Privacy Officer to ensure that the privacy of all visitors is respected and to respond to individual concerns which have been or may be raised about the collection of the required information. Extensive stakeholder outreach and information dissemination activities are taking place, which are reviewed and adjusted on an ongoing basis to ensure maximum effectiveness. Further, the DHS Chief Privacy Officer, who serves as the appellate review authority for all individual complaints and concerns about the program, will exercise comprehensive oversight of all phases of the program to ensure that privacy concerns are respected throughout implementation.

3. System Architecture

US-VISIT Increment 1 accomplished its goals primarily through the integration and modification of the capabilities of three existing DHS systems:

1. The Arrival and Departure Information System (ADIS)[5]
2. The Passenger Processing Component of the Treasury Enforcement Communications System (TECS)[6]

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[4] An individual may apply for a discretionary waiver of inadmissibility under Section 212(d)(3) of the Immigration and Nationality Act, 8 U.S.C. 1182(d)(3).

[5] System of Records Notice for Arrival and Departure Information System (ADIS), DHS/ICE-CBP-001, 68 FR 69412-69414 (December 12, 2003).

[6] System of Records Notice for Treasury Enforcement Communications System (TECS), TREASURY/CS.244, 63 FR 69809 (December 17, 1998). As indicated in the US-VISIT Increment 1 Functional Requirements Document (FRD), the Passenger Processing Component of TECS consists of two systems, where "system" is used in the sense of the E-Government Act, title 44, Chapter 35, section 3502 of U.S. Code; i.e., "a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information." The two systems, and the process relevant to US-VISIT that they support, are (1) Interagency Border Inspection System (IBIS) (including the Nonimmigrant visa (NIV) database), supporting the lookout process; and

3. The Automated Biometric Identification System (IDENT)[7]

US-VISIT Increment 1 involved modification and extension of client software on POE workstations (which include other functionality that is not part of US-VISIT) and the development of departure devices to collect exit data. Under Increment 2, this POE workstation functionality will be extended to workstations at the relevant land border POEs along with the ability to print Arrival/Departure Record Form I-94[8] departure stubs based on captured data and to transfer that data to a non-US-VISIT component of TECS for forwarding to the Nonimmigrant Information System[9] (NIIS).[10]

Workstations at all POEs will have the ability to perform biometric comparisons (stored photo vs. travel document photo vs. traveler) and document authentication on U.S. travel documents issued to non-citizens (visas in the case of US-VISIT). Several different approaches to departure devices for air and sea ports are currently being tested[11] and will be analyzed in a future PIA. This PIA considers departure devices only in general terms.

The changes to ADIS, TECS, and IDENT for Increment 1 included:

1. Modifications to TECS to give immigration inspectors the ability to display nonimmigrant-visa (NIV) data.
2. Modifications to the ADIS database to accommodate additional data fields, to interface with other systems, and to generate various types of reports based on the stored data.
3. Modifications to the IDENT database to capture biometrics at the primary POE and to facilitate identity verification.
4. Establishment of interfaces to facilitate the transfer of biometric information from IDENT to ADIS and from ADIS to TECS.
5. Establishment of other interfaces to facilitate transfer of changes or extensions in the status of individuals from two other databases—the Student and Exchange Visitor Information System (SEVIS) and the Computer Linked Application Information Management System (CLAIMS 3) to ADIS.

The changes to these systems for Increment 2 include:

1. Modification of existing workstations in the Passport Control areas of land POEs to capture biographic and biometric information.

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(2) Advance Passenger Information System (APIS), supporting the entry/exit process by receiving airline passenger manifest information.

[7] System of Records Notice for Enforcement Operational Immigration Records (ENFORCE/IDENT), DHS/ICE-CBP-CIS-001,68 FR 69414-69417 (December 12, 2003).

[8] Form I-94 and its variants must be filled out by most foreign visitors to the U.S.

[9] System of Records Notice for Nonimmigrant Information System (NIIS), JUSTICE/INS-036, 68 FR 5048-5049 (January 31, 2003).

[10] This supports a previously existing business process by providing more efficient data entry. Previously, all I-94 data was manually entered into NIIS and then replicated in a non-US-VISIT component of TECS. The information entered at the POEs will flow into this component of TECS and be replicated in NIIS.

[11] Department of Homeland Security; Border and Transportation Security; Notice to Aliens Included in the United States Visitor and Immigrant Status Indicator Technology System (US–VISIT), 69 FR 46556-46558 (August 3, 2004).

2. Establishment of an interface between the land border POE workstations and a non-US-VISIT component of TECS to support forwarding of I-94 information to NIIS.

3. Changes in the business process DHS uses to share information with other Federal law enforcement agencies.

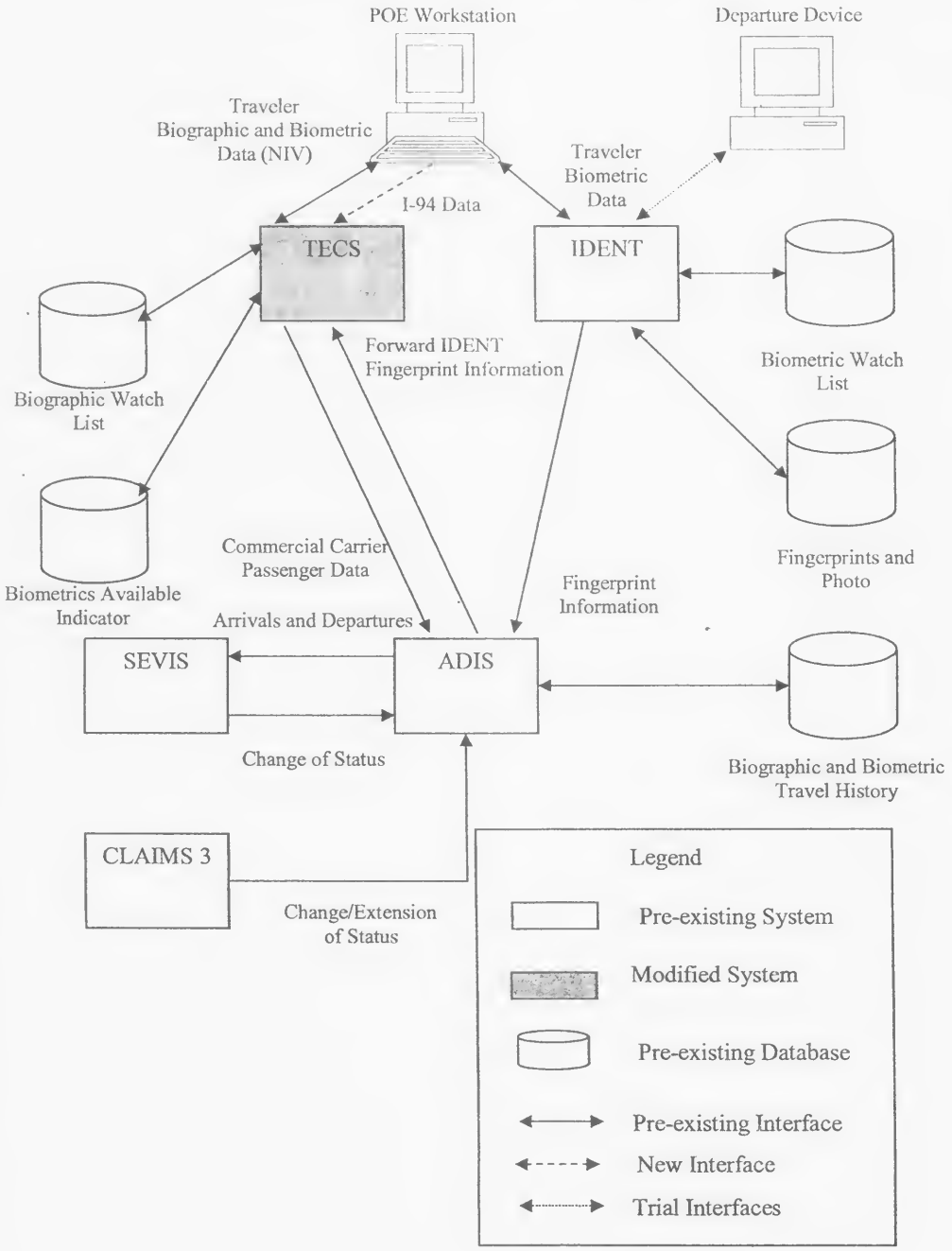
US-VISIT interfaces with other, non-DHS systems for relevant purposes, including watch list updates and checks. In particular, US-VISIT exchanges biographic and biometric information with the State Department's Consular Affairs Consolidated Database (CCD) as part of the visa application process (CCD does not retain any biometric information.)

As stated in the PIA for US-VISIT Increment I, which was published on the DHS website and in the Federal Register on January 4, 2004[12], the US-VISIT program shares information with federal, state, local, tribal, and foreign law enforcement agencies. This information sharing enhances the ability of DHS and other law enforcement agencies to work more cooperatively and effectively in achieving their national security and law enforcement objectives. In order to enhance the effectiveness of the FBI's access of US-VISIT information, US-VISIT is modifying the method by which it shares information by providing the FBI with direct access. Memoranda of Understanding establishing limits on access, use, disclosure and disposition will be put in place to strictly govern these interfaces in order to minimize any privacy impacts.

[12] A technical correction was published on January 16, 2004 at 69 FR 2608.

The diagram below presents data flows in the context of the high-level system architecture. Note that the terms "pre-existing," "modified," and "new" are relative to US-VISIT Increment 1.

Figure 1: US-VISIT Increment 2 Architecture



- **Intended use of the information**

DHS uses the information collected and maintained by US-VISIT to carry out its national security, law enforcement, and immigration control functions. Through the enhancement and integration of existing database systems, DHS is able to ensure the entry of legitimate visitors, identify, investigate, apprehend and/or remove aliens unlawfully entering or present in the United States beyond the lawful limitations of their visit, and prevent the entry of inadmissible aliens. US-VISIT enables DHS to protect U.S. borders and national security through improved immigration control. US-VISIT will also help DHS prevent aliens from obtaining benefits to which they are not entitled. As announced previously, DHS also shares information obtained through US-VISIT with other federal, state, local, tribal, and foreign law enforcement partners to accomplish common goals.

4. Administrative Controls on Access to the Data

- **With whom the information will be shared**

The personal information collected and maintained by US-VISIT is accessed by employees of DHS components—Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), and United States Citizenship and Immigration Services (USCIS) – and the Department of State for immigration and border management purposes.

The information also is accessed by agents of the Federal Bureau of Investigation (FBI) for law enforcement purposes and may be shared with other law enforcement agencies at the federal, state, local, foreign, or tribal level, who, in accordance with their responsibilities, are lawfully engaged in collecting law enforcement intelligence information (whether civil or criminal) and/or investigating, prosecuting, enforcing, or implementing civil and/or criminal laws, related rules, regulations, or orders. The Privacy Act System of Records Notices (SORNs) for the existing systems on which US-VISIT draws provide notice as to the conditions of disclosure and routine uses for the information collected by US-VISIT. Any disclosure by DHS must be compatible with the purpose for which the information was collected. Any non-DHS agency granted access to this information will sign a Memorandum of Understanding that will govern protection and usage of the information.

- **How the information will be secured**

The US-VISIT Program secures information and the systems on which that information resides by complying with the requirements of the DHS Information Technology (IT) Security Program Handbook. This handbook establishes a comprehensive program to provide complete information security, including directives on roles and responsibilities, management policies, operational policies, and application rules, which are applied to component systems, communications between component systems, and at all interfaces between component systems and external systems. In addition, ADIS, TECS, and IDENT have been individually certified as satisfying the applicable security requirements of their legacy (pre-DHS) organizations and will undergo recertification as required by law and DHS policy.

One aspect of the DHS comprehensive program to provide information security involves the establishment of strict rules of behavior for each major application, including US-VISIT. These rules of behavior require all users to be adequately trained regarding the security of their

systems. These rules also require a periodic assessment of physical, technical, and administrative controls to enhance data integrity and accountability. System users must sign statements acknowledging that they have been trained and understand the security aspects of their systems. In addition, the rules of behavior already in effect for each of the component systems on which US-VISIT draws will be applied to the program, adding an additional layer of security protection.

5. Information Life Cycle and Privacy Impacts

The table below provides an overview of the privacy risks associated with US-VISIT and the types of mitigation measures that address those risks.

Table 1: Overview of Privacy Threats and Mitigation Measures

Type of Threat	Description of Threat	Type of Measures to Counter/Mitigate Threat
Unintentional threats from insiders[13]	Unintentional threats include gaps in the privacy policy; mistakes in information system design, development, integration, configuration, and operation; and errors made by custodians (i.e., personnel of organizations with custody of the information). These threats can be physical (e.g., leaving documents in plain view) or electronic in nature. These threats can result in insiders being granted access to information for which they are not authorized or not consistent with their responsibilities.	These threats are addressed by a privacy policy consistent with Fair Information Practices, laws, regulations, and OMB guidance; (b) defining appropriate functional and interface requirements; developing, integrating, and configuring the system in accordance with those requirements and best security practices; and testing and validating the system against those requirements; and (c) providing clear operating instructions and training to users and system administrators.
Intentional threat from insiders	Threat actions can be characterized as improper use of authorized capabilities (e.g., browsing, removing information from trash) and circumvention of controls to take unauthorized actions (e.g., removing data from a workstation that has been not been shut off).	These threats are addressed by a combination of technical safeguards (e.g., access control, auditing, and anomaly detection) and administrative safeguards (e.g., procedures, training).
Intentional and unintentional threats from authorized external entities[14]	Intentional: Threat actions can be characterized as improper use of authorized capabilities (e.g., misuse of information provided by US-VISIT) and circumvention of controls to take unauthorized actions (e.g., unauthorized access to systems). Unintentional: Flaws in privacy policy definition; mistakes in information system design, development, integration, configuration, and operation; and	These threats are addressed by technical safeguards (in particular, boundary controls such as firewalls) and administrative safeguards in the form of routine use agreements and memoranda of understanding which require external entities (a) to conform with the rules of behavior and (b) to provide safeguards consistent with, or more stringent than, those of the system or program.

[13] Here, the term "insider" is intended to include individuals acting under the authority of the system owner or program manager. These include users, system administrators, maintenance personnel, and others authorized for physical access to system components.

[14] These include individuals and systems that are not under the authority of the system owner or program manager, but are authorized to receive information from, provide information to, or interface electronically with the system.

	errors made by custodians	
Intentional threats from external unauthorized entities	Threat actions can be characterized by mechanism: physical attack (e.g., theft of equipment), electronic attack (e.g., hacking, interception of communications), and personnel attack (e.g., social engineering).	These threats are addressed by physical safeguards, boundary controls at external interfaces, technical safeguards (e.g., identification and authentication, encrypted communications), and clear operating instructions and training for users and system administrators.

The following analysis is structured according to the information life cycle. For each life-cycle stage—collection, use and disclosure, processing, and retention and destruction—key issues are assessed, privacy risks identified, and mitigation measures discussed. Risks are related to fair information principles—notice/awareness, choice/consent, access/participation, integrity/security, and enforcement/redress—that form the basis of many statutes and codes.[15] US-VISIT has developed and is publishing its own set of privacy principles, which will be used for this analysis in all future PIAs.

- **Collection**

US-VISIT collects, uses, and retains only the personal information necessary for its purposes. As a result of the Arrival/Departure Record Form I-94 data capture process, Increment 2 does collect data elements not already collected by US-VISIT, but only in support of an existing business process and system of records. All these data are transferred to a non-US-VISIT component of TECS that replicates the data in NIIS and forwards these data to NIIS. None of the I-94 data is used or retained by US-VISIT. This represents a minor change to an existing (non-US-VISIT) data collection process. Currently, Forms I-94, I-94W, and I-94T are completed by hand, collected, manually reviewed for legibility and accuracy, and sent to a data entry contractor for entry into NIIS. US-VISIT will streamline this process for Form I-94 at applicable land POEs by electronically capturing I-94 data. (The process for Forms I-94W and I-94T remains unchanged.) Moreover, the Form I-94 departure stub will be printed for issuance to the traveler as evidence of the terms of admission. This affords individuals at these POEs the opportunity to verify that their I-94 information was properly entered by the CBP official and to request correction of any inaccuracies at the time of departure—an additional integrity safeguard.

[15] Notice/awareness involves being informed of an entity's information handling practices and requires limitation of collection, use, disclosure, and retention to that which is consistent with stated purposes. Choice/consent requires that, to the extent possible, options be provided regarding the collection and handling of personal information. Access/participation involves the ability to view and/or contest the data held about oneself. Integrity/security requires that steps be taken to ensure that personal information is both accurate and protected. Enforcement/redress involves compliance mechanisms.

Otherwise, the expansion of US-VISIT to land border POEs provides for the same data collection that Increment 1 implemented at air and sea POEs, with identical risks and mitigations. Similarly, the inclusion of VWP countries, while expanding the pool of covered individuals, does not qualitatively affect the risk analysis.[16] The biometric comparison and document authentication process to which immigrant visa holders (in addition to other covered individuals) may be subjected further expands the pool of covered individuals, but in a more limited fashion and, again, with no qualitative impact on the risk analysis.

While US-VISIT does not constitute a new system of records, it does expand the types of data held in its component systems. (The component SORNs were previously updated to reflect US-VISIT usage.) By definition this creates a general privacy risk. This risk is mitigated, however, by a privacy policy (available at http://www.dhs.gov/us-visit) supported and enforced by a comprehensive privacy program. This program includes a separate Privacy Officer for US-VISIT, mandatory privacy training for system operators, appropriate safeguards for data handling, and ongoing consultation with stakeholders and representative organizations. Additionally, US-VISIT will conduct periodic strategic reviews of the data to ensure that what is collected is limited fundamentally to that which is necessary for US-VISIT purposes.

- **Use and Disclosure**

The IDENT and TECS systems collect data that are used for purposes other than those identified by US-VISIT. This presents a potential notice risk. This risk is mitigated in several ways. First, US-VISIT isolates US-VISIT data from non US-VISIT data on component systems. US-VISIT transactions have a unique identifier to differentiate them from other TECS and IDENT transactions. This allows for improved oversight and audit capabilities to ensure that the data are being handled in a manner consistent with all applicable federal laws and regulations regarding privacy and data integrity. All users receive specific privacy and security training on the handling of this data, including any special restrictions on data use and/or disclosure such as those resulting from any applicable international agreements and special types of status (e.g., asylum applicants). Second, the IDENT and TECS systems have their own published SORNs, which explain permissible data uses for both US-VISIT and non-US-VISIT purposes. This too mitigates the risk of individuals not having received effective notice. Third, Memoranda of Understanding and of Agreement are being put into place with third parties (including other agencies, such as the FBI and the Department of State,) to address privacy protections and use limitations for US-VISIT data.

- **Processing**

The data flows, which occur over an encrypted network between US-VISIT component systems and/or applications, are limited and confined only to those transactions that are functionally necessary. Although much of the personal information going into ADIS from SEVIS and CLAIMS 3 is duplicative of data entering ADIS from TECS, this duplication is to ensure that changes in status received from SEVIS or CLAIMS 3 are associated with the correct individual, even in cases of data element mismatches (i.e., differing values for the same data element received from different sources). This mitigates the data integrity risk. A failure to match generates an exception report that prompts action to resolve the issue. This also mitigates

[16] The air Passenger Name Record (PNR) data covered by a data-sharing agreement between the U.S. and the European Union are not used by US-VISIT.

integrity risk by guarding against incorrect enforcement actions resulting from lost immigration status changes. (The data flows from SEVIS and CLAIMS 3 principally support changes in status.)

On the other hand, if a match is made, but there are some data element mismatches, no report is generated identifying the relevant records and data elements (one or more of which must have inaccurate or improper values) and no corrective action is taken. This is due to the resources that would be required to investigate all such events. This integrity risk again creates a possibility of incorrect enforcement actions if the match was made in error as a result of the data element mismatches. However, this aspect of the integrity risk is mitigated by subjecting all status changes that would result in enforcement actions to manual analysis and verification. A quality assurance process is also being used to identify any problem trends in the matching process (e.g. compounded errors) and implement risk mitigation as needed (e.g., special checks targeted at specific data elements exhibiting a statistically significant tendency to cause matching errors).

Matching errors are also a potential issue at POEs. The matching errors and the integrity risk they constitute can be of two main types: 1) watch list false positive (where an individual is incorrectly matched to someone on a watch list) and 2) incorrect 1:1 verification mismatch (where a false discrepancy is detected between an individual and their own records). POE mismatch rates to date appear to be consistently low for erroneous watch list hits (a cumulative rate of less than 0.1%). Both types of risk are substantially mitigated by on-the-spot manual verification and clearance (taking an average of around 3 minutes for watch list false positives) combined with the US-VISIT redress policy.

US-VISIT has implemented a three-stage process to facilitate the amendment or correction by individuals of data that are not accurate, relevant, timely, or complete. The full US-VISIT redress policy, including request form, is available at http://www.dhs.gov/us-visit. The US-VISIT Privacy Officer has set a goal of processing redress requests within 20 business days. US-VISIT will refine this process on an ongoing basis through systematic consideration of specific scenarios, including expedited removal.

- **Retention and Destruction**

The policies of individual component systems, as stated in their SORNs, govern the retention of personal information collected by US-VISIT. Because the component systems were created at different times for varied purposes, there are inconsistencies across the SORNs with respect to data retention policies. There is also some duplication in the types of data collected by each system. These inconsistencies and duplication result in some heightened degree of integrity/security, access, and/or redress risk as personal information could disappear from one or more component systems while persisting in others. In order to most appropriately and effectively mitigate these risks, a comprehensive assessment of retention requirements is currently being conducted. When complete, this assessment will be used to establish a uniform retention policy for personal information collected by US-VISIT. It includes consideration of any applicable international agreements or special types of status, as described above, as well as consideration of issues related to retention of personal data for individuals who are covered by US-VISIT and later become either legal permanent residents or U.S. citizens. Additional mitigation is provided on a case-by-case basis by the US-VISIT redress process, which will complement the uniform retention policy that is under development.

US-VISIT stores fingerprint images, both in the IDENT database and temporarily on some POE

workstations before transferring them to IDENT. These images are sensitive, and their storage could present a security as well as a privacy risk. Because retention of fingerprint images is functionally necessary so that manual comparison of fingerprints can be performed to verify biometric watch list matches, appropriate mitigation strategies are utilized, including physical and logical access controls on the POE workstations and on the IDENT system.

6. Design Choices (including whether a new system of records is being created)

Legislation both before and after the events of September 11, 2001, led to the development of the US-VISIT Program. The program was originally intended by Congress to address concerns with visa overstays, the number of illegal foreign nationals in the country, and overall border security issues. After September 11, 2001, terrorism-related concerns added urgency to development and deployment of this Program. Requirements for the program, including the implementation of an integrated and interoperable border and immigration management system, are embedded in various provisions of: The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104-208; The Immigration and Naturalization Service Data Management Improvement Act of 2000 (DMIA), Public Law 106-215; The Visa Waiver Permanent Program Act of 2000 (VWPPA), Public Law 106-396; The U.S.A. PATRIOT Act, Public Law 107-56; and The Enhanced Border Security and Visa Entry Reform Act ("Border Security Act"), Public Law 107-173. As a result, many of the characteristics of US-VISIT were pre-determined. These characteristics include, among others:

- Use of a National Institute of Standards and Technology (NIST) biometric standard for identifying foreign nationals;
- Use of biometric identifiers in travel and entry documents issued to foreign nationals, and the ability to read such documents at U.S. POEs;
- Integration of arrival/departure data on foreign nationals, including commercial carrier passenger manifests; and
- Integration with other law enforcement and security systems.

These and other requirements substantially constrained the high-level design choices available to the US-VISIT Program. A major choice for the program concerned whether to develop an entirely or largely new system or to build upon existing systems. Given the legislatively imposed deadline of December 31, 2003, for establishing an initial operating capability, along with the various integration requirements, the program opted to leverage existing systems—IDENT, ADIS, and the Passenger Processing Component of TECS.

As a result of this choice for Increment 1, DHS determined that a new system of records would not be created. US-VISIT Increment 1 integrated and enhanced the capabilities of existing systems; it did not create a new system of records outside of the records that exist on other systems. (These systems have been modified to support US-VISIT functionality—as described in Section 3—and their SORNs have been revised accordingly.) Although Increment 2 has not altered this assessment, US-VISIT is studying whether creation of a unique system of records would enhance privacy protections.

7. Summary and Conclusions

In order to assess the privacy risks of US-VISIT effectively and accurately, and because the program represents a new business process, the initial PIA was carried out and performed in accordance with OMB guidelines. In the process of conducting the PIA for Increment 1, DHS identified the need to: (1) update the SORNs of the ADIS and IDENT systems to accurately reflect US-VISIT requirements and usage, which has been accomplished, and (2) examine the privacy and security aspects of the existing SORNs and implement on an ongoing basis any necessary additional strategies to ensure the privacy and security of US-VISIT data. Under Increment 2, the coverage of US-VISIT is expanded to include additional categories of visitors, additional ports of entry, and changed business processes by which information is shared outside DHS. These changes have been made in ways that ensure strong privacy controls and oversight.

Based on these analyses, it can be concluded that

- Most of the high-level design choices for US-VISIT were statutorily pre-determined;
- US-VISIT creates a pool of individuals whose personal information is at risk (covered individuals), which Increment 2 expands; but
- US-VISIT mitigates specific privacy risks and Increment 2 does not create a need for new mitigations; and
- US-VISIT through its Privacy Officer and in collaboration with the DHS Chief Privacy Officer will continue to track, assess, and address privacy issues throughout the life of the US-VISIT Program.

Appendix A: List of References

1 Statutory Authorities

1.1 Statutory Authorities for Protection of Information and of Information Systems

5 U.S.C. § 552, Freedom of Information Act (FOIA) of 1966, As Amended By Public Law No. 104-231, 110 Stat. 3048

5 U.S.C. § 552a, Privacy Act of 1974, As Amended

Public Law 100-503, Computer Matching and Privacy Act of 1988

Public Law 107-347, E-Government Act of 2002, Section 208, Privacy Provisions, and Title III, Information Security (Federal Information Systems Management Act (FISMA))

1.2 Statutory Authorities for US-VISIT

Public Law 104-208, Illegal Immigration Reform and Immigrant Responsibility Act of 1996

Public Law 106-215, The Immigration and Naturalization Service Data Management Improvement Act of 2000 (DMIA)

Public Law 106-396, The Visa Waiver Permanent Program Act of 2000 (VWPPA)

Public Law 107-56, The U.S.A. PATRIOT Act

Public Law 107-173, Enhanced Border Security and Visa Entry Reform Act of 2002 ("Border Security Act")

2 US-VISIT and Component Systems Documentation

Arrival Departure Information System Data Elements Document (Sensitive but Unclassified) (Draft), November 10, 2003.

Consolidated Functional Requirements Document, US-VISIT, Increment 1, Information Technology Program Management Support, Draft, August 28, 2003.

Consolidated Interface Control Document, US-VISIT, Increment 1, Draft, August 28, 2003.

Department of Homeland Security; Border and Transportation Security; Notice to Aliens Included in the United States Visitor and Immigrant Status Indicator Technology System (US–VISIT), 69 FR 46556 (August 3, 2004).

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Department of Homeland Security; United States Visitor and Immigrant Status Indicator Technology Program (''US–VISIT''); Authority to Collect Biometric Data From Additional Travelers and Expansion to the 50 Most Highly Trafficked Land Border Ports of Entry, 69 FR 53318 (August 31, 2004).

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Increment 2B Business Requirements, Version 0.5, US-VISIT, undated.

Increment 2B Concept of Operations, Version 2.2, US-VISIT, April 29, 2004.

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IT Security Program Handbook, Version 1.3, Sensitive Systems, Department of Homeland Security, ID-4300A, June 20, 2003.

Security Evaluation Report (SER) for the Automated Biometric Identification System (IDENT), SMI-0039-SID-214-RG-40391, March 10, 2003.

Security Evaluation Report (SER) for the Visa Waiver Permanent Program Act Support System Arrival Departure Information System (VWPPASS/ADIS), SMI-0039-SI-214-DTR-50446, October 8, 2003.

System of Records Notice for Arrival and Departure Information System (ADIS), DHS/ICE-CBP-001, 68 FR 69412 (December 2003).

System of Records Notice for Enforcement Operational Immigration Records (ENFORCE/IDENT), DHS/ICE-CBP-CIS-001, 68 FR 69414 (December 12, 2003).

System of Records Notice for Nonimmigrant Information System (NIIS), JUSTICE/INS-036, 68 FR 5048 (January 31, 2003).

System of Records Notice for Treasury Enforcement Communications System (TECS), TREASURY/CS.244, 63 FR 69865 (December 17, 1998).

Treasury Enforcement Communications System (TECS) Functional Security Requirements Document, United States Customs Service, February 20, 2003.

The United States Visitor and Immigrant Status Indicator Technology (US-VISIT) Program Increment 1 Concept of Operations: Process Flows and Operational Scenarios, Draft, July 15, 2003.

US-VISIT Increment 2A Proposal, US-VISIT, April 11, 2004.

US-VISIT Information Brochure, undated.

US-VISIT Privacy Policy, November, 2003.

US-VISIT Program Overview (DHS briefing), undated.

US-VISIT Q&As: Background Information, Draft REV, October 17, 2003.

US-VISIT Redress Policy, April 15, 2004.

3 Related Guidance and Supporting Documentation

Federal Trade Commission, Privacy Online: A Report to Congress, June, 1998.

OMB Guidance for Implementing the Privacy Provisions of the E-Government Act of 2002, Memorandum M-03-22, September 26, 2003.

Risk Management Guide for Information Technology Systems, NIST Special Publication 800-30, January 2002.

Roles for the National Institute of Standards and Technology (NIST) in Accelerating the Development of Critical Biometric Consensus Standards for US Homeland Security and the Prevention of ID Theft, NIST, March 11, 2003.

Transfer of Air Passenger Name Record (PNR) Data: A Global EU Approach, Commission of the European Communities, December 16, 2003.

Appendix B: List of Acronyms

ADIS	Arrival Departure Information System
APIS	Advance Passenger Information System
BLSR	Baseline Security Requirements
CBP	Customs and Border Protection
CIS	Citizenship and Immigration Services
CLAIMS 3	Computer Linked Applications Information Management System
COA	Class of Admission
CCD	Consular Affairs Consolidated Database
CSRC	Computer Security Resource Center
CVT	Candidate Verification Tool
DD	Departure Device
DHS	Department of Homeland Security
DMIA	Data Management Improvement Act
DoB	Date of Birth
DocKey	Document Key
DoS	Department of State
FBI	Federal Bureau of Investigation
FIN	Fingerprint Identification Number
FOIA	Freedom of Information Act
FRD	Functional Requirements Document
I&A	Identification and Authentication
IAFIS	Integrated Automated Fingerprint Identification System
IBIS	Interagency Border Inspection System
ICD	Interface Control Document
ICE	Immigration and Customs Enforcement
ID	Identifier
IDENT	Automated Biometric Identification System
IFR	Interim Final Rule
IIRIRA	Illegal Immigration Reform and Immigrant Responsibility Act
IT	Information Technology
LPR	Lawful Permanent Resident
NATO	North Atlantic Treaty Organization
NIIS	Nonimmigrant Information System
NIST	National Institute of Standards and Technology

NIV	Nonimmigrant Visa
OMB	Office of Management and Budget
PA	Privacy Act
PIA	Privacy Impact Assessment
PICS	Password Issuance Control System
POD	Port of Departure
POE	Port of Entry
PNR	Passenger Name Record
Pub. L.	Public Law
SER	Security Evaluation Report
SEVIS	Student and Exchange Visitor Information System
SM/I	Systems Management and Integration
SOR	System of Records
SORN	System of Records Notice
SSN	Social Security Number
STARS	Service Technology Alliance Resources
TBD	To Be Determined
TECS	Treasury Enforcement Communications System
U.S.C.	United States Code
US-VISIT	United States Visitor Immigrant Status Indicator Technology
VWP	Visa Waiver Program
VWPPA	Visa Waiver Permanent Program Act
VWPPASS	Visa Waiver Permanent Program Act Support System
WAN	Wide Area Network
W/S	Workstation

Appendix C: Data Flows Detailed

Pursuant to Public Law 107-173, Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act of 2002, US-VISIT information is and will be integrated with other DHS databases and data systems. US-VISIT information is and will be interfaced with data systems of other agencies US-VISIT exchanges data on a routine basis with the Student and Exchange Visitor Information System (SEVIS), the Computer Linked Applications Information Management System (CLAIMS 3), the Nonimmigrant Information System (NIIS), and the State Department's Consular Affairs Consolidated Database. However, US-VISIT information is logically separated from other data and users on the component systems (TECS, IDENT, and ADIS).

Tables C-1 through C-4 detail the flows of personal information in US-VISIT. In general, internally generated administrative information (other than identifiers) that is associated with individuals is not included. However, information with special relevance for the treatment of individuals (e.g., Class of Admission) is included. Table C-1 defines sets of data elements that are handled as groups. To reduce complexity, the rest of the data flow tables refer, when appropriate, to these groups rather than to individual data elements. Table C-2 details the data flowing into and out of US-VISIT breaking it down by component system/application. Table C-3 indicates what personal information is being used by individual US-VISIT processes and which systems/applications are involved in those processes. Note that because the contexts of primary and secondary inspection are different for air/sea POEs and land border POEs, Table C-3 refers instead to core and extended inspection. Table C-4 charts the flows of personal information between US-VISIT systems/applications and directly between US-VISIT systems/applications and selected other systems. A comprehensive assessment of external interfaces is underway. These tables facilitate analysis of the personal data requirements of US-VISIT and identification of potentially unnecessary data collection or movement.

Table C-1: Data Aggregates

Aggregate Name	Data Elements

DocKey	• Complete name
	• Date of birth
	• Citizenship
	• Gender
	• Travel document
	  o Type
	  o Number
	  o Date of issuance
	  o Country of issuance
	• Fingerprint Identification Number (FIN)
	• Biographic and biometric watch list hit/match[17]

Admission data	• Class of admission • Admit until date

Visa data	• First name
	• Last name
	• Visa
	  o Class
	  o Number
	  o Entry (multiple or one time entry)
	  o Issuance date
	  o Expiration date
	• Passport type
	• Passport number
	• Gender
	• Date of birth
	• Nationality

Travel document data	Dependent on document type but will include
	• Complete name
	• Document
	  o Number
	  o Date of issuance
	  o Country of issuance

[17] This information is not retained in the event of a false positive.

Table C-1: Data Aggregates (continued)

Aggregate Name	Data Elements

Passenger manifest	• Complete name
	• Date of birth
	• Gender
	• Document
	  o Country of issuance
	  o Type
	  o Number
	  o Expiration date
	  o Issue date
	• Nationality
	• Carrier code, number
	• Vessel seaport
	• Vessel name
	• PNR Number
	• Arrival country, airport
	• Departure country, airport
	• Arrival date & time/Departure date
	• U.S. destination address
	• Passenger status, status code

I-94 data	• Complete name • Date of birth • Citizenship • Gender • Passport number • Country of residence • Departure city • Visa city of issuance • Visa data of issuance • U.S. destination address

Aggregate Name	Data Elements

Visa application	• State Department case ID
	• Applicant ID
	• Complete name
	• Gender
	• Date of birth
	• Country of birth
	• Nationality
	• Passport
	  o Number
	  o Type
	  o Date of issuance
	  o Country of issuance
	  o City of issuance
	  o Expiration date
	• Visa type
	• Visa class

Encounter data	• Encounter date and time
	• Encounter applicant ID
	• Travel document
	  o Type
	  o Country of issuance
	  o Number
	• Date of birth
	• Eye color
	• Hair color
	• Height
	• Complete name
	• Nationality
	• Country of birth
	• Race
	• Gender
	• Weight
	• State Department ID

Audit log	• User ID • Date and time • System actions

Table C-2: US-VISIT Increment 2 Data In/Out by System/Application

System/Application	Data In	Data Out
TECS	Passenger manifest, admission data, photo (NIV), visa data (NIV), DocKey	Visa data (NIV), passenger manifest, DocKey (including biographic watch list hit/match), photo (NIV), admission data, audit log
IDENT	DocKey, photo, fingerprints, biographic data (watch list updates)	DocKey (including biometric watch list hit/match), fingerprints, audit log
ADIS	Passenger manifest, admission data, DocKey, complete name, DoB, gender, country of birth, nationality, U.S. destination address, visa class, visa number, passport number, country of issuance, SSN[18], alien number, I-94 number, POE, entry date, POD, departure date, admission data (current/requested), case status, SEVIS status change date, SEVIS ID (current/requested)	DocKey, complete name, DoB, gender, nationality, visa type, visa number, passport number, country of issuance, POE, entry date, POD, departure date, admission data, SEVIS ID, SEVIS status, status change date, audit log
Workstation	Travel document data, visa data, passenger manifest, DocKey (including biographic and biometric watch list hit/match), photo, fingerprints, admission data, I-94 data	Updated passenger manifest, DocKey, photo, fingerprints, admission data, I-94 data
Departure Device	TBD pending exit pilot evaluation	TBD pending exit pilot evaluation
Candidate Verification Tool (CVT)	Candidate & subject fingerprints, FINs, photos, verification history	Verification decision
Secondary Web Tool	Encounter data, FIN (previous encounter)	

[18] Received from CLAIMS 3 for non-immigrants authorized to work.

Table C-3: US-VISIT Increment 2 Processes and Data Usage

Process	Subprocess	System/Application	Data Usage
Pre-Arrival	Visa application check	TECS, IDENT	Visa application, photo, fingerprints, FIN
	Manifest data check	TECS	Passenger manifest
	Biographical watch list check	TECS	Passenger manifest
	Visa data check	TECS	Passenger manifest, visa data (NIV)
	Passenger list analysis	TECS	Results of passenger manifest, biographical watch list, and visa data checks
Arrival (core)	Biometric verification	IDENT, Workstation	DocKey, fingerprints
	Biometric watch list check	IDENT, Workstation	DocKey, fingerprints
	Document – visa comparison	TECS, Workstation	Travel document data, visa data (NIV), photo (NIV)
	Manifest/Admission update	TECS, ADIS, Workstation	Passenger, manifest, admission data
	I-94 data entry	Workstation	I-94 data
Arrival (extended)	Queries	IDENT, Secondary Web Tool	Encounter data, complete name, gender, DoB, doc type, number, and country of issuance, FIN (previous encounter)
	Admission update	TECS, ADIS, Workstation	DocKey, admission data
	Biometric comparison and document authentication	TECS, Workstation	Visa data (NIV), photo (NIV)
Departure	Biometric verification	IDENT, Departure Device	DocKey, fingerprints
	Biometric watch list check	IDENT, Departure Device	DocKey, fingerprints

Table C-3: US-VISIT Increment 2 Processes and Data Usage (concluded)

Process	Subprocess	System/Application	Data Usage
Arrival/Departure reconciliation	Arrival/Departure correlation	ADIS	Passenger manifest, admission data
	Change of status	ADIS	Complete name, DoB, gender, nationality, visa type, visa number, passport number, country of issuance, POE, entry date, POD, departure date, admission data, SEVIS ID, SEVIS status, status change date
Watch list hit/match verification		IDENT, Candidate Verification Tool (CVT)	Candidate & subject fingerprints, FINs, photos, verification history
Audit log capture		TECS, IDENT, ADIS	User, date and time, system actions

Table C-4: US-VISIT Increment 2 System/Application Interface Data Flows[19]

From/To	W/S	TECS	IDENT	ADIS	DD	SWT	CVT	SEVIS	CLAIMS 3	DOJ IAFIS	CCD	NUSV TECS
Work-Station (W/S)		DocKey, admission data, updated passenger manifest	DocKey, photo, finger-prints									I-94 data
TECS	DocKey, admission data, visa data (NIV), photo (NIV), passenger manifest, status			DocKey, passenger manifest, admission data								
IDENT	DocKey			DocKey	TBD	Encounter data, complete name, gender, DoB, doc type, number, and country of issuance, FIN (previous encounter)	Candidate & subject fingerprints, FINs, photos, verification history				Encounter data, watch list hits	
ADIS		DocKey						Complete				

19 Note: Only selected third_party interfaces are shown; for all potential third parties, see the component SORNs.

From/To	W/S	TECS	IDENT	ADIS	DD	SWT	CVT	SEVIS	CLAIMS 3	DOJ IAFIS	CCD	NUSV TECS
								name, DoB, gender, nationality, visa type & number, passport number & country of issuance, POE, entry date, POD, departure date, admission data, SEVIS ID, SEVIS status, status change date				
Departure Device (DD)			TBD									
Secondary Web Tool (SWT)												
Candidate Verification Tool (CVT)			Verification decision									
SEVIS				Complete name, DoB, gender, nationality, visa type, visa number,								

From/To	W/S	TECS	IDENT	ADIS	DD	SWT	CVT	SEVIS	CLAIMS 3	DOJ IAFIS	CCD	NUSV TECS
				passport number, country of issuance, POE, entry date, POD, departure date, admission data, SEVIS ID, SEVIS status, status change date								
CLAIMS 3				Complete name, DoB, gender, country of birth, nationality, U.S. destination address, passport number, country of issuance, SSN, alien number, I-94 number, entry date, admission data (current/requested), case status, SEVIS ID (current/req								

From/To	W/S	TECS	IDENT	ADIS	DD	SWT	CVT	SEVIS	CLAIMS 3	DOJ IAFIS	CCD	NUSV TECS
				uested)								
Dept. of Justice (DOJ) IAFIS			Fingerprints, biographic data									
Dept of State Consular Affairs Consolidated DB (CCD)		Visa data (NIV), photo (NIV), FIN	Visa data (refusal)									
Non US-VISIT (NUSV) TECS												

Appendix D: Safeguards Detailed

NIST Special Publication 800-30, Risk Management Guide for Information Technology Systems (January 2002) identifies classes of safeguards for information system security. Technical safeguards are applied (1) within component systems, (2) to communications between component systems, and (3) at interfaces between component systems and external (i.e., non-US-VISIT) systems. Physical safeguards are generally provided by the facilities in which components systems are housed. Administrative and procedural safeguards are provided by rules of behavior, as discussed in Section 4.2.1 above.

The table below provides greater detail on the various physical and electronic measures employed to counter the various threats to US-VISIT Increment 2. Compliance of ADIS, the Passenger Processing Component of TECS, IDENT and the POE workstations with ID-4300A, the BLSR, and the DHS Physical Security Handbook is assumed. As reflected in the table, many different threats can be mitigated by the same safeguards.

Table D-1: Privacy Threats and Mitigation Methods Detailed

Nature of Threat	Architectural Placement	Safeguard	Mechanism
Intentional physical threats from unauthorized external entities	ADIS	Physical protection	The ADIS database and application is maintained at a Department of Justice Data Center. Physical controls of that facility (e.g., guards, locks) apply and prevent entry by unauthorized entities.
Intentional physical threats from unauthorized external entities	Passenger Processing Component of TECS	Physical protection	The Passenger Processing Component of TECS is maintained on a mainframe by CBP. Physical controls of the TECS facility (e.g., guards, locks) apply and prevent entrée by unauthorized entities.
Intentional physical threats from external entities	IDENT	Physical protection	IDENT is maintained on an IBM cluster at a Department of Justice Data Center. Physical controls of the facility (e.g., guards, locks) apply and prevent entrée by unauthorized entities.
Intentional physical threats from external entities	POE Workstation	Physical protection	Physical controls may be specific to each POE. Assumed to be in compliance with BLSR and ID-4300A.
Intentional and unintentional electronic threats from authorized (internal and external) entities	US-VISIT-wide	Technical protection: Identification and authentication (I&A)	User identifier and password, managed by the Password Issuance Control System (PICS). Issue to be addressed during system integration: Define procedures for correlation among different user identifiers (issued by PICS and the legacy mechanisms in ADIS, the Passenger Processing

[20] Access to information on the system depends on, and accountability for user actions is ensured by, I&A of users. As indicated in the table, US-VISIT component provide user ID / password mechanisms. The US-VISIT, Increment 1 Functional Requirements Document (FRD) states that "The Password Issuance Control System shall be used for user identification and password management." System integration must address the issue of whether these password mechanisms will be integrated to provide a single sign-on capability or whether separate logon processes

Nature of Threat	Architectural Placement	Safeguard	Mechanism
			Component of TECS, IDENT, and the POE workstations) to facilitate tracking and investigation of activities by individual users. [20]
Intentional and unintentional electronic threats from authorized (internal and external) entities	ADIS	Technical protection: I&A	User identifier and password
Intentional and unintentional electronic threats from authorized (internal and external) entities	IDENT	Technical protection: I&A	User identifier and password
Intentional and unintentional electronic threats from authorized (internal and external) entities	Passenger Processing Component of TECS	Technical protection: I&A	User identifier and password
Intentional and unintentional physical and electronic threat from unauthorized external entities	POE Workstation	Technical protection: I&A	User identifier and password. US-VISIT, Increment 2 client software runs on Windows 2000 workstations connected to the DHS network.
Intentional and unintentional electronic threats from	ADIS	Technical protection: Authorization and access control	Enforced by database management system, via ADIS application interface.
Intentional and unintentional electronic threat from authorized (internal and external) entities	IDENT	Technical protection: Authorization and access control	Enforced by database management system, via IDENT application interface.
Intentional and unintentional electronic threat from authorized (internal and external) entities	Passenger Processing Component of TECS	Technical protection: Authorization and access control	Enforced by database management system, via IBIS application interface.
Intentional and unintentional	POE Workstation	Technical protection: Authorization and	Access to US-VISIT client applications is authorized, given that access to the

will be used (e.g., logon to POE Workstation and/or the DHS network, logon to IBIS client, logon to IDENT client). If separate logons are involved, technical or procedural controls will be needed to ensure that actions taken by a single user can be correlated and traced to that user. Alternatives will be defined and evaluated as part of the system integration process. It is anticipated that the issue will be resolved so as to ensure compliance with the Baseline Security Requirements (BLSR). A solution that provides adequate security will address the privacy concern.

Draft

Nature of Threat	Architectural Placement	Safeguard	Mechanism
physical and electronic threat from unauthorized external entities		access control	workstation is granted. Access controls to US-VISIT data on ADIS, TECS, and IDENT are enforced by the other component systems.
Intentional electronic and physical threat from internal entities	ADIS, IDENT, Passenger Processing Component of TECS	Technical protection: Object reuse (identified under system protections)	Assumed to be in compliance with BLSR and ID-4300A.
Intentional electronic and physical threat from external entities	POE Workstation	Technical protection: Residual information protection	Issue to be addressed during system integration: How to ensure residual information protection on the POE Workstation for transient objects containing biometric or biographic information. See Encryption, below.[21]
Intentional physical and electronic threats from external entities	POE Workstation, Departure Device	Technical protection: Encryption	Issue to be addressed during system integration: How will encryption be used to protect transiently stored biometric and biographic information? Will encryption address the residual information concern?
Intentional electronic threat from authorized and unauthorized entities	US-VISIT internal communication (between POE workstation, Passenger Processing	Technical protection: Protected communications and transaction privacy	Internal communications occur over the secured DHS WAN. The ICD states that exchange of data between all systems will be accomplished by a message queuing service, using IBM Websphere MQSeries. Websphere SSL and/or PKI capabilities are not currently used, but provide potential

[21] Some Port of Entry (POE) workstations and future point of departure devices will store various personal information, if only transiently.

The Consolidated Functional Requirements Document, Section 5.3, specifies that the departure devices will store subject biographic and biometric data when communication between departure devices and the IDENT database is unavailable. Depending on volume and length of communication outage, this could leave potentially large amounts of personal information residing on these devices. Particularly because the departure devices are intended to be self-service, this poses a significant privacy risk. It is believed that data will be encrypted on the departure devices to mitigate this risk.

Accountability for user actions is ensured by audit mechanisms. ADIS, the Passenger Processing Component of TECS, and IDENT provide auditing. The US-VISIT, Increment 1 Functional Requirements Document (FRD) states two audit requirements on the IDENT Client:

RTM 8.3-10 "The IDENT Client System shall capture the user ID of the user collecting store-and-forward biographic and biometric information."

RTM 8.3-20 "The IDENT Client System shall capture the user ID of the user submitting store-and-forward transactions to the EID."

Captured information is cached and retained in the workstation even after the encounter ends. It is not deleted until the authorized user logs out of the workstation. As a result of this approach, the risk arises that the captured user ID could be modified while stored on the workstation, thus impairing DHS's ability to ensure compliance with rules of behavior and impose penalties for noncompliance.

It is anticipated that these issues will be resolved so as to ensure compliance with the DHS/ICE BLSR for Automated Information Systems. A solution that provides adequate security for the POE workstations and departure devices will address the privacy concerns.

Draft

Nature of Threat	Architectural Placement	Safeguard	Mechanism
	Component of TECS, ADIS, and IDENT)		future capability for additional protection of the privacy of US-VISIT transactions.
Intentional and unintentional electronic threat from authorized entities	US-VISIT-wide, Passenger Processing Component of TECS, ADIS, and IDENT	Technical protection: Audit	Any US-VISIT-specific audit trail requirements will be determined and documented as part of the US-VISIT, Increment 1 Release 2 requirements / design phase. Issue to be addressed during integration: Define procedures for use of the auditing capabilities of the Passenger Processing Component of TECS, ADIS, and IDENT, as well as Websphere, to facilitate tracking and investigation of transactions that span component systems?
Intentional and unintentional electronic threat from external and internal entities	POE Workstation	Technical protection: Audit	The US-VISIT, Increment 1 FRD requires that the IDENT Client System capture the user ID of the user collecting biometric and biographic information, and of the user submitting transactions to the Enforcement Integrated Database. Issues to be addressed during integration: • How will the captured data on the client be protected against modification or deletion? • If this captured data is considered to be a local audit trail (rather than a component of a store-and-forward transaction, deleted when the transaction is submitted), how and on what system will audit data from multiple clients be aggregated?
Intentional electronic threats from authorized and unauthorized external entities	External interfaces	Technical protection: Boundary protection (e.g., firewall, guard)	Not specified. For US-VISIT Increment 1, • Passenger Processing Component of TECS interfaces are internal to US-VISIT. • ADIS interfaces with SEVIS and CLAIMS 3. • IDENT interfaces with IAFIS via the IDENT/IAFIS Gateway Server interface, Production IDENT, and the Department of State Consular Affairs Consolidated Database
Unintentional electronic and physical threats from authorized external entities	External interfaces	Administrative protection: Routine use agreements	Not available for this version of the PIA.

[FR Doc. 04–21280 Filed 9–22–04; 8:45 am]
BILLING CODE 4910–15–C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4907–N–30]

Notice of Proposed Information Collection: Comment Request Congregate Housing Services Program

AGENCY: Office of the Assistant Secretary for Housing, –Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 22, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Building, Room 8202, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: For copies of the proposed forms and other available information contact Carissa Janis, Office of Housing Assistance and Grants Management, by telephone at 202–708–2866 extension 2487. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Congregate Housing Services Program.

OMB Control Number: 2502–0485.

Description of the need for the information and proposed use: Completion of the Annual Report by grantees provides HUD with essential information about whom the grant is serving and what sort of services the individuals receive using grant funds. The Summary Budget is a matrix of budgeted yearly costs, which shows the services funded through the grant and demonstrates how matching funds, participant fees, and grant funds will be used in tandem to operate the grant program. Field staff approves this annual budget and request annual extension funds according to the budget. field staff can also determine if grantees are meeting statutory and regulatory requirements through the evaluation of this budget. HUD will use the Payment Voucher to monitor use of grant funds for eligible activities over the term of the grant. The Grantee may similarly use the Payment Voucher to track and record their requests for payment reimbursement for grant-funded activities.

Agency Form Numbers, if applicable: HUD–90006, "Congregate Housing Services Program annual Reporting Form", HUD–91180–A, "Summary Budget Grantee", and HUD90198, "Line of Credit Control System (LOCCS)/Voice Response System (VRS) Congregate Housing Services Program Payment Voucher".

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 75, the total annual responses is 600, and the total annual hours of response are estimated at 6,345.

Status of the proposed information collection: Reinstatement, with change.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: September 18, 2004.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing. Deputy Federal Housing Commissioner.

[FR Doc. 04–21331 Filed 9–22–04; 8:45 am]
BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4907–N–31]

Notice of Proposed Information Collection: Comment Request; Annual Adjustment Factor (AAF) Rent Income

AGENCY: Office of the Assistant Secretary for Housing,—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: November 22, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Building, Room 8202, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Peter Giaquinto, Office of Housing Programs and Grant Administration, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone number (202) 708–2866 ext. 2479 (this is not a toll-free number), for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of the information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information

technology, *e.g.*, permitting electronic submission of responses.

Title of Proposal: Annual Adjustment Factor (AAF) Rent Increase Requirements.

OMB Control Number, if applicable: 2502–0507.

Description of the need for the information and proposed use: On September 28, 1994, Congress enacted the Housing Appropriations Act that authorized HUD's spending authority for Fiscal Year 1995. Among the many measures developed in the bill, emphasis was placed on utilizing the mechanism in the Section 8 Housing Assistance Payment (HAP) contract language that permits an analysis on the reasonableness of the Annual Adjustment Factor (AAF) formula as it's applied to each project unit type. Under this law, review of the AAF under the Overall Limitation clause of the HAP contract would apply only to Section 8 New Construction and Substantial Rehabilitation properties where Section 8 rent levels for a unit type presently exceed the published existing housing fair market rents (FMR's). For Section 8 New Construction and Substantial Rehabilitation properties where rent levels for particular unit type do not exceed the existing AFMR and for all other Section 8 contract types without regard for current rent level, review under the overall-limitation clause of the contract would not occur and the method of rent adjustment would be the appropriately published AAF.

Agency form numbers, if applicable: HUD 92273–S8.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of respondents is 3,000, the frequency of responses is annual, the estimated time to complete response is 1.50 hours, and the total burden hours requested is 4,950.

Status of the proposed information collection: Extension of a previously approved collection for which approval has expired,

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: September 15, 2004.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing Deputy Federal Housing Commissioner.

[FR Doc. 04–21332 Filed 9–22–04; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4909–N–07]

Notice of Proposed Information Collection for Public Comment: Notice of Funding Availability for the Tribal Colleges and University Programs

AGENCY: Office of the Policy Development and Research, HUD

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* November 22, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8228, Washington, DC 20410–6000.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, 202–708–3061, ext. 3852 (this is not a toll-free number), for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department of Housing and Urban Development will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Notice of Funding Availability for the Tribal College and Universities Programs.

OMB Control Number: 2528–0215 (Expire 10/31/04).

Description of the Need for the Information and Proposed Use: The information is being collected to select applicants for award in this statutorily created competitive grant program and to monitor performance of grantees to ensure they meet statutory and program goals and requirements.

Agency Form Numbers: SF 424, HUD 424–B, HUD 424–CB, SFLLL, HUD–23700, HUD 2880, HUD 2993, HUD 2994, HUD 96010–1.

Members of the Affected Public: Tribal Colleges and Universities (TCU) that meet the definition of a TCU established in Title III of the 1998 Amendments to Higher Education Act of 1965 (Pub. L. 105–244, approved October 7, 1998).

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Information pursuant to grant award will be submitted once a year. The following chart details the respondent burden on an annual and semi-annual basis:

	Number of respondents	Total annual responses	Hours per response	Total hours
Applicants	20	20	40	800
Semi-Annual Reports	10	20	6	120
Final Reports	10	10	8	80
Recordkeeping	10	10	*5*	*50*
Total			59	1050

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 16, 2004.

Darlene F. Williams,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 04–21333 Filed 9–22–04; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903–N–75]

Notice of Submission of Proposed Information Collection To OMB; Participant Tracking and Data Management for the Moving To Opportunity Demonstration Program

AGENCY: Office of the Chief Information Officer.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This is for the clearance of two data collections vital to the continued participant tracking and data management for the Moving to Opportunity (MTO) demonstration program, MTO is a unique experimental research demonstration designed to learn whether moving from a high-poverty neighborhood to a low-poverty neighborhood significantly improves the social and economic prospects of poor families. This data collection is necessary to measure impacts approximately 5-years after families were randomly assigned to the two treatment groups and the control group.

DATES: Comments Due Date: October 25, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528—Pending) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins and at HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a survey instrument to obtain information from faith based and community organizations on their likelihood and success at applying for various funding programs. This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Participant Tracking and Data Management for the Moving to Opportunity Demonstration Program.

OMB Approval Number: 2528—Pending.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use:

This request is for the clearance of two data collections vital to the continued participant tracking and data management for the Moving to Opportunity (MTO) demonstration program. MTO is a unique experimental research demonstration designed to learn whether moving from a high-poverty neighborhood to a low-poverty neighborhood significantly improves the social and economic prospects of poor families. This data collection is necessary to measure impacts approximately 5-years after families were randomly assigned to the two treatment groups and the control group.

Frequency of Submission: On occasion, other (one time).

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	4,656	1		0.260		1,214

Total Estimated Burden Hours: 1,214.

Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 16, 2004.

Donna L. Eden,

Director, Office of Investment Strategies, Policy, and Management, Office of the Chief Information Officer.

[FR Doc. 04–21338 Filed 9–22–04; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Final Comprehensive Conservation Plan and Environmental Assessment for Illinois River National Wildlife and Fish Refuge (NWFR), Havana, IL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that the final Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) are available for the Illinois River NWFR, Havana, Illinois. The CCP and EA were prepared pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969 and describe how the Service intends to manage the refuge over the next 15 years.

ADDRESSES: Copies of the final CCP and EA are available on compact diskette or hard copy; you may obtain a copy by writing to: Illinois River National

Wildlife and Fish Refuge Complex, 19031 East County Road 2105 North, Havana, Illinois 62644. You may also access or download copies at the following Web site address: *http://midwest.fws.gov/planning/IllinoisRiver/index.html.*

FOR FURTHER INFORMATION CONTACT: Ross Adams at (309) 535–2290.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee *et seq.*), requires a CCP. The purpose in developing CCPs is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife science, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, the CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update these CCPs at least every 15 years in accordance with the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370d).

The Illinois River NWFR Complex includes three national wildlife refuges in Illinois: Chautauqua NWR in Mason and Marshal Counties; Meredosia NWR in Cass and Morgan Counties; and Emiquon NWR in Fulton County. The planning process began in 1998.

Three management alternatives were considered. Alternative 3, Refuge Resource Area Focus, is the selected alternative. This alternative would increase conservation efforts in the Illinois River Focus Areas and enhance, protect and restore fish and wildlife habitat within the boundaries of the Illinois River Refuges. There will be no expansion of existing authorized boundaries. We propose to complete land acquisition within the currently approved boundaries of Emiquon NWR and Meredosia NWR on a willing-seller basis as funding allows. We also propose to use voluntary partnerships to conserve grassland, savanna, and native forests within five focus areas. The Chatauqua NWR auto-tour route will be expanded. Hunting will be expanded by allowing big game hunting on Liverpool Lake and Meredosia Island. The east side of Lake Chautauqua will be open to bank fishing year-round, and two accessible bank fishing facilities will be provided on the Chautauqua NWR Upper Pool and Meredosia NWR. Facility improvements proposed include restroom facilities at the headquarters that will accommodate larger groups, converting the headquarters maintenance shop to a visitor contact station, and developing interpretive signage for the auto tour.

Dated: May 27, 2004.

Charles M. Wooley,

Acting Regional Director, U.S. Fish and Wildlife Service, Ft. Snelling, Minnesota.

[FR Doc. 04–21373 Filed 9–22–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Final Comprehensive Conservation Plan and Environmental Assessment for Mark Twain National Wildlife Refuge Complex in Iowa, Illinois and Missouri

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that the final Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) are available for Mark Twain National Wildlife Refuge Complex (Complex). This CCP is prepared pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd-668ee *et seq.*) and the National Environmental Policy Act of 1969, and describes how the Service intends to manage this refuge over the next 15 years.

ADDRESSES: Copies of the CCP are available on compact diskette or hard copy, and can be obtained by writing: Mark Twain National Wildlife Refuge Complex, 1704 North 24th Street, Quincy, Illinois 62301. Copies of the CCP can also be accessed and downloaded at the following Web site address: *http://midwest.fws.gov/planning/marktwain/index.html.*

FOR FURTHER INFORMATION CONTACT: Dick Steinbach at (217) 224–8580.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd-668ee *et seq.*) requires a CCP. The purpose in developing CCPs is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife science, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, the CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update these CCPs at least every 15 years in accordance with the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370d).

Mark Twain National Wildlife Refuge was established in 1958 from lands originally purchased by the U.S. Army Corps of Engineers (COE) for construction of the Mississippi River 9-foot navigation channel project. Since then the Refuge has evolved into a Refuge Complex that includes Port Louisa NWR near Wapello, Iowa; Great River NWR and Clarence Cannon NWR, both near Annada, Missouri; Two Rivers NWR near Brussels, Illinois; and Middle Mississippi near St. Louis, Missouri. The Complex Headquarters is located in Quincy, Illinois.

Four management alternatives were evaluated in the draft environmental assessment. The alternatives are centered on different levels of flood protection/river connectivity and additional land conservation measures through acquisition or partnership.

The selected alternative, Alternative A—Expanded boundaries and Increased River Connectivity, proposes a land conservation proposal with a land acquisition component. The 55,673-acre proposal has been included in the comprehensive conservation planning process. It would incorporate a boundary expansion of 27,659 acres and proposes working with landowners and agencies on the balance of the area to promote long term conservation and restoration of those areas. The other alternatives considered were: Alternative B—Current Program, maintaining current management strategies and acquisition within existing boundaries (no action); Alternative C—Existing Boundaries and Maximum River Connectivity, increasing river connectivity via spillways, levee breaches, and

acquisition within existing boundaries; and

Alternative D—Existing Boundaries and Least River Connectivity, enhancing habitat conservation via more flood protection and less river connectivity on refuge lands within existing boundaries.

Components of the final comprehensive conservation plan and environmental assessment include:

Habitat and Public Use—Under the selected alternative identified for Complex management in the final environmental assessment, habitats and public use would be enhanced on current divisions. Some flood-friendly nature trails, observation platforms, and information kiosks would offer recreational and educational opportunities to the public. Additional hunting, fishing, and non-consumptive wildlife uses would be implemented where biologically compatible. Habitats are improved through a process of ensuring the appropriate management options are being applied at each site.

Partnerships—The final comprehensive conservation plan for the Mark Twain National Wildlife Refuge Complex emphasizes the importance of the close working relationships the Complex has established with three Upper Mississippi River states and the U.S. Army Corps of Engineers. Along with these partners, the Service operates a mosaic of habitat and public use opportunities along the corridor. All partners are involved in the effort to reverse a trend of declining resource values on the River. These relationships will be strengthened under the plan.

Resource Conservation—The Plan proposes a resource conservation plan incorporating partnership programs offered through the U.S. Army Corps of Engineers and U.S. Department of Agriculture, such as the Wetlands Reserve Program and flood reduction projects. Service acquisition of land would be staged, occurring as willing sellers emerged and as funds became available. Acquisition would target the most flood-prone lands that have high natural resource values and also would produce benefits to federal policy efforts, such as providing storage capacity, reducing disaster assistance payments, and increasing water quality through increased nutrient cycling.

Dated: May 17, 2004.

Charles M. Wooley,

Acting Regional Director, , U.S. Fish and Wildlife Service, Ft. Snelling, Minnesota.

[FR Doc. 04–21374 Filed 9–22–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Final Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) for the Minnesota Valley National Wildlife Refuge (NWR) and Minnesota Valley Wetland Management District (WMD), Bloomington, MN

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service announces that the final CCP and EA is available for Minnesota Valley NWR and Minnesota Valley WMD, Bloomington, Minnesota. The CCP was prepared pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969. The goals and objectives presented in the CCP describe how the agency intends to manage the Refuge and waterfowl production areas over the next 15 years.

ADDRESSES: Copies of the final CCP and EA are available on compact disk or hard copy. You may access and download a copy via the Refuge Web site at: *http://midwest.fws.gov/planning/MinnesotaValley/index.html* or by writing to the Refuge at: Minnesota Valley National Wildlife Refuge, 3815 East 80th Street, Bloomington, Minnesota 55425–1600.

FOR FURTHER INFORMATION CONTACT: Rick Schultz, Refuge Manager, (952) 854–5900.

SUPPLEMENTARY INFORMATION: The Minnesota Valley NWR is located along 34 miles of the lower Minnesota River from near the City of Jordan to historic Fort Snelling and the river's confluence with the Mississippi River. The Refuge is also responsible for a 14-county region known as the Minnesota Valley Wetland Management District. It consists of more than 5,000 acres of waterfowl production areas and conservation easements.

The CCP recommends an expansion of the current boundaries by a total of 10,737 acres in 6 new units of the Refuge.

Funding for land acquisition will in large part be available through a Refuge Trust Fund established as mitigation for damages caused by expansion of the Minneapolis/St. Paul International Airport.

We intend to increase hunting opportunities by expanding archery deer hunts, providing wild turkey and deer hunts for disabled hunters, improving the youth waterfowl hunting program, and by opening newly-acquired lands to appropriate hunting uses.

The CCP proposes interpretive programs and improvements to existing facilities that will maintain or increase visitation from the present 250,000–300,000 visitors a year.

Dated: July 2, 2004.

Charles M. Wooley,

Acting Regional Director, U.S. Fish and Wildlife Service, Ft. Snelling, Minnesota.

[FR Doc. 04–21375 Filed 9–22–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Patent, Trademark and Copyright Acts

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of prospective intent to award exclusive license.

SUMMARY: The United States Geological Survey (USGS) is contemplating awarding an exclusive license to Westco Scientific Instruments, Inc., of Danbury, CT, on U.S. Patent Application Serial No. 10/251,696, entitled "Reduction Devise for Nitrate Determination."

Inquiries: If other parties are interested in similar activities, or have comments related to the prospective award,please contact Neil Mark, USGS, 12201 Sunrise Valley Drive, MS 201, Reston, Virginia 20192, voice (703) 648–4344, fax (703) 648–7219, or e-mail *nmark@usgs.gov*.

SUPPLEMENTARY INFORMATION: This notice is submitted to meet the requirements of 35 U.S.C. 208 *et seq.*

Dated: September 3, 2004.

Carol F. Aten,

Chief, Office of Administrative Policy and Services.

[FR Doc. 04–21383 Filed 9–22–04; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–923–1430–ET; NMNM 52374, NMNM 52382, NMNM 63992, and NMNMAA 25089]

Public Land Order No. 7615; Partial Revocation of Secretarial Orders Dated September 24, 1903, July 17, 1908, June 3, 1926, and August 27, 1936; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes four Secretarial Orders insofar as they affect 18.02 acres of lands withdrawn for the Bureau of Reclamation's Rio Grande Project. This order makes the lands available for conveyance in accordance with Public Law 107–335.

EFFECTIVE DATE: September 23, 2004.

FOR FURTHER INFORMATION CONTACT: Jeanette Espinosa, BLM New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502, 505–438–7597.

SUPPLEMENTARY INFORMATION: Public Law 107–335 directs the Secretary of the Interior to convey 18.02 acres of Rio Grande Project lands to the Elephant Butte/Caballo Leaseholders Association, Inc.

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. The Secretarial Order dated September 24, 1903, is hereby revoked insofar as it affects the following described lands withdrawn for the Bureau of Reclamation's Rio Grande Project:

NMNM 52374

New Mexico Principal Meridian

T. 11 S., R. 3 W.,

Tract 1, located in sec. 18, more particularly described as follows:

Using New Mexico State Plane Grid bearings, and ground distances; Beginning at the Northwest corner of sec. 18, T. 11 S., R. 3 W., thence S 51°56′24″ E, a distance of 5757.15 feet to the point of beginning; thence, N 79°22′16″ E, a distance of 131.13 feet; thence N 00°14′06″ W, a distance of 206.07 feet; thence N 08°14′58″ E, a distance of 124.73 feet; thence along a curve having a radius of 225.91 feet, arc length of 95.53 feet, delta angle of 24°13′44″, a chord bearing of N 03°51′54″ W, and a chord length of 94.82 feet; thence N 67°16′00″ E, a distance of 156.95 feet; thence S 69°02′01″ E, a distance of 110.05 feet; thence S 22°58′00″ W, a distance of 98.05 feet; thence S 20°30′13″ W, a distance of 74.04 feet; thence S 05°52′42″ E, a distance of 66.89 feet; thence S 28°54′56″ E, a distance of 52.85 feet; thence S 64°25′45″ E, a distance of 153.40 feet; thence S 39°57′34″ W, a distance of 101.24 feet; thence S 45°09′34″ W, a distance of 28.56 feet; thence S 00°48′51″ W, a distance of 85.35 feet; thence N 89°50′30″ W, a distance of 124.93 feet; thence N 89°38′32″ W, a distance of 100.22 feet; thence S 03°29′18″ W, a distance of 48.95 feet; thence S 15°14′33″ E, a distance of 100.82 feet; thence S 78°11′30″ W, a distance of 154.84 feet; thence N 24°49′09″ W, a distance of 106.56 feet; thence N 24°49′09″ W, a distance of 63.36 feet; thence N 13°03′17″ E, a distance of 76.76 feet to the point of beginning.

Tract 2, located in sec. 8, more particularly described as follows:

Using New Mexico State Plane Grid bearings, and ground distances; Beginning at the Southwest corner of sec. 7, T. 11 S., R. 3 W., thence N 87°36′19″ E, a distance of 5556.06 feet to the point of beginning; thence, N 14°12′20″ E, a distance of 187.70 feet; thence S 75°36′07″ E, a distance of 119.86 feet; thence S 14°17′53″ W, a distance of 180.84 feet; thence N 78°52′58″ W, a distance of 119.74 feet to the point of beginning.

Tract 3, located in sec. 8, more particularly described as follows:

Using New Mexico State Plane Grid bearings, and ground distances; Beginning at the Northwest corner of sec. 18, T. 11 S., R. 3 W., thence N 80°11′08″ E, a distance of 5409.95 feet to the point of beginning; thence N 86°24′40″ E, a distance of 200.37 feet; thence S 02°30′20″ E, a distance of 100.13 feet; thence S 86°30′27″ W, a distance of 199.19 feet; thence N 03°10′47″ W, a distance of 99.77 feet to the point of beginning.

The areas described aggregate 4.92 acres in Sierra County.

2. The Secretarial Order dated July 17, 1908, is hereby revoked insofar as it affects the following described land withdrawn for the Bureau of Reclamation's Rio Grande Project:

NMNM 52382

New Mexico Principal Meridian

T. 12 S., R. 3 W.,

Tract 4, located in sec. 7, more particularly described as follows:

Using New Mexico State Plane Grid bearings, and ground distances; Beginning at the Northwest Corner of sec. 18, T. 12 S., R. 3 W., (a USGLOS brass cap set for the closing corner of secs. 13 and 18), thence N 34°22′45″ E, a distance of 5,454.60 feet to the point of beginning; thence N 03°38′31″ W, a distance of 99.80 feet; thence N 05°42′08″ W, a distance of 98.58 feet; thence N 78°57′14″ W, a distance of 22.56 feet; thence N 01°47′21″ E, a distance of 165.73 feet; thence N 85°09′40″ E, a distance of 99.53 feet; thence N 85°27′34″ E, a distance of 99.94 feet; thence N 83°59′20″ E, a distance of 100.48 feet; thence S 05°06′28″ E, a distance of 101.41 feet; thence N 85°33′29″ E, a distance of 199.83 feet; thence S 04°26′17″ E, a distance of 100.06 feet; thence S 04°26′17″ E, a distance of 24.77 feet; thence N 86°50′20″ E, a distance of 126.22 feet; thence S 03°09′40″ E, a distance of 60.02 feet; thence S 00°45′33″ E, a distance of 100.03 feet; thence S 00°45′33″ E, a distance of 100.02 feet; thence S 86°48′13″ W, a distance of 212.86 feet; thence N 02°30′10″ W, a distance of 105.56 feet; thence S 86°23′42″ W, a distance of 198.31 feet; thence S 86°23′42″ W, a distance of 200.85 feet to point of beginning.

The area described contains 4.81 acres in Sierra County.

3. The Secretarial Order dated June 3, 1926, is hereby revoked insofar as it affects the following described land withdrawn for the Bureau of Reclamation's Rio Grande Project:

NMNM 63992

New Mexico Principal Meridian

T. 16 S., R. 5 W.,

Tract 5, located in sec. 24, more particularly described as follows:

Using New Mexico State Plane Grid bearings, and ground distances; Beginning at the quarter corner between secs. 23 and 24, T. 16 S., R. 5 W., thence N 71°20′57″ E, a distance of 2697.02 feet to the point of beginning; thence, N 00°28′36″ E, a distance of 172.43 feet; thence, N 78°53′32″ E, a distance of 220.75 feet; thence S 00°45′21″ W, a distance of 75.89 feet; thence S 85°17′11″ E, a distance of 49.17 feet; thence S 88°51′45″ E, a distance of 50.27 feet; thence S 88°52′51 E, a distance of 49.70 feet; thence N 88°55′33″ E, a distance of 49.41 feet; thence S 87°20′38″ E, a distance of 50.51 feet; thence S 87°36′35″ E, a distance of 48.75 feet; thence S 88°18′59″ E, a distance of 50.25 feet; thence S 88°42′44″ E, a distance of 49.82 feet; thence S 87°48′05″ E, a distance of 49.28 feet; thence S 88°13′50″ E, a distance of 49.49 feet; thence N 86°40′31″ E, a distance of 49.85 feet; thence S 86°22′45″ E, a distance of 50.30 feet; thence S 86°02′27″ E, a distance of 49.75 feet; thence S 89°09′02″ E, a distance of 50.15 feet; thence S 89°55′47″ E, a distance of 104.76 feet; thence S 71°31′17″ E, a distance of 89.94 feet; thence S 84°43′25″ E, a distance of 198.45 feet; thence S 00°11′21″ W, a distance of 493.80 feet; thence N 57°54′43″ W, a distance of 340.67 feet; thence N 74°32′50″ W, a distance of 359.80 feet; thence S 78°41′53″ W, a distance of 76.67 feet; thence N 12°24′45″ W, a distance of 75.58 feet; thence along a curve having a radius of 90.02 feet, arc length of 118.54 feet, delta angle of 75°26′53″ , a chord bearing of N 50°08′12″ W, and a chord length of 110.16 feet; thence N 88°12′02″ W, a distance of 487.92 feet to the point of beginning.

The area described contains 8.07 acres, in Sierra County.

4. The Secretarial Order dated August 27, 1936, is hereby revoked insofar as it affects the following described land withdrawn for the Bureau of Reclamation's Rio Grande Project:

NMNMAA 25089

New Mexico Principal Meridian

T. 16 S., R. 5 W.,

Tract 6, located in sec. 24, more particularly described as follows:

Using New Mexico State Plane Grid bearings, and ground distances; Beginning at the quarter corner between secs. 23 and 24, T. 16 S., R. 5 W., thence N 70°40′44″ E, a distance of 2615.17 feet to the point and place of beginning; thence N 03°38′12″ E, a distance of 50.00 feet; thence N 35°36′12″ E, a distance of 147.31 feet; thence S 00°28′36″ W, a distance of 172.43 feet; thence N 88°12′02″ W, a distance of 87.54 feet to the point of beginning.

The area described contains 0.22 acres, in Sierra County.

5. The lands described in Paragraphs 1, 2, 3, and 4 are hereby made available for conveyance in accordance with Public Law 107–335.

Dated: September 10, 2004.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 04–21360 Filed 9–22–04; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Dam Adaptive Management Work Group (AMWG), Notice of Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Adaptive Management Program (AMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMP includes a federal advisory committee (AMWG), a technical work group (TWG), a monitoring and research center, and independent review panels. The AMWG makes recommendations to the Secretary of the Interior concerning Glen Canyon Dam operations and other management actions to protect resources downstream of Glen Canyon Dam consistent with the Grand Canyon Protection Act. The TWG is a subcommittee of the AMWG and provides technical advice and recommendations to the AMWG.

Date and Location

The AMWG will conduct the following public meeting:

Phoenix, Arizona—October 25–26, 2004. The meeting will begin at 10 a.m. and conclude at 5 p.m. on October 25, 2004, and will begin at 8 a.m. and conclude at 3 p.m. on October 26, 2004. The meeting will be held at the Arizona Department of Water Resources, 500 N. Third Street, Conference Rooms A&B, Phoenix, Arizona.

Agenda: The purpose of the meeting will be to discuss feedback on previous AMWG recommendations, effects of Modified Low Fluctuating Flows (MLFF) under the Record of Decision, status of the Colorado River Basin Fund, status of Programmatic Agreement membership, Glen Canyon Dam maintenance schedule, review of AMWG Operating Procedures, development of FY06–07 Budget and work plan, review of planning documents, environmental compliance progress on proposed actions, research and monitoring reports, basin hydrology, public outreach, as well as other administrative and resource issues pertaining to the AMP.

Time will be allowed for any individual or organization wishing to make formal oral comments (limited to 5 minutes) at the meeting. To allow full consideration of information by the AMWG members, written notice must be provided to Dennis Kubly, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah, 84138; telephone (801) 524–3715; faxogram (801) 524–3858; e-mail at *dkubly@uc.usbr.gov* at least five (5) days prior to the meeting. Any written comments received will be provided to the AMWG and TWG members.

FOR FURTHER INFORMATION CONTACT: Dennis Kubly, telephone (801) 524–3715; faxogram (801) 524–3858; or via e-mail at *dkubly@uc.usbr.gov.*

Dated: September 13, 2004.

Randall V. Peterson,

Manager, Environmental Resources Division, Upper Colorado Regional Office.

[FR Doc. 04–21376 Filed 9–22–04; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–244 (Second Review)]

Natural Bristle Paintbrushes From China

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject review.

EFFECTIVE DATE: September 17, 2004.

FOR FURTHER INFORMATION CONTACT: Debra Baker ((202) 205–3180 or *Debra.Baker@usitc.gov),* Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On August 6, 2004, the Commission established a schedule for the conduct of the subject expedited five-year review (69 FR 51474, August 19, 2004). Subsequently, on September 7, 2004, the Department of Commerce (Commerce) determined that its review is extraordinarily complicated and extended the time limit for its final results in the expedited five-year review from August 31, 2004, to not later than October 15, 2004 (69 FR 54118). The Commission, therefore, has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B) [1] and is revising its schedule to reflect Commerce's extension of the time limit for the final results of its expedited sunset review.

As provided for in the Commission's original scheduling notice (69 FR 51474, August 19, 2004), final party comments concerning Commerce's final results of its expedited sunset review are due three business days after the issuance of Commerce's results.

For further information concerning this expedited review see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: September 20, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–21392 Filed 9–22–04; 8:45 am]

BILLING CODE 7020–02–P

[1] As a transition order five-year review, the Commission determines that the subject review is extraordinarily complicated pursuant to section 751(c)(5)(C) of the Tariff Act of 1930.

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that, on September 7, 2004, a proposed Consent Decree in *United States* v. *Apache Nitrogen Products, Inc.*, Civil Action No. 04–448 TUC DCB, was lodged with the United States District Court for the District of Arizona.

In this action, the United States brought suit against Apache Nitrogen Products ("ANP") pursuant to section 113(b) of the Clean Air Act ("CAA"), 42 U.S.C. 7413(b), and 40 CFR 60.11(d) for civil penalties and injunctive relief associated with ANP's violation of EPA's New Source Performance Standards. The complaint alleges that on numerous occasions between 1999 and 2002, ANP violated the NSPS by failing to maintain and operate its nitric acid facility, located in St. David, Arizona, in a manner consistent with good air pollution control practice for minimizing emissions.

Under the terms of the Consent Decree filed simultaneously with the complaint, ANP agrees to pay a $40,000 civil penalty and to implement certain injunctive relief provisions. Specifically, in order to control NO_X below the NSPS emission standard, Apache will operate a newly installed advanced NO_X emissions control device at its facility. In addition, ANP agrees to: (1) Comply with the EPA approved operation and maintenance plan for the H_2O_2 System; (2) submit any proposed revisions to the H_2O_2 System plan to the EPA; (3) comply with EPA requested revisions to the H_2O_2 System plan; (4) provide training to all employees involving in operating and maintaining the H_2O_2 System and maintain the plans in an area accessible to employees. If ANP fails to abide by the provisions of the Consent Decree, ANP will be subject to stipulated penalties.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Apache Nitrogen Products, Inc.*, D.J. Ref. #90–5–2–1–1438/1.

The Consent Decree may be examined at the Office of the United States Attorney, 405 W. Congress Street, Suite 4800, Tucson, AZ 85701–5040. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site *http://www.usdoj.gov/enrd/open.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $5.00 (25 cents per page reproduction cost) for the Consent Decree, payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–21312 Filed 9–22–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended ("CERCLA")

Pursuant to 28 CFR 50.7, notice is hereby given that on August 30, 2004, a proposed consent decree in *United States* v. *Becton Dickinson AcuteCare Holdings, Inc., et al.*, Civil No. 04–1888 (CC), was lodged with the United States District Court for the District of Puerto Rico.

In this action, the United States sought reimbursement of past response costs, civil penalties, and injunctive relief under Sections 106 and 107 of CERCLA, against Becton Dickinson AcuteCare Holdings, Inc., Browning-Ferris Industries of Puerto Rico, Inc., General Electric Co., the Municipality of Juncos, Puerto Rico, the Puerto Rico Land Administration, and the Puerto Rico Development and Housing Improvement Administration, in connection with the former Juncos Municipal Landfill Site in Juncos, Puerto Rico. This consent decree resolves the liability of the three governmental defendants. These three defendants owned and/or operated this Site, which was used for the disposal of hazardous substances. This settlement will require that these three defendants pay a total of $650,000 plus accrued interest, $150,000 of which is for reimbursement of past costs incurred by the United States at the Site through May 2003, and $500,000 of which the United States has designated as a civil penalty pursuant to section 106 of CERCLA, 42 U.S.C. 9606, for acts and omissions prior to May 22, 2003, that EPA has deemed to constitute noncompliance, with the terms and conditions of two administrative orders. $195,000 of the total amount is to be paid at the time of lodging of the Consent Decree, and the remainder is to be paid within one year thereof.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Becton Dickinson AcuteCare Holdings, Inc., et al.*, D.J. Ref. #90–11–2–717A.

The consent decree may be examined at the Office of the United States Attorney, Torre Chardon, Suite 1201, 350 Carlos Chardon Avenue, San Juan, Puerto Rico, and at U.S. EPA Region 2, Office of Regional Counsel, 290 Broadway, New York, New York. During the public comment period, the consent decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html*. A copy of the consent decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the consent Decree Library, please enclose a check in the amount of $6.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–21307 Filed 9–22–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended ("CERCLA")

Pursuant to 28 CFR 50.7, notice is hereby given that on August 27, 2004, a proposed consent decree in *United States* v. *Becton Dickinson AcuteCare Holdings, Inc., et al.*, Civil No. 04–1888 (CC), was lodged with the United States District Court for the District of Puerto Rico.

In this action, the United States sought reimbursement of past response costs, civil penalties, and injunctive relief under sections 106 and 107 of CERCLA, against Becton Dickinson AcuteCare Holdings, Inc., Browning-Ferris Industries of Puerto Rico, Inc., General Electric Co., the Municipality of Juncos, Puerto Rico, the Puerto Rico Land Administration, and the Puerto Rico Development and Housing Improvement Administration, in connection with the former Juncos Municipal Landfill Site in Juncos, Puerto Rico. This consent decree resolves the liability of the three corporate defendants. These three defendants either arranged for disposal or transported for disposal hazardous substances at the Site. This settlement will require that these three defendants pay a total of $3,350,000, plus accrued interest, as reimbursement of past costs incurred by the United States at the Site through May 2003. Half of the total amount is to be paid at the time of lodging of the Consent Decree, and the reminder is to be paid within one year thereof.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and National Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Becton Dickinson AcuteCare Holdings, Inc., et al.*, D.J. Ref. #90–11–2–717A.

The consent decree may be examined at the Office of the United States Attorney, Torre Chardon, Suite 1201, 350 Carlos Chardon Avenue, San Juan, Puerto Rico, and at U.S. EPA Region 2, Office of Regional Counsel, 290 Broadway, New York, New York. During the public comment period, the consent decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* A copy of the consent decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $6.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–21308 Filed 9–22–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on September 10, 2004, a proposed Consent Decree in *United States* v. *Littleson, Inc.*, Midvale City, Utah, and the Union Pacific Railroad Company, an action for injunctive relief and the reimbursement of response costs pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, ("CERCLA"), 42 U.S.C. 9601 *et seq.*, was lodged with the United States District Court for the District of Utah, Case No. 2:04CV00843.

In this action, the United States sought injunctive relief to require defendants to perform certain remedial actions at the Midvale Slag Superfund Site, located in Midvale, Utah, and to reimburse the United States for response costs incurred at the Site. Pursuant to the proposed Consent Decree, Littleson agrees to perform the remedial action at the Site using approximately $16 million in funds from the Midvale Slag Special Account, plus its own monies. The $16 million was collected from other responsible parties in a prior settlement. Littleson also agrees to pay EPA 20% if uts "Net Development Cash Flows" from land sale activities, up to a maximum amount of $2.2 million. In addition, Midvale City and the Union Pacific Railroad Company agree to implement and apply certain institutional controls to ensure the long-term effectiveness of the remedial action.

The proposed Consent Decree also resolves a pending action that Littleson filed against the United States seeking contribution for the costs of cleaning up Site contamination allegedly attributable to the actions of the Metals Reserve Company during World War II. Pursuant to the proposed Consent Decree, the United States will pay $2.2 million to the Midvale Slag Special Account to resolve this contribution action. The monies contributed by the United States will be used to perform additional remedial activities at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Littleson, Inc. et al.*, D.J. Ref. DJ# 90–11–3–1194/1.

The Consent Decree may be examined at U.S. EPA Region 8, 999 18th Street, Suite 500, Denver, Colorado, 80202. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check made payable to the United States Treasury in the amount of $14.75 for the Consent Decree only and $145.00 for the Consent Decree plus Appendices ($.25 per page).

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–21310 Filed 9–22–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

In accordance with United States Department of Justice policy, 28 CFR 50.7, notice is hereby given that on September 15, 2004, a proposed Consent Decree in *United States* v. *Old Dutch Mustard Company, Inc., d/b/a Pilgrim Foods* ("Pilgrim"), Civil Action No. 1:04–CV–346, was lodged with the United States District Court for the District of New Hampshire.

The Consent Decree resolves Clean Water Act claims arising from Pilgrim's operation of a food processing plant in Greenville, New Hampshire. the Complaint alleges: (1) A failure to apply for a NPDES permit for storm water discharges to a brook from a vinegar tank farm storage area; (2) discharge of storm water from the tank farm area without a permit; (3) the direct discharge of certain process waste

waters to the brook without a permit; (4) an oil spill which occurred in 1998; and (5) failure to timely prepare an oil spill prevention, control, and countermeasure (SPCC) plan in relation to Pilgrim's oil storage facilities on the site.

The Consent Decree imposes civil penalties in the amount of $190,000 and injunctive relief including construction of berms around the tank farm, other material storage areas, and hazardous substance storage tanks; completion of improvements to liquid materials and products delivery, conveyance, storage, and loading systems; and revision of the SPCC plan.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Old Dutch Mustard Company, Inc., d/b/a Pilgrim Foods*, (U.S.D.C., D.N.H.), D.O.J. Ref. #90–5–1–1–07145.

The Consent Decree may be examined at the Office of the United States Attorney, Federal Building, 55 Pleasant Street, Concord, New Hampshire, 03301 and at the Region I Office of the Environmental Protection Agency, One Congress Street, Suite 110–SEL, Boston, MA 02114–2023. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood *tonia.fleetwood@usdoj.gov*, fax no (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $15.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–21306 Filed 9–22–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Between the United States of America and Sigma-Aldrich Co. Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on September 1, 2004, a proposed Consent Decree ("Consent Decree") in the case of *United States of America* v. *Sigma-Aldrich Co.*, Civil Action No. 04–CV–01186–RWS was lodged with the United States District Court for the Eastern District of Missouri, Eastern Division.

The Consent Decree settles the United States' claims for civil penalties for Defendant's violations of the industrial refrigerant, repair, testing, record-keeping, and reporting regulations at 40 CFR part 82, subpart F, §§ 82.156–82.166 ("Recycling and Emissions Reduction"), promulgated pursuant to Subchapter VI of the Clean Air Act ("Stratospheric Ozone Protection"), 42 U.S.C. § § 7671–7671q. Under the Consent Decree, Sigma must pay the United States a civil penalty of $180,000 within twenty-one days of the entry of the Decree. Sigma also must retrofit or retire six particular appliances, four within two months of entry, a fifth appliance within six months, and the final one within twelve months. Finally, Sigma must implement a Refrigerant Management Plan.

The Department of Justice will receive comments relating to the Consent Decree for a period of thirty days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Sigma-Aldrich Co.*, D.J. Reference No. 90–5–2–1–06469.

The Consent Decree may be examined at the office of the United States Attorney, 111 South 10th Street, Room 20.333, St. Louis, MO 63102 and at U.S. EPA region 7, 901 N. 5th Street, Kansas City, KS 66101. During the comment period, the Consent Decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the consent Decree Library, please enclose a check in the amount of $7.00 (25 cents per page reproduction cost) payable to the United States Treasury for payment.

Robert Maher,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–21311 Filed 9–22–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Pursuant to 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States and Robert G. Burnley, Director, Commmonwealth of Virginia Department of Environmental Quality* v. *Stone Container Corporation*, Civil Action No. 3:04 CV 647 was lodged with the United States District Court for the Eastern District of Virginia on September 9, 2004. The Commonwealth of Virginia has filed a Complaint in Intervention and is a signatory to the proposed Consent Decree.

In its Complaint, the United States alleges Stone Container Corporation ("Stone Container") and its predecessors violated the Clean Air Act, 42 U.S.C. § 7601 *et seq.*, the regulations promulgated thereunder, and the requirements of the Virginia State Implementation Plan, at Stone Container's West Point, Virginia pulp and paper manufacturing facility ("West Point Facility"). The Commonwealth of Virginia Department of Environmental Quality ("Commonwealth") filed a Motion for Leave to Intervene and a Complaint in Intervention, alleging the same violations. The proposed Consent Decree resolves Stone Container's liability to the United States and the Commonwealth for the violations alleged in the Complaints. The Consent Decree requires Stone Container to install air pollution control devices to control emissions of sulfur dioxide and nitrogen oxides from the West Point Facility. The Consent Decree also requires Stone Container to pay a civil penalty of $475,000 to the United States and $457,000 to the Commonwealth, and to comply with monitoring, recordkeeping, and reporting requirements.

The Department of Justice will receive comments relating to the Consent Decree for a period of thirty (30) days following the date of public of this Notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources

Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and refer to *United States and Robert G. Burnley, Director, Commonwealth of Virginia Department of Environmental Quality*, DOJ No. 90–5–2–1–06526.

The Consent Decree may be examined at the Office of the United States Attorney for the Eastern District of Virginia, 600 East Main Street, Suite 1800, Richmond, VA 23219 and at U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $10.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–21309 Filed 9–22–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[Docket No. ATF 13N; ATF O 1157.1]

Delegation Order—Authority To Approve ATF F 1345.4, Request and Nondisclosure Agreement

1. *Purpose.* This order delegates the authority to approve ATF F 1345.4, Request and Nondisclosure Agreement, for current, departing, and former employees who are removing or accessing Bureau documents.

2. *Discussion.* Department of Justice Order 2710.8C, Removal and Maintenance of, and Access to, Documents, dated November 7, 2000, establishes policy and procedures on removal from Department of Justice custody, and requests for maintenance of or access to documentary materials, by current, departing, and former employees. It establishes the responsibilities of Bureau heads with regard to such materials and gives them authority to redelegate their responsibilities.

3. *Cancellation.* ATF O 1100.162, Delegation Order—Authority to Approve TD F 80–05.5, Documentary Materials Removal/Nonremoval Certification, dated 06/30/93, is canceled.

4. *Reference.* ATF O 1345.3A, Removal, Maintenance of, and Access to ATF Documents.

5. *Delegation.* Pursuant to responsibilities referenced in paragraph 2, I hereby delegate the following as approving officials with authority to approve ATF F 1345.4:

a. Deputy Director.
b. Ombudsman.
c. Chief, Strategic Planning.
d. Executive assistants.
e. Deputy Executive Assistant (Equal Opportunity).
f. Assistant directors.
g. Deputy assistant directors.
h. Chief Counsel.
i. Deputy Chief Counsel.
j. Assistant chief counsel(s).
k. Associate chief counsel(s).
l. Deputy associate chief counsel(s).
m. Division counsel(s).
n. Headquarters staff, division, deputy division, branch and section chiefs.
o. Director, Laboratory Services.
p. Chief(s), laboratories.
q. Director, New Building Projects Office.
r. Chair, Professional Review Board.
s. Chair, Merit Promotion Board.
t. Chief, Recruitment Center and Hiring Center.
u. Regional audit managers.
v. Special agents in charge.
w. Assistant special agents in charge.
x. Resident agents in charge.
y. Directors of industry operations.
z. Area supervisors.
aa. Group supervisors.

6. *Redelegation.* This authority may not be redelegated.

7. *Questions.* Contact the Document Services Branch at 202–927–8930 if there are questions.

Date Signed: September 14, 2004.

Carl J. Truscott,

Director.

[FR Doc. 04–21335 Filed 9–22–04; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

September 15, 2004.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Storage and Handling of Anhydrous Ammonia (29 CFR 1910.111(b)(3) and (b)(4)).

OMB Number: 1218–0208.

Frequency: On occasion.

Type of Response: Recordkeeping and Third party disclosure.

Affected Public: Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; and State, Local, or Tribal Government.

Number of Respondents: 2,030.

Number of Annual Responses: 2,030.

Estimated Time Per Response: 10 minutes.

Total Burden Hours: 345.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The information collection requirements contained in 29 CFR 1910.111(b)(3) and (b)(4) help ensure that employers use only properly designed and tested containers and systems to store anhydrous ammonia, thereby, preventing accidental release of, and exposure of employees to, this highly toxic and corrosive substance. In addition, these requirements provide the most efficient means for an OSHA compliance officer to ensure that the containers and systems are safe.

Agency: Occupational Safety and Health Administration.

Type of Review. Extension of currently approved collection.

Title: Regulations Containing Procedures for Handling of Discrimination Complaints.

OMB Number: 1218–0236.

Frequency: On occasion.

Type of Response: Reporting.

Affected Public: Individuals or households.

Number of Respondents: 368.

Number of Annual Responses: 368.

Estimated Time Per Response: 1 hour.

Total Burden Hours: 368.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Regulations at 29 CFR part 24, 29 CFR part 1979, 29 CFR part 1980, and 29 CFR part 1981 specify the procedures that an employee must use to file a complaint with OSHA alleging that their employer violated a "whistle blower" provision for which the Agency has investigative responsibility. Any employee who believes that such a violation occurred may file a compliant, or have the complaint filed on their behalf. While OSHA specifies no particular form for filing a complaint, these regulations require that a complaint must be in writing and should include a full statement of the acts and omissions, with pertinent dates, which are believed to constitute the alleged violation.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–21346 Filed 9–22–04; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

September 15, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Ira Mills on 202–693–4122 (this is not a toll-free number) or e-mail: *mills.ira@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, Washington, DC 20503 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Extension of a currently approved collection.

Title: Benefits, Timeliness and Quality Review System.

OMB Number: 1205–0359.

Frequency: Quarterly; monthly.

Affected Public: State, local, or tribal government.

MONTHLY UNIVERSE MEASURES: SWA STAFF HOURS PER YEAR

Report	Measure	Number of respondents	Reports per year	Total responses	Hrs. per resp.	Total hrs/year
9050	First Payment Time Lapse, Tier I	53	12	636	.5	318
9050	First Payment Time Lapse, Partial/Part Total Claims, Tier II.	53	12	636	.5	318
9050	First Payment Time Lapse, Workshare Claims, Tier II.	53	12	636	.5	318
9051	Continued Weeks Compensated Time Lapse, Tier II.	53	12	636	.5	318
9051	Continued Weeks Compensated Time Lapse, Partial Part/Total, Tier II.	53	12	636	.5	318
9051	Continued Weeks Compensated Time Lapse, Workshare, Tier II.	53	12	636	.5	318
9052	Nonmonetary Determinations Time Lapse, Tier I, Detection Date.	53	12	636	1.0	636
9053	Nonmonetary Determinations Time Lapse, Report Only.	53	12	636	1.0	636
9054	Lower Authority Appeals Time Lapse, Tier I.	53	12	636	.5	318
9055	Lower Authority Appeals Case Aging, Tier II.	53	12	636	1.0	636
9054	Higher Authority Appeals Time Lapse, Tier I.	53	12	636	.5	318

MONTHLY UNIVERSE MEASURES: SWA STAFF HOURS PER YEAR—Continued

Report	Measure	Number of respondents	Reports per year	Total responses	Hrs. per resp.	Total hrs/year
9055	Higher Authority Appeals Case Aging, Tier II.	53	12	636	1.0	636
Subtotal						5088

QUARTERLY SAMPLE REVIEW MEASURES: SWA STAFF HOURS PER YEAR

Report	Measure	Number of respondents	Sampled cases reviewed per year	Total cases reviewed per year	Hrs. per resp.	Total hrs/year
9056	Nonmonetary Determination Quality, Tier I.	29 Small States	240	6,960	1	6,960
9056	Nonmonetary Determination Quality, Tier I.	24 Large States	400	9,600	1	9,600
9057	Lower Authority Appeals Quality, Tier I.	47 Small States	80	3,760	3.5	13,160
9057	Lower Authority Appeals Quality, Tier I.	6 Large States	160	960	3.5	3,360
Subtotal						33,080

Total Burden Hours: 38,168.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): $0.

Description: These reports provide data necessary to monitor State performance in administration of Unemployment Insurance as mandated by the Secretary of Labor.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–21347 Filed 9–22–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,348]

Ahearn & Soper Company, Inc., East Syracuse, NY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 20, 2004 in response to a worker petition filed by a State agency representative on behalf of workers at Ahearn & Soper Company, Inc., East Syracuse, New York.

The petition regarding the investigation has been deemed invalid. In order to establish a valid worker group, there must be at least three full-time workers employed at some point during the period under investigation.

Workers of the group subject to this investigation did not meet the threshold of employment. Consequently the investigation has been terminated.

Signed at Washington, DC this 8th day of September 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–2334 Filed 9–22–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,336]

C & W Fabricators Wheelabrator Air Pollution Control, Inc., Gardner, MA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 15, 2002, applicable to workers of C & W Fabricators, Gardner, Massachusetts. The notice was published in the **Federal Register** on July 29, 2002 (67 FR 49038).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of inlet and exhaust systems for gas turbines.

New information provided by a company official shows that some of the workers separated from employment at C & W Fabricators had their wages reported under a separate unemployment insurance (UI) tax account for Wheelabrator Air Pollution Control, Inc.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of C & W Fabricators, Gardner, Massachusetts, who were adversely affected by a shift in production to Mexico.

The amended notice applicable to TA–W–41,336 is hereby issued as follows:

"All workers of C & W Fabricators, Inc., Wheelabrator Air Pollution Control, Inc., Gardner, Massachusetts, who became totally or partially separated from employment on or after April 4, 2001, through July 15, 2004, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC this 15th day of September 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–2329 Filed 9–22–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,395, TA–W–55,395A, and TA–W–55,395B]

Dana Undies, Blakely, GA; Arlington, GA; Colquitt, GA; Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for worker adjustment assistance.

The investigation was initiated on August 6, 2004, in response to a petition filed on behalf of workers of Dana Undies, Blakely, Arlington, and Colquitt, Georgia. The workers at Blakely and Colquitt produced infants', toddlers', and boys' and girls' underwear. Workers at Arlington supported the plant in Blakely.

In order to make an affirmative determination and issue a certification of eligibility to apply for Trade Adjustment Assistance, the group eligibility requirements in either paragraph (a)(2)(A) or (a)(2)(B) of section 222 of the Trade Act must be met. It is determined in the case of the Blakely and Arlington facilities that the requirements of (a)(2)(A) of section 222 have been met.

The investigation revealed that sales, production and employment at the Blakely/Arlington facilities decreased from 2002 to 2003 and in January through July, 2004 compared with the same period of 2003.

The subject firm has increased its company imports of underwear from Thailand in 2004 impacting production and employment at the Blakely facility.

United States aggregate imports of infant's apparel increased absolutely and relative to shipments in 2003 compared with 2002. The import to consumption ratio was over 1,000 percent in 2003.

In accordance with section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Furthermore, Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 6, 2004, in response to a worker petition filed on behalf of workers at Dana Undies, Colquitt, Georgia.

The investigation revealed that in the case of Dana Undies, Colquitt, Georgia, all workers were separated from the subject firm more than one year before the date of the petition. Section 223(b) of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation of the Colquitt facility has been terminated.

Conclusion

After careful review of the facts obtained in the investigation, I determine that increases of imports of articles like or directly competitive with underwear produced at Dana Undies, Blakely and Arlington, Georgia contributed importantly to the total or partial separation of workers and to the decline in sales or production at that firm or subdivision. In accordance with the provisions of the Act, I make the following certification:

"All workers of Dana Undies, Blakely, Georgia (TA–W–55,395), and Arlington, Georgia (TA–W–55,395A), who became totally or partially separated from employment on or after August 5, 2003 through two years from the date of certification are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974."

Furthermore, I determine that the investigation of workers of Dana Undies, Colquitt, Georgia (TA–W–55,395B) has been terminated for the aforementioned reasons.

Signed in Washington, DC, this 14th day of September 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–2338 Filed 9–22–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 4, 2004.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 4, 2004.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 17th day of September 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 08/30/2004 and 9/10/2004]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
55,514	Elliott Power Systems (Comp)	Lexington, TN	08/31/2004	08/31/2004
55,515	Burkart Carolina, LLC (Comp)	Henderson, NC	08/31/2004	08/25/2004
55,516	Invista, Inc. (Wkrs)	Kinston, NC	08/31/2004	08/26/2004
55,517	U.S. Fuji Electric (Wkrs)	Ashland, VA	08/31/2004	08/24/2004
55,518	BASF (TX)	Freeport, TX	08/31/2004	08/30/2004
55,519	Pinehurst Manufacturing (Comp)	Albemarle, NC	08/31/2004	08/24/2004
55,520	Galey and Lord Industries (Comp)	New York, NY	08/31/2004	08/24/2004
55,521	Micro Craft (MI)	Novi, MI	08/31/2004	08/27/2004
55,522	Ace Electrical Acquisition, LLC (Comp)	Columbus, KS	08/31/2004	08/27/2004
55,523	Meadwestvaco (Comp)	Garland, TX	08/31/2004	08/30/2004
55,524	Spartech Vy-Cal (USWA)	Conshocken, PA	08/31/2004	08/27/2004
55,525	Pacific Precision Metals (Comp)	Azusa, CA	08/31/2004	08/25/2004
55,526	IQE, Inc. (Wkrs)	Bethlehem, PA	08/31/2004	08/12/2004
55,527	Thomson/Biosis (NPW)	Philadelphia, PA	08/31/2004	08/12/2004
55,528	Drager Medical (Wkrs)	Telford, PA	08/31/2004	08/06/2004
55,529	Plastek Group (Wkrs)	Erie, PA	08/31/2004	08/23/2004
55,530	AT and T Corp. (NPW)	Augusta, GA	08/31/2004	08/30/2004
55,531	Electronic Data Systems (NPW)	Raleigh, NC	08/31/2004	08/29/2004
55,532	Primavera Manufacturing Corp. (Comp)	Philadelphia, PA	08/31/2004	08/24/2004
55,533	Johnson Electric (Comp)	Brownsville, TX	09/01/2004	08/31/2004
55,534	Collins Tool Corp. (Comp)	Lewistown, PA	09/01/2004	08/31/2004
55,535	KEMET Electronic (Comp)	Brownsville, TX	09/01/2004	08/31/2004
55,536	Hitachi Magnetics Corp. (Comp)	Edmore, MI	09/01/2004	08/24/2004
55,537	Great Lakes Castings Corp. (Comp)	Ludington, MI	09/01/2004	08/27/2002
55,538	Amerock (Comp)	Rockford, IL	09/01/2004	08/31/2004
55,539	Clover Garments (Wkrs)	San Francisco, CA	09/01/2004	08/30/2002
55,540	American Uniform Co. (Comp)	Conasauga, TN	09/01/2004	08/24/2004
55,541	Glencore Ltd. (NPS)	Stamford, CT	09/01/2004	08/31/2004
55,542	McGarry Machine (OR)	Portland, OR	09/01/2004	08/31/2004
55,543	Clifford Tools and Mfg. Company (CA)	Chatsworth, CA	09/02/2004	08/27/2004
55,544	Canteen Vending (Comp)	Fletcher, NC	09/02/2004	08/23/2004
55,545	Hooker Furniture Corp. (Comp)	Maiden, NC	09/02/2004	08/26/2004
55,546	Georgia Pacific Corp. (Comp)	Bellingham, WA	09/02/2004	08/31/2004
55,547	Eddie Labels and Accessories Corp. (Wkrs)	City of Industr, CA	09/02/2004	09/01/2004
55,548	Miller Golf Co. (Comp)	Rockland, MA	09/02/2004	08/13/2004
55,549	Engineering Service (Wkrs)	Troy, MI	09/03/2004	09/01/2004
55,550	Owen Manufacturing (Wkrs)	Owen, WI	09/03/2004	08/26/2004
55,551	Corra-Board Products—Timbar Packaging (Comp)	Hanover, PA	09/08/2004	08/31/2004
55,552	Nu-Kote International (Comp)	Chatsworth, CA	09/03/2004	08/25/2004
55,553	Honeywell (Wkrs)	Falls Church, VA	09/03/2004	08/27/2004
55,554	Array/KCS Industries (WI)	Hartland, WI	09/03/2004	09/02/2004
55,555	American Offset Printing Ink (Comp)	Charlotta, NC	09/03/2004	08/25/2004
55,556	Aeronca (IAM)	Middletown, OH	09/03/2004	08/27/2004
55,557	TSI of Florida/Cable SPEC LLC (Comp)	Grand Prairie, TX	09/03/2004	08/31/2004
55,558	Emerson Appliance Controls (Comp)	Sparta, TN	09/03/2004	08/26/2004
55,559	Chatham Borgstena Automotive Textiles (Comp)	Mount Airy, NC	09/03/2004	08/25/2004
55,560	Lacey Manufacturing Co. (Comp)	Bridgeport, CT	09/03/2004	09/02/2004
55,561	Nibco Inc., (Wkrs)	Elkhart, IN	09/07/2004	08/18/2004
55,562	Engineering Service (Wkrs)	Troy, MI	09/07/2004	09/01/2004
55,563	Marsilli North America (Comp)	Owings Mills, MD	09/07/2004	09/05/2004
55,564	Haeger Potteries of Macomb (The) (Comp)	Macomb, IL	09/07/2004	09/03/2004
55,565	Wing Tai Company (Wkrs)	San Francisco, CA	09/07/2004	09/03/2004
55,566	Johnson Screens (MN)	New Brighton, MN	09/07/2004	09/03/2004
55,567	Honeywell Video Systems (Comp)	Falls Church, VA	09/08/2004	08/30/2004
55,568	Arch Wireless (Wkrs)	Charlotte, NC	09/08/2004	09/03/2004
55,569	SM Company (Comp)	Asheville, NC	09/08/2004	09/07/2004
55,570	Queen Manufacturing (Comp)	Asheville, NC	09/08/2004	09/07/2004
55,571	Westling Manufacturing Co. (MN)	Princeton, MN	09/08/2004	09/02/2004
55,572	Down River, LLC (Wkrs)	White City, OR	09/09/2004	08/31/2004
55,573	Libbey Glass (USWA)	Walnut, CA	09/09/2004	08/31/2004
55,574	Philips Lighting Co. (IBEW)	Paris, TX	09/09/2004	09/02/2004
55,575	Duncan Industries (AR)	Harrison, AR	09/09/2004	09/08/2004
55,576	Hickory Springs Mgf. Co. (Wkrs)	Conover, NC	09/09/2004	09/08/2004
55,577	Resources Conservation (CT)	Stamford, CT	09/09/2004	09/08/2004
55,578	Clestica Corporation (AR)	Littlé Rock, AR	09/09/2004	09/08/2004
55,579	Cozzini, Inc. (CA)	San Leandro, CA	09/09/2004	08/31/2004
55,580	Lear Corporation (UAW)	New Castle, DE	09/09/2004	08/23/2004
55,581	West Point Foundry and Machine (Wkrs)	West Point, GA	09/09/2004	08/26/2004
55,582	American Falcon Corp. (Comp)	Auburn, ME	09/10/2004	09/08/2004
55,583	Android Industries (Comp)	Vienna, OH	09/10/2004	09/08/2004

APPENDIX—Continued

[Petitions instituted between 08/30/2004 and 9/10/2004]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
55,584	Pompei Furniture/BJI Employees Services	Miami, FL	09/10/2004	09/09/2004
55,585	Blue Ridge Paper Products (NJ)	Morristown, NJ	09/10/2004	09/09/2004
55,586	IBM (NC)	Durham, NC	09/10/2004	09/09/2004
55,587	General Electric Co. (Wkrs)	Conover, NC	09/10/2004	08/31/2004
55,588	Zellweger Analytics (FL)	Miramar, FL	09/10/2004	09/09/2004

[FR Doc. 04–21348 Filed 9–22–04; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,333]

Gateway Country Store, Whitehall Mall, Whitehall, PA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Gateway Country Store, Whitehall Mall, Whitehall, Pennsylvania. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–55,333; Gateway Country Store, Whitehall Mall Whitehall Mall, Pennsylvania (September 16, 2004)

Signed at Washington, DC, this 17th day of September 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E4–2335 Filed 9–22–04; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,294]

GE Electric, Consumer & Industrial Division, Ravenna Lamp Plant, Ravenna, OH; Notice of Revised Determination on Reconsideration of Alternative Trade Adjustment Assistance

By letter dated August 17, 2004, a petitioner requested administrative reconsideration regarding Alternative Trade Adjustment Assistance (ATAA). The negative determination was signed on July 29, 2004, and published in the **Federal Register** on August 20, 2004 (69 FR 51716).

The workers of GE Electric, Consumer & Industrial Division, Ravenna Lamp Plant, Ravenna, Ohio, were certified eligible to apply for Trade Adjustment Assistance (TAA) on July 29, 2004.

The initial ATAA investigation determined that the skills of the subject worker group are easily transferable to other positions in the local area.

The petitioner alleges in the request for reconsideration that the skills of the workers at the subject firm are not easily transferable.

Additional investigation has determined that the workers possess skills that are not easily transferable. A significant number or proportion of the worker group are age fifty years or over. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that the requirements of section 246 of the Trade Act of 1974, as amended, have been met for workers at the subject firm.

In accordance with the provisions of the Act, I make the following certification:

All workers of GE Electric, Consumer & Industrial Division, Ravenna Lamp Plant, Ravenna, Ohio, who became totally or partially separated from employment on or after July 16, 2003, through July 29, 2006, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed in Washington, DC this 15th day of September, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–2332 Filed 9–22–04; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,536]

Hitachi Magnetics Corporation, Edmore, MI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 1, 2004 in response to a worker petition which was filed by a company official on behalf of workers at Hitachi Magnetics Corporation, Edmore, Michigan.

The petitioning group of workers is covered by an active trade adjustment assistance certification (TA–W–50,272) which remains in effect through January 3, 2005. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 7th day of September, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–2340 Filed 9–22–04; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,567]

Honeywell Video Systems, Falls Church, VA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 8, 2004, in response to a petition filed by a company official on behalf of workers at Honeywell Video Systems, Falls Church, Virginia.

The petitioning group of workers is covered by an earlier petition instituted on September 3, 2004 (TA–W–55,553), that is the subject of an ongoing investigation for which a determination

has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed in Washington, DC this 14th day of September, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–2337 Filed 9–22–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,445]

Irwin Manufactuirng Corporation, Ocilla, GA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 16, 2004, in response to a petition filed by the company on behalf of workers at Irwin Manufacturing, Ocilla, Georgia.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 13th day of September, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–2339 Filed 9–22–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,566]

Johnson Screens Inc., New Brighton, MN; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 7, 2004 in response to a petition filed by the TAA Coordinator of the Department of Employment Economic Development, Saint Paul, Minnesota on behalf of workers at Johnson Screens Inc., New Brighton, Minnesota.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 10th day of September 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–2341 Filed 9–22–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,375]

JP Morgan Chase & Company, Credit Card Services, Customer Service and Collections Departments, Hicksville, NY; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 4, 2004 in response to a petition filed on behalf of workers at JP Morgan Chase & Company, Credit Card Services, Customer Service and Collections Departments, Hicksville, NY. Workers at the subject firm performed customer service and collections functions for the subject firm's customers.

The Department of Labor issued a negative determination applicable to the petitioning group of workers on July 1, 2004 (TA–W–55,375). No new information or change in circumstances is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 8th day of September 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–2336 Filed 9–22–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,631]

Main Street Textiles LP Joan Fabrics Corporation Fall River, Massachusetts; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 3, 2003, applicable to workers of Main Street Textiles LP, Fall River, Massachusetts. The notice will be published soon in the **Federal Register**.

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of jacquard furniture fabric.

New information shows that Joan Fabrics Corporation is the parent firm of Main Street Textiles LP. Some of the workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax accounts for Joan Fabrics Corporation.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Main Street Textiles LP, Fall River, Massachusetts who were adversely affected by a shift in production of woven textiles to Mexico.

The amended notice applicable to TA–W–53,631 is hereby issued as follows:

"All workers of Main Street Textiles LP, Joan Fabrics Corporation, Fall River, Massachusetts, who became totally or partially separated from employment on or after November 18, 2002, through December 3, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974."

Signed at Washington, DC this 15th day of September 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–2330 Filed 9–22–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the periods of August and September 2004.

In order for an affirmative determination to be made and a

certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign county of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA–W–55,435; Rock-Tenn Company, Aurora, IL.

TA–W–55,337; Benees, Inc., Farmington, MO.

TA–W–54,398; Monster Cable Products, Inc., Brisbane, CA.

TA–W–55,234; Lexmark International, Printing Services and Solutions Division, Lexington, KY.

TA–W–55,423; Granville Hosiery, Inc., Oxford NC.

TA–W–55,377; Gallade Technologies, including on-site leased workers from Adecco, Saginaw, MI.

TA–W–55,316; Westpoint Stevens, Inc., Greenville, AL.

TA–W–55,291; Uretech International, Inc., Luckey, OH.

TA–W–55,292; Thomasville Furniture, Inc., Plant 1, A Thomasville Upholstery Div., Statesville, NC.

TA–W–55,411; Belden Communications, Communications Division, a subsidiary of Belden, Inc., Phoenix, AZ.

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–55,418; Electronic Data Systems Corp., Atlanta, GA.

TA–W–55,301; Plexus, a division of Banctec, Santa Clara, CA.

TA–W–55,356; GE Consumer Finance, a division of The General Electric Capital Corp., a division of The General Electric Company, Mason, OH.

TA–W–55,339; Fujitsu Network Communications, Inc., Services Division, Richardson, TX.

TA–W–55,100; Chattanooga General Services, Inc., a wholly owned subsidiary of General Industries of Tennessee, 5912 Quintus Loop, Chattanooga, TN.

TA–W–55,358; ECE Holding, Inc., d/b/a Stream, Eugene, OR.

TA–W–55,466; WSGM Holdings LLC, d/b/a Melton Industrial Truck, Burlington, NC.

TA–W–55,397; VIP USA, Inc. Formerly Lexington Services, Hotel Reservation Division, Irving, TX.

TA–W–55,417; Abbott Laboratories, Inc., Medisense Products, Customer Care Organization, Bedford, MA.

TA–W–55,382; Eclipsys Corp., Santa Rosa, CA.

The investigation revealed that criterion (a)(2)(A)(I.A) and (a)(2)(B)(II.A) (no employment decline) has not been met.

TA–W–55,391; eMag Solutions, LLC, Graham, TX.

TA–W–55,285 & A; Seagate Technology LLC, Recording Head Operations Division, Normandale, MN and Product and Technology Development Div., Shakopee, MN.

TA–W–55,447; Juno, Inc., McKinley Street Plant, including leased workers of Manpower, Inc., Anoka, MN.

TA–W–55,486; Visteon Systems, LLC, Connersville, IN.

TA–W–55,427; Kincaid Furniture, Taylorsville, NC.

The investigation revealed that criterion (a)(2)(A)(I.B) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B) (has shifted production to a county not under the free trade agreement with U.S.) have not been met.

TA–W–55,321; Dynea USA, Inc., Eugene, OR.

TA–W–55,275; Teledyne Relays, a division of Teledyne Technologies, including on-site leased workers from Kelly Services and Volt Services Group, Hawthorne, CA.

TA–W–55,289; General Electric Inspection Technologies, LP, Lewistown, PA

The investigation revealed that criteria (2) has not been met. The workers' firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

TA–W–55,433; Peachtree MFN Products, Plant #2, Braselton, GA.

TA–W–55,374; Automodular Assemblies, a subsidiary of Automodular Assemblies (Canada), New Castle, DE.

The investigation revealed that criteria (a)(2)(A) (I.C) (increased imports) and (II.C) (has shifted production to a foreign country) have not been met.

TA–W–55,299; Gould Electronics, Inc., Eastlake, OH.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met.

TA–W–55,444; Broyhill Furniture Industries, Conover, NC: August 11, 2003.

TA–W–55,362; M.J. Wood Products, d/b/a Vermont Precision Woodworks, Morrisville, VT: July 27, 2003.

TA–W–55,421; Commonwealth Industries, Tube Enterprises Division, a subsidiary of Commonwealth Aluminum, Kings Mountain, NC: August 11, 2003.

TA–W–55,334; Mulholland Brothers, San Francisco, CA: July 21, 2003.

TA–W–55,451; Lawrence Hardware LLC, including on-site leased workers from Burton Placement and Manpower, Sterling, IL: July 28, 2003.

TA–W–55,399; Lonza, Inc., Bayport Plant, Pasadena, TX: August 4, 2003.

TA–W–55,414; Klipsch LLC, including on-site leased workers from Select Staff, Hope, AR: August 9, 2003.

TA–W–55,284; Moline Machinery Ltd, Duluth, MN: July 20, 2003.

TA–W–55,434; Kent Sporting Goods Company, Inc. New London, OH: August 3, 2003.

TA–W–55,298; Hewitt Soap Works, Inc., a subsidiary of Bradford Soap Works, Inc., Dayton, OH: June 22, 2003.

TA–W–55,282; Haworth Jonesboro Systems Products, a subsidiary of Haworth, Inc, including on-site leased workers from Staffmark, Jonesboro, AR: July 16, 2003.

TA–W–55,245; Commercial Vehicle Services, Inc., Canby, OR: July 9, 2003.

TA–W–55,239; Edron Fixture Corporation, Metal Shop Division, Miami, FL: July 12, 2003.

TA–W–55,493; Zenith Logistics, LLC, leased workers working at Bassett Furniture Industries, Macon, GA: August 20, 2003.

TA–W–55,501; Sandvik Special Metals LLC, Kennewick, WA: November 10, 2003.

TA–W–55,305; Tredegar Film Products U.S. LLC, a wholly owned subsidiary of Tredegar Film Products Corp., New Bern, NC: July 22, 2003.

TA–W–55,378; Employment Staffing, workers at Maxxim Medical, Honea Path, SC: August 3, 2003.

TA–W–55,366; Crisci Tool and Die, Inc., Leominster, MA: July 26, 2003.

TA–W–55,329; Westchester Lace, Knitting Department, North Bergen, NJ: July 21, 2003.

TA–W–55,331; Burlington Industries, LLC, Williamsburg Plant, Matkins, NC: August 22, 2004.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of section 222 have been met.

TA–W–55,372; Union Apparel, Inc., Norvelt, PA: December 1, 2003.

TA–W–55,422; Foamex LP, Williamsport, PA: August 3, 2003.

TA–W–55,479; Tyco Safety Products, a div. of SimplexGrinnell, a wholly owned subsidiary of Tyco Fire & Security, Westminster, MA: August 11, 2003.

TA–W–55,402; Royal Home Fashions, a subsidiary of Croscill, Inc., Plant 2, Henderson, NC: August 5, 2003.

TA–W–55,483; Siemens Energy and Automation, subsidiary of Siemens AG, Process Solutions Division, Process Instruments Business Unit, including leased workers of Staffing Network and Cornerstone, Modesto, CA: August 18, 2003.

TA–W–53,631; Main Street Textiles LP, Fall River, MA: November 18, 2002.

TA–W–55,343; Victoria Vogue, Inc., Bethlehem, PA: August 21, 2004.

TA–W–55,297; Superior Technical Resources, Inc., on-site leased workers at OSRAM Sylvania, Waldoboro, ME: June 22, 2003.

TA–W–55,280; Cooper Standard Automotive, NVH Division, El Dorado, AR: July 20, 2003.

TA–W–55,263 & A; Fabrictex, Inc., Lincolnton, NC and Sales Office, New York, NY: July 12, 2003.

TA–W–55,384; Pleasant Hill Manufacturing, a subsidiary of King Louie International, Inc., Wagoner, OK: July 26, 2003.

TA–W–55,315; Manpower, workers at Drexel Heritage Furniture Industries, Plant 2, Marion, NC: July 14, 2003.

TA–W–55,257; Russell Athletic, Focused Factory, a division of Russell Corp., Alexander City, AL, A; Russell Activewear, Plant 10, a div. of Russell Corp., Alexander City, AL, B; Russell Corporation, Sales Office Drive, Alexander City, AL, C; Russell Athletic, New #1 Mill, a division of Russell Corp., Alexander City, AL and D; Russell Activewear, New #1 Mill, a div. of Russell Corp., Alexander City, AL: July 12, 2003.

TA–W–55,456; Five Rivers Electronic Innovations, LLC, Cabinet Div., Jefferson City, TN: August 13, 2003.

T–W–55,467; Precision Moulding LLC, a subsidiary of Tara Materials, Inc., Cottonwood, CA: August 16, 2003.

TA–W–55,360; Henry County Plywood Corporation, including on-site leased workers from Aztec Labor Resources, Inc., Ridgeway, VA: July 31, 2001.

The following certifications have been issued. The requirement of upstream supplier to a trade certified primary firm has been met.

TA–W–55,477; Screen Specialty Shop, Inc., West Jefferson, NC: August 9, 2003.

TA–W–55,205; The Boeing Company, Fabrication Division, Boeing-Oak Ridge, Inc., Oak Ridge, TN: April 23, 2004.

The following certification has been issued. The requirement of downstream producer to a firm trade certified was certified on the basis of a shift of production or imports from Canada or Mexico.

TA–W–55,458; Decrane Cabin Interiors, a division of Decrane Aircraft, Tucson, AZ: August 6, 2003.

Negative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of section 246(a)(3)(A)(ii) of the Trade Act must be met.

In the following cases, it has been determined that the requirements of section 246(a)(3)(ii) have not been met for the reasons specified.

The Department as determined that criterion (2) of section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–55,451; Lawrence Hardware LLC, including on-site leased workers from Burton Placement and Manpower, Sterling, IL.

TA–W–55,399; Lonza, Inc., Bayport Plant, Pasadena, TX.

TA–W–55,414; Klipsch LLC, including on-site leased workers from Select Staff, Hope, AR.

TA–W–55,483; Siemens Energy and Automation, subsidiary of Siemens AG, Process Solutions Div., Process Instruments Business Unit, including leased workers of Staffing Network and Cornerstone, Modesto, CA.

TA–W–55,205; The Boeing Company, Fabrication Division, Boeing-Oak Ridge, Inc., Oak Ridge, TN.

Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

TA–W–55,374; Automodular Assemblies, a subsidiary of Automodular Assemblies (Canada), New Castle, DE.

TA–W–55,433; Peachtree MFN Products, Plant #2, Braselton, GA.

TA–W–55,275; Teledyne Relays, a division of Teledyne Technologies, including on-site leased workers from Kelly Services and Volt Services Group, Hawthorne, CA.

TA–W–55,289; General Electric Inspection Technologies, LP, Lewistown, PA.

TA–W–55,285 & A; Seagate Technology LLC, Recording Head Operations Division, Normandale, MN, Product and Technology Development Div., Shakopee, MN.

TA–W–55,447; Juno, Inc., Mckinley Street Plant, including leased workers of Manpower, Inc., Anoka, MN.

TA–W–55,486; Visteon Systems LLC, Connersville, IN.

TA–W–55,427; Kincaid Furniture, Taylorsville, NC.

TA–W–55,466; WSGM Holdings LLC, d/b/a Melton Industrial Truck, Burlington, NC.

TA–W–55,397; VIP USA, Inc., formerly Lexington Services, Hotel Reservation Division, Irving, TX.

TA–W–55,417; Abbott Laboratories, Inc., Medisense Products, Customer Care Organization, Bedford, MA.

TA–W–55,382; Eclipsys Corp., Santa Rosa, CA.

TA–W–55,234; Lexmark International, Printing Services and Solutions Division, Lexington, KY.

TA–W–55,423; Gramville Hosiery, Inc., Oxford, NC.

TA–W–55,316; Westpoint Stevens, Inc., Greenville, AL.

TA–W–55,377; Gallade Technologies, including on-site leased workers from Adecco, Saginaw, MI.

TA–W–55,291; Uretech International, Inc., Luckey, OH.

TA–W–55,292; Thomasville Furniture, Inc., Plant 1, A Thomasville Upholstery Div., Statesville, NC.

TA–W–55,411; Belden Communications, Communications Div., a subsidiary of Belden, Inc., Phoenix, AZ.

TA–W–55,299; Gould Electronics, Inc., Eastlake, OH.

Affirmative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of section 246(a)(3)(A)(ii) of the Trade Act must be met.

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determinations.

In the following cases, it has been determined that the requirements of section 246(a)(3)(ii) have been met.

I. Whether a significant number of workers in the workers' firm are 50 years of age or older.

II. Whether the workers in the workers' firm possess skills that are not easily transferable.

III. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

TA–W–53,631; Main Street Textiles LP, Fall River, MA: November 18, 2002.

TA–W–55,331; Burlington Industries, LLC, Williamsburg Plant, Matkins, NC: August 22, 2004.

TA–W–55,329; Westchester Lace, Knitting Department, North Bergen, NJ: July 21, 2003.

TA–W–55,305; Tredegar Film Products U.S. LLC, a wholly owned subsidiary of Tredegar Film Products Corp., New Bern, NC: July 22, 2003.

TA–W–55,378; Employment Staffing, Workers at Maxim Medical, Honea Path, SC: August 3, 2003.

TA–W–55,366; Crisci Tool and Die, Inc., Leominsterm MA: July 26, 2003.

TA–W–55,360; Henry County Plywood Corp., including on-site leased workers from Aztec Labor Resources, Inc., Ridgeway, VA: July 31, 2003.

TA–W–55,501; Sandvik Special Metals LLC, Kennewick, WA: November 10, 2003.

TA–W–55,467; Precision Moulding LLC, a subsidiary of Tara Materials, Inc., Cottonwood, CA: August 16, 2003.

TA–W–55,493; Zenith Logistics, LLC, leased workers working at Bassett Furniture Industries, Macon, GA: August 20, 2003.

TA–W–55,456; Five Rivers Electronic Innovations, LLC, Cabinet Div., Jefferson City, TN: August 13, 2003.

TA–W–55,458; Decrane Cabin Interiors, a division of Decrane Aircraft, Tucson, AZ: August 6, 2003.

TA–W–55,257; Russell Athletic, Focused Factory, a division of Russell Corp., Alexander City, AL, A; Russell Activewear, Plant #10, a division of Russell Corp., Alexander City, AL, B; Russell Corp., Sales Office Drive, Alexander City, AL, C; Russell Athletic, New #1 Mill, a division of Russell Corp., Alexander City, AL, D; Russell Activewear, New #1 Mill, a division of Russell Corp., Alexander City, AL: July 12, 2003.

TA–W–55,315; Manpower, workers at Drexel Heritage Furniture Industries, Plant 2, Marion, NC: July 24, 2003.

TA–W–55,384; Pleasant Hill Manufacturing, a subsidiary of King Louie International, Inc., Wagoner, OK: July 26, 2003.

TA–W–55,239; Edron Fixture Corp., Metal Shop Div., Miami, FL: July 12, 2003.

TA–W–55,245; Commercial Vehicle Services, Inc., Canby, OR: July 9, 2003.

TA–W–55,263 & A; Fabrictex, Inc., Lincolnton, NC and Sales Office, New York, NY: July 12, 2003.

TA–W–55,280; Cooper Standard Automotive, NVH Div., El Dorado, AR: July 20, 2003.

TA–W–55,282; Haworth Jonesboro Systems Products, a subsidiary of Haworth, In., including on-site leased workers from Staffmark, Jonesboro, AR: July 16, 2003.

TA–W–55,297; Superior Technical Resources, Inc., On-Site Leased workers at OSRAM Syslvania, Waldoboro, ME: June 22, 2003.

TA–W–55,298; Hewitt Soap Works, Inc., a subsidiary of Bradford Soap Works, Inc., Dayton, OH: June 22, 2003.

TA–W–55,343; Victoria Vogue, Inc., Bethlehem, PA: August 21, 2004.

TA–W–55,434; Kent Sporting Goods Co., Inc., New London, OH: August 3, 2003.

TA–W–55,284; Moline Machinery Ltd, Duluth, MN: July 20, 2003.

TA–W–55,355; Advance Transformer, a division of Philips Lighting, Boscobel, WI: August 13, 2004.

TA–W–55,359; Brown & Williamson Tobacco Corporation, Wilson Leaf Division, Wilson, NC: July 30, 2003.

TA–W–55,379; Invisible Technologies, Inc., including leased workers of Pro Resources, Kelly Services and People Link, Garrett, IN: August 2, 2003.

I hereby certify that the aforementioned determinations were issued during the months of August and September 2004. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: September 17, 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E4–2333 Filed 9–22–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,125]

Volt Temporary Services, Volt Services Group, Leased Workers Onsite at SR Telecom, Inc., Redmond, WA; Notice of Negative Determination on Reconsideration

On August 10, 2004, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The Department's notice was published in the **Federal Register** on August 20, 2004 (69 FR 51718). Separated workers are employees of Volt Temporary Services, Volt Services Group working onsite at SR Telecom, Inc., Redmond, Washington.

The Department denied the initial petition because Volt Temporary Services, Volt Services Group is not a company that produces an article but is a staffing agency that satisfies companies' human resource needs by sending temporary workers to fulfill a variety of needs. The initial petition was also denied because Volt Temporary Services, Volt Services Group was not under a written contractual relationship with SR Telecom, Inc., Redmond, Washington.

In the request for reconsideration, the petitioners allege that the Volt Temporary Services, Volt Services Group workers who were assigned to SR Telecom, Inc., Redmond, Washington performed assembly work and did not perform administrative functions.

The reconsideration investigation revealed that while Volt Temporary Services, Volt Services Group does not produce an article, it does place workers in companies that are engaged in production. During the reconsideration investigation, it was confirmed that a written contract did not exist between Volt Temporary Services, Volt Services Group and SR Telecom, Inc., Redmond, Washington.

A subject company official informed the Department that almost seven hundred Volt Temporary Services, Volt Services Group workers were placed in assignments in 2003 and over five hundred Volt Temporary Services, Volt Services Group workers were placed in assignments in 2004. Fifteen Volt Temporary Services, Volt Services Group workers were placed with SR Telecom, Inc., Redmond, Washington in 2003 and two Volt Temporary Services, Volt Services Group workers were placed with SR Telecom, Inc., Redmond, Washington in 2004 (one performed administrative duties, the other performed warehousing, packing and shipping/receiving duties).

At the time that SR Telecom, Inc., Redmond, Washington closed in July 2004, only one Volt Temporary Services, Volt Services Group worker was still assigned there. That employee was placed in SR Telecom, Inc., Redmond, Washington in 2003 and is currently a permanent employee of Volt Temporary Services, Volt Services Group.

The two Volt Temporary Services, Volt Services Group workers who were assigned to SR Telecom, Inc., Redmond, Washington in 2004 ceased working there on July 12, 2004, because their assignments naturally expired at that time. As such, there were no worker lay-offs during the relevant time period.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Volt Temporary Services, Volt Services Group, leased workers on-site at SR Telecom, Inc., Redmond, Washington.

Signed in Washington, DC, this 14th day of September, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–2331 Filed 9–22–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act: Native American Employment and Training Council

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463), as amended, and section 166(h)(4) of the Workforce Investment Act (WIA) (29 U.S.C. 2911(h)(4)), notice is hereby given of the next meeting of the Native American Employment and Training Council as constituted under WIA.

Time and Date: The meeting will begin at 9 a.m. e.d.t. (eastern daylight saving time) on Wednesday, October 13, 2004, and continue until 5 p.m. e.d.t. that day. The period from 3 p.m. to 5 p.m. e.d.t. will be reserved for participation and presentation by members of the public. The meeting will reconvene at 8:30 a.m. e.d.t. on Thursday, October 14, 2004, and continue until approximately 5 p.m. e.d.t. on that day.

Place: All sessions will be held in Embassy Suites, 1250 22nd Street, NW., Washington, DC 20037.

Status: The meeting will be open to the public. Persons who need special accommodations should contact Ms. Athena Brown on (202) 693–3737 by October 1, 2004.

Matters to be Considered: The formal agenda will include, but not be limited to, the following topics: (1) Election of Council Chairperson, Vice-Chairperson, and other officers; (2) comments from the Department on overall employment and training issues, including implementation of the OMB "Common Measures" for evaluating employment and training programs; (3) Council work group reports, including an update on the Unemployment Insurance Wage Record Study; (4) status of the Council report to the Department and Congress; (5) status of the Technical Assistance and Training Initiative; and (6) status of WIA reauthorization legislation.

FOR FURTHER INFORMATION CONTACT: Ms. Athena Brown, Chief, Division of Indian and Native American Programs, Office of National Programs, Employment and Training Administration, U.S. Department of Labor, Room S–4203, 200 Constitution Avenue, NW., Washington, DC 20210.

Telephone: (202) 693–3737 (VOICE) (this is not a toll-free number) or 1–800–

877–8339 (TTY) or speech-to-speech at 1–877–877–8982 (these are toll-free numbers).

Signed in Washington, DC, this 17th day of September, 2004.

Thomas M. Dowd,

Deputy Assistant Secretary, Employment and Training Administration.

[FR Doc. E4–2342 Filed 9–22–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 1218–0115(2004)]

Cranes and Derricks Standard for Construction; Notification of Operational Specifications and Hand Signals: Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits comments concerning its request for an extension of the information collection requirements specified by paragraphs (a)(1), (a)(2), (a)(4), and (a)(16) of the Cranes and Derricks Standard for Construction (29 CFR 1926.550). These paragraphs require employers to provide notification of specified operating characteristics pertaining to cranes and derricks using documentation, posting, or revised maintenance-instruction plates, tags, or decals and to notify employees of hand signals used to communicate with equipment operators by posting an illustration of applicable signals at the worksite.

DATES: Comments must be submitted by the following dates:

Hard copy: Your comments must be submitted (postmarked or received) by November 22, 2004.

Facsimile and electronic transmission: Your comments must be received by November 22, 2004.

ADDRESSES: You may submit comments, identified by OSHA Docket No. ICR–1218–0115(2004), by any of the following methods:

Regular mail, express delivery, hand delivery, and messenger service: Submit your comments and attachments to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). OSHA Docket Office and Department of Labor hours are 8:15 a.m. to 4:45 p.m., ET.

Facsimile: If your comments are 10 pages or fewer in length, including attachments, you may fax them to the OSHA Docket Office at (202) 693–1648.

Electronic: You may submit comments through the Internet at *http://ecomments.osha.gov*. Follow instructions on the OSHA Web page for submitting comments.

Docket: For access to the docket to read or download comments or background materials, such as the complete Information Collection Request (ICR) (containing the Supporting Statement, OMB–83–I Form, and attachments), go to OSHA's Web page at *http://www.OSHA.gov*. Comments, submissions, and the ICR are available for inspection and copying at the OSHA Docket Office at the address above. You may also contact Todd Owen at the address below to obtain a copy of the ICR.

(For additional information on submitting comments, please see the "Public Participation" heading in the **SUPPLEMENTARY INFORMATION** section of this document.)

FOR FURTHER INFORMATION CONTACT: Todd Owen, Directorate of Standards and Guidance, OSHA, Room N–3609, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments and supporting materials in response to this notice by (1) hard copy, (2) fax transmission (facsimile), or (3) electronically through the OSHA Web page. Because of security related problems, there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

All comments, submissions and background documents are available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions posted on OSHA's Web page are available at *http://www.OSHA.gov*. Contact the OSHA Docket Office for information about materials not available through the OSHA Web page and for assistance using the Web page to locate docket submissions.

Electronic copies of this **Federal Register** notice as well as other relevant documents are available on OSHA's Web page.

II. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

Several paragraphs of the Cranes and Derricks Standard for Construction (§ 1926.550) contain notification requirements, including paragraphs (a)(1), (a)(2), (a)(4), and (a)(16). If an equipment manufacturer's specifications are not available, paragraph (a)(1) requires employers to operate a crane or derrick using specifications determined and recorded by a qualified engineer who is competent to make such determinations. Under paragraph (a)(2), employers must post on each crane and derrick its rated load capacities, and recommended operating speeds, special hazard warnings, or instructions. Paragraph (a)(4) requires employers to post at the worksite an illustration of the hand signals prescribed by the applicable ANSI standard for that type of crane or derrick. According to paragraph (a)(16), employers must revise as appropriate the capacity, operation, and maintenance-instruction plates, tags, or decals if they make alterations that involve the capacity or safe operation of a crane or derrick.

In summary, these provisions require employers to provide notification of specified operating characteristics through documentation, posting, or revising maintenance-instruction plates, tags, or decals, and to notify employees of hand signals used to communicate with equipment operators by posting an illustration of applicable signals at the worksite. These paperwork

requirements ensure that employers operate a crane or derrick according to the limitations and specifications developed for that equipment, and that hand signals used to communicate with equipment operators are clear and correct. Therefore, these requirements prevent employers from exceeding the operating specifications and limitations of cranes and derricks, and ensure that they use accurate hand signals regarding equipment operation. By operating the equipment safely and within specified parameters, and communicating effectively with equipment operators, employers will prevent serious injury and death to the equipment operators and other employees who use or work near the equipment.

III. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

IV. Proposed Actions

OSHA is proposing to extend the information collection requirements specified by paragraphs (a)(1), (a)(2), (a)(4), and (a)(16) of Sec. 1926.550. The Agency will summarize the comments submitted in response to this notice and will include this summary in its request to OMB to extend the approval of these information collection requirements contained in the Standard.

Type of Review: Extension of currently approved information collection requirements.

Title: Cranes and Derricks Standard for Construction; Notification of Operational Specifications and Hand Signals (29 CFR 1926.550).

OMB Number: 1218–0115.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local, or Tribal governments.

Number of Respondents: 70,544.

Frequency of Response: On occasion.

Total Responses: 70,544.[1]

Average Time per Response: Five minutes (.08 hour) to post specifications or hand-signals illustrations.

Estimated Total Burden Hours: 5,640.

Estimated Cost. (Operation and Maintenance): $477,802.

V. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on September 17, 2004.

John L. Henshaw,

Assistant Secretary of Labor

[FR Doc. 04–21358 Filed 9–22–04; 8:45 am]

BILLING CODE 4510–26–M

[1] In estimating the number of respondents (establishments) covered by these paperwork requirements, the Agency assumes a ratio of 1 crane or derrick per establishment. The determinations made by OSHA in the accompanying ICR indicate that paragraphs (a)(2), (a)(4), and (a)(16) cover 70,544 cranes and derricks, resulting in an equal number of establishments (*i.e.* 70,544). In addition, the Agency finds that engineers under contract to employers provide the documentation specified by paragraph (a)(1); therefore, OSHA treats this paperwork requirement as a capital cost under Item 13 of the ICR.

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 1218–0054(2004)]

Cranes and Derricks Standard for Construction: Recording Tests for Toxic Gases and Oxygen-Deficient Atmospheres in Enclosed Spaces; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits comments concerning its request of ran extension of the information collection requirement specified by paragraph (a)(11) of the Cranes and Derricks Standard for Construction (29 CFR 1926.550). If a crane or derrick powered by an internal-combustion engine is exhausting into an enclosed space that employees occupy or will occupy, this paragraph requires employers to record tests made of the breathing air in the space to ensure that adequate oxygen is available and that concentrations of toxic gases are at safe levels.

DATES: Comments must be submitted by the following dates:

Hard copy: Your comments must be submitted (postmarked or received) by November 22, 2004.

Facsimile and electronic transmission: Your comments must be received by November 22, 2004.

ADDRESSES: You may submit comments, identified by OSHA Docket No. ICR–1218–0054(2004), by any of the following methods:

Regular mail, express delivery, hand delivery, and messenger service: Submit your comments and attachments to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). OSHA Docket Office and Department of Labor hours are 8:15 a.m. to 4:45 p.m., ET.

Facsimile: If your comments are 10 pages or fewer in length, including attachments, you may fax them to the OSHA Docket Office at (202) 693–1648.

Electronic: You may submit comments through the Internet at *http://ecomments.osha.gov*. Follow instructions on the OSHA Webpage for submitting comments.

Docket: For access to the docket to read or download comments or background materials, such as the complete Information Collection Request (ICR) (containing the Supporting Statement, OMB–83–I Form, and attachments), go to OSHA's Webpage at *http://www.OSHA.gov*. Comments, submissions, and the ICR are available for inspection and copying at the OSHA Docket Office at the address above. You may also contact Todd Owen at the address below to obtain a copy of the ICR.

(For additional information and submitting comments, please see the "Public Participation" heading in the **SUPPLEMENTARY INFORMATION** section of this document.)

FOR FURTHER INFORMATION CONTACT: Todd Owen, Directorate of Standards and Guidance, OSHA, Room N–3609, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments and supporting materials in response to this notice by (1) hard copy, (2) fax transmission (facsimile), or (3) electronically through the OSHA Web page. Because of security related

problems, there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

All comments, submissions and background documents are available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions posted on OSHA's Web page are available at *http://www.OSHA.gov*. Contact the OSHA Docket Office for information about materials not available through the OSHA Web page and for assistance using the Web page to locate docket submissions.

Electronic copies of the **Federal Register** notice as well as other relevant documents are available on OSHA's Web page.

II. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

Paragraph (a)(11) of OSHA's Cranes and Derricks Standard for Construction (§ 1926.550) addresses conditions in which a crane or derrick powered by an internal-combustion engine is exhausting in an enclosed space that employees occupy or will occupy. Under these conditions, employers must record tests made of the breathing air in the space to ensure that adequate oxygen is available and that concentrations of toxic gases are at safe levels.

Establishing a test record allows employers to document oxygen levels and specific atmospheric contaminants, ascertain the effectiveness of controls, implement additional controls if necessary, and readily provide this information to other crews and shifts who may work in the enclosed space. Accordingly, employers will prevent serious injury and death to equipment operators and other employees who use or work near this equipment in an enclosed space. In addition, these records provide the most efficient means of an OSHA compliance officer to determine that an employer performed the required tests and implemented appropriate controls.

III. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The equality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

IV. Proposed Actions

OSHA is proposing to extend the information collection requirements specified by paragraph (a)(11) of § 1926.550. The Agency will summarize the comments submitted in response to this notice and will include this summary in its request to OMB to extend the approval of these information collection requirements contained in the Standard.

Type of Review: Extension of currently approved information collection requirements.

Time: Cranes and Derricks Standards for Construction; Recording Tests for Toxic Gases and Oxygen-Deficient Atmospheres in Enclosed Spaces (29 CFR 1926.550).

OMB Number: 1218–0054.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local, or Tribal governments.

Number of Respondents: 50 (enclosed spaces).

Frequency of Response: On occasion.

Total Responses: 50.

Average Time per Response: Two minutes (0.3 hour) to perform atmosphere testing and record the results.

Estimated Total Burden Hours: 99 hours.

Estimated Cost. (Operation and Maintenance): $9,000.

V. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Dated: Signed at Washington, DC on September 17, 2004.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 04–21359 Filed 9–22–04; 8:45 am]

BILLING CODE 4510–26–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act; Meeting

September 16, 2004.

TIME AND DATE: 10 a.m., Thursday, September 23, 2004.

PLACE: The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session:

Secretary of Labor v. *U.S. Steel Mining Co.*, Docket No. SE 2002–126. (Issues include whether the judge properly concluded that the operator violated 30 CFR 77.404(a), which requires equipment to be maintained in safe operating condition.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs, subject to 29 CFR 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 434–9950 / (202) 708–9300 for TDD Relay / 1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 04–21483 Filed 9–21–04; 8:45 am]

BILLING CODE 6735–01–M

OFFICE OF NATIONAL DRUG CONTROL POLICY

Meeting of the Drug Control Research, Data, and Evaluation Advisory Committee

AGENCY: Office of National Drug Control Policy.

ACTION: Notice of meeting.

SUMMARY: The Drug Control Research, Data, and Evaluation Advisory Committee will meet to conduct ordinary business including discussions concerning the long-term and short-term planning for potential research projects.

DATES: The meeting will be held Wednesday, October 27, 2004 from 10 a.m. to 5 p.m. and Thursday, October 28, 2004 from 9 a.m. to 5 p.m. There will be an opportunity for public comment from 4:30 p.m. to 5 p.m. on Wednesday, October 27, 2004.

ADDRESSES: The meeting will be held at the Office of National Drug Control Policy, 750 17th Street, NW., 5th Floor Conference Room, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Janie Dargan, (202) 395–6714.

Dated: September 17, 2004.

Daniel R. Petersen,

Assistant General Counsel.

[FR Doc. 04–21327 Filed 9–22–04; 8:45 am]

BILLING CODE 3180–02–P

NUCLEAR REGULATORY COMMISSION

Radiac Research Corporation, Brooklyn, NY; Notice of Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that by petition dated November 4, 2003, Michael Gerrard of Arnold and Porter, representing Neighbors Against Garbage (the Petitioners), filed a Petition pursuant to Title 10 of the Code of Federal Regulations, Section 2.206. The Petitioners requested that the U.S. Nuclear Regulatory Commission (NRC) immediately revoke, suspend or modify the New York State Department of Labor (NYDOL) license held by Radiac Research Corporation under the NRC's authority pursuant to the Atomic Energy Act of 1954 (AEA), as amended to protect the common defense and security.

The basis for this request was that Radiac's radioactive waste storage operation adjoining the Radiac hazardous waste transfer and storage operation in Brooklyn, New York represented a significant risk to the common defense and security.

In a letter dated December 17, 2003, the NRC informed the Petitioners that the request for immediate action was denied because the limits on types and activity of radioactive material that Radiac was authorized to possess were below the levels of concern. The letter added that the issues identified in the petition would be reviewed under 10 CFR 2.206 and that this review would be conducted by the Office of Nuclear Material Safety and Safeguards (NMSS).

The Petitioner and the Licensee both participated in a meeting with the NMSS Petition Review Board (PRB) on February 20, 2004. At this meeting, the Petitioner provided additional information concerning the bases for the Petition, and the Licensee provided additional information concerning their response to the Petition. A concerned citizen and a representative of the Honorable Nydia M. Velázquez, US. House of Representatives, provided statements. Two other concerned citizens present at the public meeting later provided written statements via e-mail on February 27, 2004. The written presentations of the parties, as well as the transcript of this meeting, have been treated as a supplement to the Petition and are available in the Agencywide Documents Access and Management System (ADAMS), which provides text and image files of the NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm.html.* The ADAMS Accession Numbers for the packages containing all the publicly available documents regarding this petition are ML041040731 and ML041240485. If you do not have access to ADAMS or there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

In a letter dated December 10, 2003, addressed to the Honorable Nils J. Diaz, Chairman, NRC, the Honorable Nydia M. Velázquez, U.S. House of Representatives, requested the NRC to investigate the risk of an accident or terrorist event at the Radiac facility. By letter dated February 10, 2004, Chairman Nils J. Diaz informed Congresswoman Velázquez that the NRC is reviewing similar common defense and security issues identified in the Neighbors Against Garbage 2.206 petition and that she would be informed of the results of that review.

In a letter dated February 19, 2004, addressed to the Honorable Nils J. Diaz, Chairman, NRC, Mr. Vincent V. Abate, Chairman, Community Board No. 1, representing Brooklyn, New York, presented information pertinent to the Petition. By letter dated March 30, 2004, the PRB informed Mr. Abate that the information would be considered as a supplement to the Petition.

In letters dated February 27, 2004, the Petitioner and Licensee provided supplemental information concerning the petition. In the Licensee's letter was a request to reject the petition based on procedural issues. In a letter dated April 27, 2004, the NRC staff informed the Petitioner and the Licensee that the Licensee's request to reject the petition was denied, that the PRB accepted the petition for review because it satisfied the criteria under 10 CFR 2.206 and Management Directive 8.11, and that the NRC staff would review the technical merits of the petition.

In a letter dated March 18, 2004, the Licensee provided supplemental information concerning the petition. In a letter dated, April 12, 2004, the Petitioner provided supplemental information concerning the petition.

The NRC sent a copy of the proposed Director's Decision to the Petitioners and to the licensee for comment on June 14, 2004. The Petitioners responded with comments on July 15, 2004. The licensee did not provide comments. The comments and the NRC staff's response to them are Enclosures to this Director's Decision.

The NMSS Office Director has denied the request of the Petitioner to revoke, suspend, or modify the NYDOL license held by Radiac Research Corporation under the NRC's authority to protect the common defense and security. The reasons for the decisions are explained in the Director's Decision pursuant to 10 CFR 2.206 [DD–04–04], the complete text of which is available in ADAMS for inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and from the ADAMS public access component on the NRC's Web site, *http://www.nrc.gov,* under the "Public Involvement" icon.

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations.

As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the Director's Decision within that time.

Dated at Rockville, Maryland, this 15th day of September 2004.

For the Nuclear Regulatory Commission.

Jack R. Strosnider,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 04–21341 Filed 9–22–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of Interim Staff Guidance Documents for Fuel Cycle Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Wilkins Smith, Project Manager, Technical Support Group, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20005–0001. Telephone: (301) 415–5788; fax number: (301) 415–5370; e-mail: *wrs@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) plans to issue Interim Staff Guidance (ISG) documents for fuel cycle facilities. These ISG documents provide clarifying guidance to the NRC staff when reviewing licensee integrated safety assessments, license applications or amendment requests or other related licensing activities for fuel cycle facilities under subpart H of 10 CFR part 70. The NRC is soliciting public comments on the ISG documents which will be considered in the final versions or subsequent revisions.

II. Summary

The purpose of this notice is to provide the public an opportunity to review and comment on the draft Interim Staff Guidance documents for fuel cycle facilities. Interim Staff Guidance—01 provides guidance to NRC staff relative to methods for qualitative evaluation of likelihood in the context of a review of a license application or amendment request under 10 CFR part 70, subpart H. Interim Staff Guidance–02 provides guidance to NRC staff relative to accident sequences that have consequences below 10 CFR 70.61 performance requirements. Interim Staff Guidance—03 provides guidance to NRC staff relative to relationships between 10 CFR part 70, subpart H, nuclear criticality safety performance requirements and the double contingency principle. Interim Staff Guidance—05 provides guidance to NRC staff relative to additional reporting requirements of 10 CFR 70.74. Interim Staff Guidance—06 provides guidance to NRC staff relative to correcting performance deficiencies and implementing corrective measures. Interim Staff Guidance—07 provides guidance to NRC staff relative to rules of engagement for the integrated safety analysis.

III. Further Information

Documents related to this action are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are provided in the following table. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Interim Staff Guidance	ADAMS accession number
Interim Staff Guidance—01	ML042460008
Interim Staff Guidance—02	ML042610008
Interim Staff Guidance—03	ML042460011
Interim Staff Guidance—05	ML042460012
Interim Staff Guidance—06	ML042460014
Interim Staff Guidance—07	ML042460015

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. Comments and questions should be directed to the NRC contact listed below by October 25, 2004. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Wilkins Smith, Project Manager, Technical Support Group, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20005–0001. Comments can also be submitted by telephone, fax, or e-mail which are as follows: Telephone: (301) 415–5788; fax number: (301) 415–5370; e-mail: *wrs@nrc.gov*.

Dated at Rockville, Maryland this 17th day of September, 2004.

For the Nuclear Regulatory Commission.

Melanie A. Galloway,

Chief, Technical Support Group, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 04–21344 Filed 9–22–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Potential Impact of Debris Blockage on Emergency Sump Recirculation at Pressurized-Water Reactors; Issue

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued Generic Letter (GL) 2004–02 to all holders of operating licenses for pressurized-water reactors (PWRs), except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel. The generic letter asks licensees of pressurized water nuclear power reactors to perform an evaluation and provide information that enables the NRC staff to verify whether licensees can demonstrate that their emergency core cooling system (ECCS) and containment spray system (CSS) are capable of performing their intended post-accident mitigating functions following a design basis accident requiring recirculation operation. The primary objective is to ensure that licensees are in compliance with the licensing and design bases requirements of their facilities with respect to the ECCS having the capability to provide long-term cooling of the reactor core following a loss of coolant accident (LOCA) as specified in the NRC regulations in title 10, of the Code of Federal Regulations section 50.46, 10 CFR 50.46.

DATES: This generic letter was issued on September 13, 2004.

ADDRESSES: Not applicable.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRR, 301–415–1212 or by e-mail: *dgc@nrc.gov*.

SUPPLEMENTARY INFORMATION: Generic Letter 2004–02 may be examined and/or copied for a fee at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and is accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. The ADAMS Accession No. for the generic letter is ML042360586.

If you do not have access to ADAMS or if there are problems in accessing documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 301–415–4737 or 1–800–397–4209, or by e-mail to *pdr@nrc.gov*.

Dated in Rockville, Maryland, this 16th day of September, 2004.

For the Nuclear Regulatory Commission.

Francis M. Costello,

Acting Chief, Reactor Operations Branch, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–21343 Filed 9–22–04; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Agency Report Form Under OMB Review

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Request for Comments.

SUMMARY: Under the provision of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency is preparing an information collection request for OMB review and approval and to request public review and comment on the submission. Comments are being solicited on the need for the information; the accuracy of the Agency's burden estimate; the quality, practical utility and clarity of the information to be collected; and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review, OMB control number 3420–0019, is summarized below.

DATES: Comments must be received within 60 calendar days of publication of this Notice.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency submitting officer. Comments on the form should be submitted to the Agency submitting officer.

FOR FURTHER INFORMATION CONTACT: *OPIC Agency Submitting Officer:* Bruce I. Campbell, Records Management Officer, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; (202) 336–8563.

Summary Form Under Review

Type of Request: Revised form.
Title: Self Monitoring Questionnaire for Insurance & Finance Projects.
Form Number: OPIC–162.
Frequency of Use: Annually for duration of project.
Type of Respondents: Business or other institution (except farms); individuals.
Description of Affected Public: U.S. companies or citizens investing overseas.
Reporting Hours: 8.5 hours per project.
Number of Responses: 230 per year.
Federal Costs: $15,718.
Authority for Information Collection: Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act of 1961, as amended.
Abstract (Needs and Uses): The questionnaire is completed by OPIC-assisted investors annually. The questionnaire allows OPIC's assessment of effects of OPIC-assisted projects on the U.S. economy and employment, as well as on the environment and economic development abroad.

Dated: September 20, 2004.

Eli Landy,

Senior Counsel, Administrative Affairs, Department of Legal Affairs.

[FR Doc. 04–21356 Filed 9–22–04; 8:45 am]

BILLING CODE 3210–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Agency Report Form Under OMB Review

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Request for comments.

SUMMARY: Under the provision of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency is preparing an information collection request for OMB review and approval and to request public review and comment on the submission. Comments are being solicited on the need for the information; the accuracy of the Agency's burden estimate; the quality, practical utility and clarity of the information to be collected; and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review, OMB control number 3420–0023, is summarized below.

DATES: Comments must be received within 60 calendar days of publication of this notice.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT: *OPIC Agency Submitting Officer:* Bruce I. Campbell, Record Management Officer, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; (202) 336–8563.

Summary Form Under Review

Type of Request: Revised form.
Title: Self Monitoring Questionnaire for Investment Funds' Sub-Projects.
Form Number: OPIC–217.
Frequency of Use: Annually for duration of project.
Type of Respondents: Business or other institution (except farms); individuals.
Description of Affected Public: U.S. companies or citizens investing overseas.
Reporting Hours: 8.5 hours per project.
Number of Responses: 189 per year.
Federal Cost: $12,916.
Authority for Information Collection: Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act of 1961, as amended.
Abstract (Needs and Uses): The questionnaire is completed by OPIC-assisted investors annually. The questionnaire allows OPIC's assessment of effects of OPIC-assisted projects on the U.S. economy and employment, as well as on the environment and economic development abroad.

Dated: September 20, 2004.

Eli Landy,

Senior Counsel, Administrative Affairs, Department of Legal Affairs.

[FR Doc. 04–21357 Filed 9–22–04; 8:45 am]

BILLING CODE 3210–01–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Employees' Group Life Insurance Program: New Option B Premiums

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management (OPM) is announcing new Federal Employees' Group Life Insurance (FEGLI) premiums for the upper age bands of Option B. The premiums will be maintained on the FEGLI Web site at *http://www.opm.gov/insure/life.*

EFFECTIVE DATE: January 1, 2005.

FOR FURTHER INFORMATION CONTACT: Karen Leibach, (202) 606–0004.

SUPPLEMENTARY INFORMATION: On December 30, 2002, OPM published a **Federal Register** notice (67 FR 79659)

announcing premium changes for FEGLI and new age bands for Options B and C. The premiums for the new Option B age bands are being phased in over a 3-year period. The first set of premiums for these age bands was effective the first pay period beginning on or after January 1, 2003. The second set of premiums for these age bands was effective the first pay period beginning on or after January 1, 2004.

This notice announces the third and final phase of the Option B premium changes. These premiums are effective the first pay period beginning on or after January 1, 2005.

OPTION B PREMIUM PER $1,000 OF INSURANCE

Age band	Biweekly	Monthly
65–69	$0.72	$1.560
70–74	1.20	2.600
75–79	1.80	3.900
80 and over	2.40	5.200

The premiums for compensationers, who are paid every 4 weeks, are 2 times the biweekly premium amounts.

Premiums for other FEGLI coverages, including premiums for other Option B age bands, are not changing.

Kay Coles James,

Director, U.S. Office Of Personnel Management.

[FR Doc. 04–21305 Filed 9–22–04; 8:45 am]

BILLING CODE 6325–50–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copy available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Form S–6—SEC File No. 270–181—OMB Control No. 3235–0184.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 [(44 U.S.C. 3501 *et seq.*)] the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Form S–6—For Registration under the Securities Act of 1933 of Securities of Unit Investment Trusts Registered on Form N–8B–2. Unit investment trusts offering their securities to the public are required by two separate statutes to file registration statements with the Commission. They are required to register their securities under the Securities Act of 1933 ("1933 Act"), and to register as investment companies under the Investment Company Act of 1940 ("1940 Act").

Form S–6 is used for registration under the 1933 Act of the securities of any unit investment trust that is registered under the 1940 Act on Form N–8B–2.[1] A separate registration statement under the 1933 Act must be filed for each series of units issued by the trust. Form S–6 consists of, among other things, a prospectus, certain written consents, an undertaking to file supplementary information, and certain exhibits containing financial and other information required in the registration statement but not required to appear in the prospectus.

Section 10(a)(3) of the 1933 Act (15 U.S.C. 77j(a)(3)) provides that when a prospectus is used more than nine months after the effective date of the registration statement, the information therein shall be as of a date not more than sixteen months prior to such use. As a result, most unit investment trusts that are registered under the 1940 Act on Form N–8B–2 update their registration statements on Form S–6 on an annual basis in order that their sponsors may continue to maintain a secondary market in the units. Unit investment trusts that are registered under the 1940 Act on Form N–8B–2 file post-effective amendments to their registration statements on Form S–6 in order to update their prospectuses.

The purpose of the registration statement on Form S–6 is to provide disclosure of financial and other information that investors may use to make informed decisions regarding the merits of the securities offered for sale. To that end, unit investment trusts that are registered under the 1940 Act on Form N–8B–2 must furnish to investors a prospectus containing pertinent information set forth in the registration statement. Without the registration requirement, this material information would not necessarily be available to investors. The Commission reviews registration statements filed on Form S–6 to ensure adequate disclosure is made to investors.

Each year investment companies file approximately 3,080 Forms S–6. It is estimated that preparing Form S–6 requires a unit investment trust to spend approximately 35 hours so that the total burden of preparing Form S–6 for all affected investment companies is 107,800 hours. Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will 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 collected; and (d) ways to minimize the burden of the collection of information on respondents, including through use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: September 16, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–21361 Filed 9–22–04; 8:45 am]

BILLING CODE 8010–01–M

[1] Form N–8B–2 is the form used for registration statements filed by unit investment trusts under the 1940 Act (except for unit investment trusts that are insurance company separate accounts issuing variable annuity or variable life insurance contracts, which instead register on Form N–4 and Form N–6, respectively). The form requires that certain material information about the trust, its sponsor, its trustees, and its operation be disclosed. The registration on Form N–8B–2 is a one-time filing that applies to the first series of the unit investment trust as well as any subsequent series that is issued by the sponsor.

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of Redline Performance Products, Inc., To Withdraw Its Common Stock, $.01 Par Value, From Listing and Registration on the American Stock Exchange LLC File No. 1–32682

September 17, 2004.

On September 9, 2004, Redline Performance Products, Inc., a Minnesota corporation ("Issuer"), filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934

("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $.01 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex").

The Board of Directors ("Board") of the Issuer unanimously approved a resolution on August 30, 2004 to withdraw the Issuer's Security from Listing on the Amex. The Board states that it is taking such action because the Issuer has filed for protection under Chapter 7 of the United States Bankruptcy Code, has ceased all business operations and does not have the financial resources necessary to maintain the listing and registration of the Issuer's class of Security. The Board also determined that it is in the best interest of the Issuer to withdraw the Security from listing and registration on the Amex. In addition, the Issuer states that a trustee has been assigned and is working with the secured creditors to determine if there will be either a liquidation of all the assets, of if the secured creditors will take the assets and try to move forward. The Issuer also states that there is no plan on getting any new market makers and the Issuer has no plan to continue listing and trading in the public markets at this time.

The Issuer states in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in the State of Minnesota, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer's application relates solely to the withdrawal of the Security from listing on the Amex and from registration under section 12(2) of the Act,[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before October 13, 2004, comment on the facts bearing upon whether the application has been made in accordance with the rules of the Amex, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comment

- Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 1–31682 or;

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 1–31682. This file number should be included on the subject line if e-mail is used. To help us process and review 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/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 04–21328 Filed 9–22–04; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26600; 812–12462]

Federated Investors, Inc., et al.

September 17, 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 exemptions from, alternatively, sections 12(d)(1)(A) and (B) of the Act, section 12(d)(1)(F)(ii) of the Act, and section 12(d)(1)(G)(i)(II) 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 APPLICATION: The order would permit, alternatively, certain registered open-end management investment companies (a) to acquire shares of other registered open-end management investment companies that are within and outside the same group of investment companies, (b) to invest pursuant to section 12(d)(1)(F) of the Act but charge a sales load in excess of 1½% and (c) to invest pursuant to section 12(d)(1)(G) of the Act but invest also in securities and other financial instruments.

APPLICANTS: Federated Investors, Inc. ("Federated"); Federated Advisory Services Company, Federated Equity Management Company of Pennsylvania, Federated Global Investment Management Corp., Federated Investment Counseling, Federated Investment Management Company, Passport Research Ltd. and Passport Research II, Ltd. (together with entities controlling, controlled by or under common control with these entities, the "Federated Advisers"); Brown Brothers Harriman & Co., CB Capital Management, Inc., Hibernia National Bank, M&I Investment Management Corp., Morgan Asset Management, Inc., Provident Investment Advisors, Inc., SouthTrust Bank, MTB Investment Advisors, Inc., WesBanco Bank, Inc., BB&T Asset Management, Inc., and Huntington Asset Advisors, Inc. (together with entities controlling, controlled by or under common control with these entities, the "Proprietary Advisers" and with the Federated Advisers, the "Advisers"); Cash Trust Series, Cash Trust Series, Inc., Cash Trust Series II, Federated American Leaders Fund, Inc., Federated Adjustable Rate Securities Fund (formerly Federated ARMs Fund), Federated Core Trust, Federated Core Trust II, L.P., Federated Equity Funds, Federated Equity Income Fund, Inc., Federated Fixed Income Securities, Inc., Federated GNMA Trust, Federated Government Income Securities, Inc., Federated High Income Bond Fund, Inc., Federated High Yield Trust, Federated Income Securities Trust, Federated Income Trust, Federated Index Trust, Federated Institutional Trust, Federated Insurance Series, Federated International Series, Inc., Federated Investment Series Funds, Inc., Federated Limited Duration Government Fund, Inc. (formerly Federated Adjustable Rate U.S. Government Fund, Inc.), Federated Managed Allocation Portfolios, Federated Municipal Opportunities Fund, Inc., Federated Municipal Securities Fund, Inc., Federated Municipal Securities Income Trust, Federated Short-Term Municipal Trust, Federated Stock and Bond Fund, Inc., Federated Stock Trust, Federated Total Return Government Bond Fund (formerly Federated U.S. Government

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[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

Securities Fund: 5–10 Years), Federated Total Return Series, Inc., Federated U.S. Government Bond Fund, Federated U.S. Government Securities Fund: 1–3 Years, Federated U.S. Government Securities Fund: 2–5 Years, Federated World Investment Series, Inc., Intermediate Municipal Trust, Edward Jones Money Market Fund (formerly Edward D. Jones & Co. Daily Passport Cash Trust), Edward Jones Tax-Free Money Market Fund, and Money Market Obligations Trust (together with any future registered open-end investment company advised by a Federated Adviser and in the same "group of investment companies," as defined in section 12(d)(1)(G)(ii) of the Act, the "Federated Funds"); BBH Prime Institutional Money Market Fund, Inc., BBH Common Settlement Fund II, Inc., BBH Fund, Inc., BBH Money Market Portfolio, BBH Trust, Golden Oak Family of Funds, Hibernia Funds, Marshall Funds, Inc., Regions Morgan Keenan Select Funds (formerly Regions Funds), The Provident Riverfront Funds, SouthTrust Funds, MTB Group of Funds (formerly Vision Group of Funds), WesMark Funds, BB&T Funds, and The Huntington Funds (together with any future registered open-end investment company advised by a Proprietary Adviser and in the same group of investment companies, the "Proprietary Funds," and together with the Federated Funds, the "Funds").[1]

FILING DATE: The application was filed on March 2, 2001 and amended on June 13, 2001 and on September 10, 2004.

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 October 12, 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, c/o Victor R. Siclari, Esq., Reed Smith LLP, Federated Investors Tower, 1001 Liberty Avenue—12th Floor, Pittsburgh, PA 15222–3779.

FOR FURTHER INFORMATION CONTACT: Stacy L. Fuller, Senior Counsel, or Michael W. Mundt, Senior Special Counsel, 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 20549–0101, (202) 942–8090.

Applicants' Representations

1. Each of the Funds is an open-end management investment company registered under the Act. Certain of the Funds are comprised of separate series (each series, also a "Fund"). Each Adviser is registered under the Investment Advisers Act of 1940.[2]

2. Applicants request relief to permit (a) certain Funds ("Investing Funds") to acquire shares of registered open-end management investment companies that are part of the same "group of investment companies," as defined in section 12(d)(1)(G)(ii) of the Act, as the Investing Funds ("Same Group Funds") and shares of registered open-end management investment companies that are not part of the same group of investment companies as the Investing Funds ("Other Group Funds") in excess of the limits set forth in section 12(d)(1)(A) of the Act, and the Same Group Funds and Other Group Funds to sell their shares to the Investing Funds in excess of the limits set forth in section 12(d)(1)(B) of the Act,[3] (b) Investing Funds that invest in Other Group Funds pursuant to section 12(d)(1)(F) of the Act to charge a sales load in excess of 1½% and (c) Investing Funds that invest in Same Group Funds pursuant to section 12(d)(1)(G) of the Act also to invest, to the extent described in the relevant prospectus, in, among other things, domestic and foreign common and preferred stock, debt obligations, futures transactions, options on the foregoing and other instruments, including money market instruments ("Direct Investments").[4] Applicants also seek relief, to the extent necessary, to permit Same Group Funds and Other Group Funds that become affiliated persons of an Investing Fund to sell shares to, and redeem shares from, the Investing Fund.[5]

3. Applicants state that each Investing Fund will provide a consolidated and efficient means through which investors will have access to a comprehensive investment vehicle through which advice in several types of investment securities will be available. Applicants assert that, in the absence of such a vehicle, investors would have to evaluate and acquire shares of each Same Group Fund and Other Group Fund separately in light of their investment goals.

Applicants' Legal Analysis

A. Sections 12(d)(1)(A) and (B) of the Act

1. Section 12(d)(1)(A) prohibits a registered investment company from acquiring shares of another registered 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 other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) prohibits a

[1] All Funds that currently intend to rely on the order are named as applicants. Any other investment company that relies on the order in the future will comply with the terms and conditions of the application. Applicants intend to amend the order periodically to enable future Proprietary Advisers that are not controlling, controlled by, or under common control with any of the current applicant Proprietary Advisers, and the Proprietary Funds advised by any of these Proprietary Advisers, to rely on the requested relief. Any such future applications to amend the order will be filed by Federated, the new Proprietary Adviser and the new Proprietary Fund(s).

[2] Three of the Proprietary Advisers are registered, and render investment advisory services, through a separately identifiable department or division: Hibernia National Bank is registered, and rends investment advisory services, through Hibernia Asset Management; SouthTrust Bank is registered, and renders investment advisory services, through SouthTrust Investment Advisers; WesBanco Bank, Inc. is registered, and renders investment advisory services, through WesBanco Investment Department.

[3] The following Funds currently intend to serve as Investing Funds: Federated American Leaders Fund, Inc., Federated Adjustable Rate Securities Fund (formerly Federated ARMs Fund), Federated Equity Funds, Federated Equity Income Fund, Inc., Federated Fixed Income Securities, Inc., Federated Government Income Securities, Inc., Federated High Income Bond Fund, Inc., Federated High Yield Trust, Federated Income Securities Trust, Federated Income Trust, Federated International Series, Inc., Federated Investment Series Funds, Inc., Federated Limited Duration Government Fund, Inc. (formerly Federated Adjustable Rate U.S. Government Fund, Inc.), Federated Managed Allocation Portfolios, Federated Stock and Bond Fund, Inc., Federated Stock Trust, Federated Total Return Government Bond Fund (formerly Federated U.S. Government Securities Fund: 5–10 Years), Federated Total Return Series, Inc. and Federated World Investment Series, Inc.; and certain portfolios of BB&T Funds, MTB Group of Funds (formerly Vision Group of Funds), The Huntington Funds and Marshall Funds, Inc.

[4] Direct Investments will not include shares of any registered investment companies that are not in the same group of investment companies as the Investing Fund.

[5] Applicants state that the relief requested in the application is not intended to permit Investing Funds to purchase shares of Same Group Funds that are money market funds as part of a cash management program.

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 outstanding voting stock or more than 10% of the acquired company's voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security or transaction from any provisions 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 Investing Funds to acquire shares of Same Group Funds and Other Group Funds, and Same Group Funds and Other Group Funds to sell their shares to Investing Funds, beyond the limits set forth in sections 12(d)(1)(A) and (B).

3. Applicants state that the proposed arrangement will be structured to mitigate the potential abuses from which sections 12(d)(1)(A) and (B) are designed to protect investors, such as 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.

4. Applicants state that the proposed arrangement will not result in undue influence by an Investing Fund or its affiliates over any Same Group Fund or Other Group Fund. To limit the influence that an Investing Fund may have over an Other Group Fund, applicants propose a condition prohibiting (a)(i) the Adviser of an Investing Fund, (ii) any person controlling, controlled by or under common control with the Adviser and (iii) any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act advised or sponsored by the Adviser or any person controlling, controlled by or under common control with the Adviser ("Adviser Group"), and (b)(i) any investment adviser within the meaning of section 2(a)(20)(B) of the Act ("Subadviser") of an Investing Fund, (ii) any person controlling, controlled by or under common control with the Subadviser and (iii) any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Subadviser or any person controlling, controlled by or under common control with the Subadviser ("Subadviser Group"), from controlling (individually or in the aggregate) an Other Group Fund within the meaning of section 2(a)(9) of the Act.

5. Applicants also propose conditions A.2–A.7, stated below, to preclude an Investing Fund and its affiliated entities from taking advantage of an Other Group Fund with respect to transactions between the entities and to ensure the transactions will be on an arm's length basis. Condition A.2 precludes an Investing Fund and its Adviser, any Subadviser, promoter, principal underwriter and any person controlling, controlled by or under common control with any of these entities (each, an "Investing Fund Affiliate") from causing any existing or potential investment by the Investing Fund in an Other Group Fund to influence the terms of any services or transactions between the Investing Fund or an Investing Fund Affiliate and the Other Group Fund or its investment adviser(s), promoter, principal underwriter and any person controlling, controlled by or under common control with any of these entities (each, an "Other Group Fund Affiliate"). Condition A.5 precludes an Investing Fund and Investing Fund Affiliates (except to the extent they are acting in their capacity as an investment adviser to an Other Group Fund) from causing an Other Group 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 an officer, director, member of an advisory board, Adviser, Subadviser or employee of the Investing Fund, or a person of which any such officer, director, member of an advisory board, Adviser, Subadviser or employee is an affiliated person (each, an "Underwriting Affiliate," except any person whose relationship to the Other Group Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate). An offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate is an "Affiliated Underwriting."

6. In addition, as an assurance that an Other Group Fund understands the implications of an investment by an Investing Fund operating in reliance on the request from sections 12(d)(1)(A) and (B), prior to any investment by the Investing Fund in the Other Group Fund in excess of the limit set forth in section 12(d)(1)(A)(i), condition A.8 requires the Investing Fund and the Other Group Fund to execute an agreement stating, without limitation, that their boards and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. Applicants note that the Other Group Fund has the right to reject an investment from an Investing Fund.

7. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. With respect to investment advisory fees, applicants state that, prior to reliance on the order and subsequently in connection with the approval of any investment advisory contract under section 15 of the Act, the board of directors or trustees of an Investing Fund ("Board"), including a majority of the directors or trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees"), will find that any investment advisory fees charged to the Investing Fund under its investment advisory contract(s) are based on services provided that are in addition to, rather than duplicative of, services provided under the investment advisory contract(s) of any Same Group Fund and Other Group Fund, unless (a) the Adviser to the Investing Fund waives the advisory fees payable by the Investing Fund in an amount that offsets the amount of advisory fees incurred by the Investing Fund as a result of investing in the Same Group Fund or Other Group Fund or (b) advisory fees are charged only at the Investing Fund level, or at the Same Group Fund or Other Group Fund level. Applicants further state, with respect to investments in an Other Group Fund outside the limits of sections 12(d)(1)(A) and (B), the Adviser to an Investing Fund will waive fees otherwise payable to the Adviser by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to a plan adopted by the Other Group Fund under rule 12b–1 under the Act ("12b–1 Fees")) received from the Other Group Fund by the Adviser, or an affiliated person of the Adviser, other than any advisory fees paid to the Adviser or its affiliated person, in connection with the investment by the Investing Fund in the Other Group Fund. Applicants also state that any Subadviser to an Investing Fund will waive fees otherwise payable to the Subadviser by the Investing Fund in an amount at least equal to any compensation received from the Other Group Fund by the Subadviser, or an affiliated person of the Subadviser, other than any advisory fees paid to the Subadviser or its affiliated person, in connection with the investment by the Investing Fund in the Other Group Fund made at the direction of the Subadviser. Applicants agree that the benefit of any

such waiver by a Subadviser will be passed through to the Investing Fund.

8. Applicants represent that the aggregate sales charges and/or service fees (as defined in the Conduct Rules of the National Association of Securities Dealers ("NASD Conduct Rules")) charged with respect to shares of any Investing Fund will not exceed the limits applicable to funds of funds set forth in rule 2830 of the NASD Conduct Rules ("Rule 2830"). Moreover, the prospectus and sales literature of an Investing Fund that operates in reliance on the relief requested from sections 12(d)(1)(A) and (B) will contain concise, "plain English" disclosure tailored to the particular document designed to inform investors of the unique characteristics of the fund of funds structure, including but not limited to, its expense structure and the additional expenses of investing in Same Group Funds and Other Group Funds.

9. Applicants contend that the proposed arrangement will not create an overly complex fund structure. Applicants note that Same Group Funds and Other Group Funds 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), except to the extent that such Same Group Fund or Other Group Fund (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1)) or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Same Group Fund or Other Group Fund to (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes or (ii) engage in interfund borrowing and lending transactions.

B. Section 12(d)(1)(F) of the Act

1. Section 12(d)(1)(F) provides that section 12(d)(1) will not apply to the acquisition by a registered investment company of the securities of an investment company if, among other things, the acquiring company and its affiliates immediately after the purchase own no more than 3% of the acquired company's total outstanding stock and the acquiring company does not charge a sales load of more than 1½% on sales of its shares. Applicants state that the proposed arrangement would comply with the provisions of section 12(d)(1)(F), except for the sales load limit of 1½%.

2. Applicants seek an exemption under section 12(d)(1)(J) exempting them from section 12(d)(1)(F)(ii) to permit Investing Funds that invest in Other Group Funds pursuant to section 12(d)(1)(F) to impose a sales load in excess of 1½%. Applicants agree, as a condition to any order granting the relief, that any sales charges and/or service fees (as defined in Rule 2830) charged with respect to shares of an Investing Fund will not exceed the limits applicable to funds of funds set forth in Rule 2830.

C. Section 12(d)(1)(G) of the Act

1. Section 12(d)(1)(G) provides that section 12(d)(1) will not apply to securities of a registered open-end investment company purchased by another registered open-end investment company, if (a) the acquiring company and the acquired company are part of the same group of investment companies, (b) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper, (c) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are limited in certain respects and (d) the acquired company has a policy that generally prohibits it from acquiring securities of registered investment companies in reliance on section 12(d)(1)(F) or (G). Applicants state that the proposed arrangement would comply with the provisions of section 12(d)(1)(G), but for the fact that an Investing Fund will invest in Direct Investments in addition to Same Group Funds.

2. Applicants request an order under section 12(d)(1)(J) exempting them from section 12(d)(1)(G)(i)(II) to permit Investing Funds that invest pursuant to section 12(d)(1)(G) to make Direct Investments. Applicants assert that permitting Investing Funds to invest in Direct Investments, as described in the application, would not raise the concerns underlying section 12(d)(1)(G).

D. Section 17(a) of the Act

1. Section 17(a) generally prohibits purchases and sales of securities, on a principal basis, between a registered investment company and any affiliated person or promoter of, or principal underwriter for, the company, and affiliated persons of such persons. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include, among other things, any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the other's outstanding voting securities; 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; any person directly or indirectly controlling, controlled by or under common control with the other person; and any investment adviser to an investment company.

2. Section 17(b) 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, including the consideration to be paid and received, 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 concerned; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) permits the Commission to exempt any person or transaction, or any class or classes of persons or transactions from any provisions 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.

3. Applicants state that a Same Group Fund or an Other Group Fund might be deemed to be an affiliated person of an Investing Fund if the Investing Fund acquires 5% or more of the Same Group Fund's or Other Group Fund's outstanding voting securities. Applicants also state that since certain of the Investing Funds, Same Group Funds and Other Group Funds may be advised, subadvised, administered and/or distributed by Federated or an entity controlling, controlled by or under common control with Federated, or share common officers and/or directors, they may be deemed to be under common control and, therefore, affiliated persons of each other. Accordingly, section 17(a) could prevent a Same Group Fund or an Other Group Fund from selling shares to, and redeeming shares from, an Investing Fund.

4. Applicants seek an exemption under sections 6(c) and 17(b) to allow the proposed transactions. Applicants state that the transactions satisfy the standards for relief under sections 6(c) and 17(b). Specifically, applicants state that the terms of the transactions are fair and reasonable and do not involve overreaching. Applicants represent that the proposed transactions will be consistent with the policies of each Investing Fund, Same Group Fund and

Other Group Fund, and with the general purposes of the Act. In addition, applicants note that the consideration paid in sales and redemptions permitted under the requested order of shares of Same Group Funds and Other Group Funds will be based on the net asset values of, respectively, the Same Group Funds and Other Group Funds.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

A. With respect to Investing Funds that purchase shares of Same Group Funds and Other Group Funds outside the limit set forth in sections 12(d)(1)(A) and (B) and are not relying on section 12(d)(1)(F) or (G), or the exemptions therefrom requested in the application:

1. The members of the Adviser Group will not control (individually or in the aggregate) an Other Group Fund within the meaning of section 2(a)(9) of the Act. The members of the Subadviser Group will not control (individually or in the aggregate) an Other Group 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 Other Group Fund, the Adviser Group or the Subadviser Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of an Other Group Fund, it will vote its shares of the Other Group Fund in the same proportion as the vote of all other holders of the Other Group Fund's shares. This condition shall not apply to the Subadviser Group with respect to an Other Group Fund for which the Subadviser or a person controlling, controlled by or under common control with the Subadviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Investing Fund or Investing Fund Affiliate will cause any existing or potential investment by the Investing Fund in shares of an Other Group Fund to influence the terms of any services or transactions between the Investing Fund or an Investing Fund Affiliate and the Other Group Fund or an Other Group Fund Affiliate.

3. The Board of the Investing Fund, including a majority of the Independent Trustees, will adopt procedures reasonably designed to assure that the Adviser and any Subadviser to the Investing Fund are conducting the investment program of the Investing Fund without taking into account any consideration received by the Investing Fund or an Investing Fund Affiliate from an Other Group Fund or an Other Group Fund Affiliate in connection with any services or transactions.

4. Once an investment by an Investing Fund in the securities of an Other Group Fund exceeds the limit of section 12(d)(1)(A)(i), the board of directors or trustees of the Other Group Fund, including a majority of the Independent Trustees, will determine that any consideration paid by the Other Group Fund to the Investing Fund or an Investing Fund 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 Other Group Fund; (b) is within the range of consideration that the Other Group 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 Other Group Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. No Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Other Group Fund) will cause an Other Group Fund to purchase a security in any Affiliated Underwriting.

6. The board of directors or trustees of an Other Group Fund, including a majority of the Independent Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Other Group Fund in Affiliated Underwritings once an investment by an Investing Fund in the securities of the Other Group 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 will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by an Investing Fund in shares of the Other Group Fund. The board should consider, among other things, (a) whether the purchases were consistent with the investment objectives and policies of the Other Group 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 Other Group Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The board shall 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. Each Other Group Fund shall maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications, and shall maintain and preserve for a period 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 an Investing Fund in the securities of the Other Group 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 board's determinations were made.

8. Prior to its investment in shares of an Other Group Fund in excess of the limit set forth in section 12(d)(1)(A)(i), an Investing Fund and the Other Group Fund will execute an agreement stating, without limitation, that their boards of directors or trustees and their investment advisers 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 Other Group Fund in excess of the limit set forth in section 12(d)(1)(A)(i), an Investing Fund will notify the Other Group Fund of the investment. At such time the Investing Fund will also transmit to the Other Group Fund a list of names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Other Group Fund of any changes to the list of names as soon as reasonably practicable after a change occurs. The Other Group Fund and the Investing Fund 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. Prior to reliance on the requested order, the Board of each Investing Fund, including a majority of the Independent Trustees, shall find that the advisory

fees, if any, charged under an Investing Fund's advisory contract(s) are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Same Group Fund's and Other Group Fund's advisory contract(s). Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the appropriate Investing Fund; provided, however, that no such determination shall be necessary where either (a) the Adviser to the Investing Fund waives the advisory fees payable by the Investing Fund in an amount that offsets the amount of advisory fees incurred by the Investing Fund as a result of investing in the Same Group Fund or Other Group Fund or (b) advisory fees are only charged at either the Investing Fund level, the Other Group Fund level or the Same Group Fund level. In addition, in connection with the approval of any investment advisory contract pursuant to section 15 of the Act subsequent to such initial determination, the Board of each Investing Fund, including a majority of the Independent Trustees, shall find that the advisory fees, if any, charged under the Investing Fund's advisory contract(s) are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Same Group Fund's and Other Group Fund's advisory contract(s). Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the appropriate Investing Fund; provided, however, that no such determination shall be necessary where either (a) the Adviser to the Investing Fund waives the advisory fees payable by the Investing Fund in an amount that offsets the amount of advisory fees incurred by the Investing Fund as a result of investing in the Same Group Fund or Other Group Fund or (b) advisory fees are only charged at either the Investing Fund level, the Other Group Fund level or the Same Group Fund level.

10. Each Adviser will waive fees otherwise payable to the Adviser by an Investing Fund in an amount at least equal to any compensation (including 12b–1 Fees) received from an Other Group Fund by the Adviser, or an affiliated person of the Adviser, other than any advisory fees paid to the Adviser or its affiliated person by the Other Group Fund, in connection with the investment by the Investing Fund in the Other Group Fund. Any Subadviser will waive fees otherwise payable to the Subadviser, directly or indirectly, by an Investing Fund in an amount at least equal to any compensation received from an Other Group Fund by the Subadviser, or an affiliated person of the Subadviser, other than any advisory fees paid to the Subadviser or its affiliated person by the Other Group Fund, in connection with the investment by the Investing Fund in the Other Group Fund made at the direction of the Subadviser. In the event that the Subadviser waives fees, the benefit of any waiver will be passed through to the Investing Fund.

11. Any sales charges and/or service fees (as defined in Rule 2830) charged with respect to shares of an Investing Fund will not exceed the limits applicable to funds of funds set forth in Rule 2830.

12. No Same Group Fund or Other Group 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), except to the extent that such Same Group Fund or Other Group Fund (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1)), or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Same Group Fund or Other Group Fund to (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions.

B. With respect to Investing Funds that purchase shares of Other Group Funds in compliance with section 12(d)(1)(F), except that the Investing Fund may charge a sales load in excess of the limitation in section 12(d)(1)(F)(ii):

1. The Investing Funds will comply with section 12(d)(1)(F) in all respects, except for the sales load limitation of section 12(d)(1)(F)(ii).

2. Any sales charges and/or service fees (as defined in Rule 2830) charged with respect to shares of an Investing Fund will not exceed the limits applicable to funds of funds set forth in Rule 2830.

3. Prior to reliance on the requested order, the Board of each Investing Fund, including a majority of the Independent Trustees, shall find that the advisory fees, if any, charged under an Investing Fund's advisory contract(s) are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Other Group Fund's advisory contract(s). Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the appropriate Investing Fund; provided, however, that no such determination shall be necessary where either (a) the Adviser to the Investing Fund waives the advisory fees payable by the Investing Fund in an amount that offsets the amount of advisory fees incurred by the Investing Fund as a result of investing in the Other Group Fund or (b) advisory fees are only charged at either the Investing Fund level or Other Group Fund level. In addition, in connection with the approval of any investment advisory contract pursuant to section 15 of the Act subsequent to such initial determination, the Board of each Investing Fund, including a majority of the Independent Trustees, shall find that the advisory fees, if any, charged under the Investing Fund's advisory contract(s) are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Other Group Fund's advisory contract(s). Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the appropriate Investing Fund; provided, however, that no such determination shall be necessary where either (a) the Adviser to the Investing Fund waives the advisory fees payable by the Investing Fund in an amount that offsets the amount of advisory fees incurred by the Investing Fund as a result of investing in the Other Group Fund or (b) advisory fees are only charged at either the Investing Fund level or Other Group Fund level.

4. No Other Group 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), except to the extent that such Other Group Fund (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1)), or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Other Group Fund to (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions.

C. With respect to Investing Funds that purchase shares of Same Group Funds in compliance with section 12(d)(1)(G), except that the Investing Fund will also invest in Direct Investments:

1. The Investing Fund will comply with all provisions of section 12(d)(1)(G), except for section 12(d)(1)(G)(i)(II) to the extent that it restricts Investing Funds from investing in Direct Investments as described in the application.

2. Prior to reliance on the requested order, the Board of each Investing Fund, including a majority of the Independent Trustees, shall find that the advisory fees, if any, charged under an Investing Fund's advisory contract(s) are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Same Group Fund's advisory contract(s). Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the appropriate Investing Fund; provided, however, that no such determination shall be necessary where either (a) the Adviser to the Investing Fund waives the advisory fees payable by the Investing Fund in an amount that offsets the amount of advisory fees incurred by the Investing Fund as a result of investing in the Same Group Fund or (b) advisory fees are only charged at either the Investing Fund level or Same Group Fund level. In addition, in connection with the approval of any investment advisory contract pursuant to section 15 of the Act subsequent to such initial determination, the Board of each Investing Fund, including a majority of the Independent Trustees, shall find that the advisory fees, if any, charged under the Investing Fund's advisory contract(s) are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Same Group Fund's advisory contract(s). Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the appropriate Investing Fund; provided, however, that no such determination shall be necessary where either (a) the Adviser to the Investing Fund waives the advisory fees payable by the Investing Fund in an amount that offsets the amount of advisory fees incurred by the Investing Fund as a result of investing in the Same Group Fund or (b) advisory fees are only charged at either the Investing Fund level or Same Group Fund level.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2347 Filed 9–22–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50394; File No. SR–Amex–2004–63]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, by the American Stock Exchange LLC Relating to the Handling of Linkage Orders

September 16, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 3, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the Amex. On September 10, 2004, the Amex submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend its rules to conform to Joint Amendment No. 13 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan").

The text of the proposed rule change, as amended, is below. Proposed additions are in *italics*.

* * * * *

Rule 940. Options Intermarket Linkage

(a) (No Change).

(b) Definitions—The following terms shall have the meaning specified in this Rule solely for the purpose of this Section 4:

(1) through (6) (No Change).

(7) "Firm Customer Quote Size" with respect to a P/A Order means the lesser of: (a) the number of option contracts that the Participant Exchange sending a P/A Order guarantees it will automatically execute at its disseminated quotation in a series of an Eligible Option Class for Public Customer orders entered directly for execution in that market; or (b) the number of option contracts that the Participant Exchange receiving a P/A Order guarantees it will automatically execute at its disseminated quotation in a series of an Eligible Option Class for Public Customer orders entered directly for execution in that market. The number shall be at least 10 *unless the receiving Participant Exchange is disseminating a quotation of less than 10 contracts, in which case this number may equal such quotation size.*

(8) "Firm Principal Quote Size" means the number of options contracts that a Participant Exchange guarantees it will execute at its disseminated quotation for incoming Principal Orders in an Eligible Option Class. This number shall be at least 10, *however if the Participant Exchange is disseminating a quotation size of less than 10 contracts, this number may equal such quotation size.*

(9) through (20) (No Change).

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to conform Amex's Linkage rules to proposed Joint Amendment No. 13 to the Linkage Plan, which would accommodate "natural size" of quotations.[4] Specifically, the Linkage Plan and Amex rules currently require that the Exchange be firm for both Principal Acting as Agent ("P/A") and Principal Orders for at least 10 contracts (the "10-up" requirement). The proposed rule change would permit

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Jeffery P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated September 9, 2004 ("Amendment No. 1"). In Amendment No. 1, the Amex amended the proposed rule text to reflect a technical change.

[4] The participants in the Linkage Plan ("Participants") have filed an amendment to the Linkage Plan to change the definitions of "Firm Customer Quote Size" ("FCQS") and "Firm Principal Quote Size" ("FPQS") (Joint Amendment No. 13). *See* Securities Exchange Act Release No. 50211 (August 18, 2004), 69 FR 52050 (August 26, 2004) (File No. 4–429).

Amex members to be firm for the actual size of their quotation, even if this amount is less than 10 contracts.

The Participants adopted the 10-up requirement for the Linkage Plan at a time when all the exchanges had rules requiring that their quotations be firm for customer orders for at least 10 contracts.[5] The Amex recently amended Exchange Rule 958A to permit the dissemination of customer limit orders representing the best bid or offer in sizes of less than ten (10) contracts.[6] Accordingly, the Amex now seeks to conform its quotation requirements for incoming Principal and P/A Orders with the quotation requirements for non-Linkage orders.

The proposed rule change would amend the definitions of both FCQS and FPQS. While Amex's Linkage rules would maintain a general requirement that the FCQS and FPQS be at least 10 contracts, that minimum would not apply if the Amex were disseminating a quotation of fewer than 10 contracts. In that case, the Exchange may establish a FQCS or FPQS equal to its disseminated size.

As with Principal and P/A Orders today, if the order is of a size eligible for automatic execution ("auto-ex"),[7] the receiving exchange must provide for auto-ex of the order. If this is not the case (for example, the receiving exchange's auto-ex system is not engaged), the receiving exchange still must provide a manual execution for at least the FCQS or FPQS, as appropriate (in this case, the size of its disseminated quotation of less than 10 contracts).

2. Statutory Basis

The Amex believes that the proposed rule is consistent with section 6(b) of the Act,[8] in general, and furthers the objectives of section 6(b)(5)[9] in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, as amended; or

(B) Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2004–63 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. All submissions should refer to File Number SR–Amex–2004–63. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2004–63 and should be submitted on or before October 14, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2352 Filed 9–22–04; 8:45 am]

BILLING CODE 8010–01–P

[5] *See* Securities Exchange Act Release No. 44383 (June 1, 2001), 66 FR 30959 (June 8, 2001) (SR–Amex–2001–18; SR–CBOE–2001–15; SR–ISE–2001–07; SR–PCX–2001–18; and SR–Phlx–2001–37).

[6] *See* Securities Exchange Act Release No. 48957 (December 18, 2003), 68 FR 75294 (December 30, 2003) (SR–Amex–2003–24).

[7] At the request of the Amex, Commission staff removed an extraneous reference provided in the original filing regarding the automatic execution size at exchanges sending and receiving Principal Orders. Telephone conversation between Jeff Burns, Associate General Counsel, Amex, and Tim Fox, Attorney, Division, Commission, on August 31, 2004.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50402; File No. SR–FICC–2004–01]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Amend the Government Securities Division and the Mortgage-Backed Securities Division Membership Rules

September 16, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 9, 2004, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") and on April 28, 2004, amended the proposed rule change described in items I, II, and III below, which items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FICC is seeking to amend the membership rules of its Government Securities Division ("GSD") and its Mortgage-Backed Securities Division ("MBSD") to (1) eliminate the requirement that the conversion to U.S. dollars be made by the applicant or member prior to submitting financial information to FICC unless such conversion is specifically requested by FICC, (2) eliminate the requirement that FICC make a determination as to the adequacy of an applicant's personnel, physical facilities, books and records, accounting systems, or internal procedures, (3) require that a non-U.S. applicant represent to FICC in writing that it is regulated in a way that is generally comparable to the way in which domestic FICC members are regulated, (4) add a requirement to the GSD's rules that a non-U.S. netting applicant represent in writing that it is in compliance with the financial reporting and responsibility standards of its home country, and (5) eliminate the requirement that GSD comparison-only applicants submit financial information to FICC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Amend the Rules of the GSD and MBSD That Require Financial Information Submitted by an Applicant To Be in Dollar Equivalents

When FICC receives financial information from non-U.S. members and applicants, FICC's credit risk staff will perform the conversion to U.S. dollars whenever it is necessary and is comfortable doing so. The credit risk staff performs the conversion as of the date of the financial statements. Therefore, FICC is proposing to eliminate the current requirement that the conversion to U.S. dollars be made by the applicant or member prior to submitting financial information to FICC unless such conversion is specifically requested by FICC.

2. Amend the Operational Capability Requirement Contained in the Rules of the GSD and the MBSD

FICC's current operational capability rules are too broad and impose upon FICC an obligation to make determinations with respect to the operational capability of an applicant or member that FICC staff is not equipped or trained to make.[3] Such determinations are more appropriately left to the applicant or member's designated examining authority. The operational capability aspect that is relevant to FICC and upon which FICC must make a determination is the ability of an applicant or member to send input to FICC and to receive output from FICC on a timely and accurate basis. Therefore, FICC is seeking to eliminate the requirement that it make a determination as to the adequacy of an applicant's personnel, physical facilities, books and records, accounting systems, or internal procedures.

3. Amend the Comparability Requirement of the GSD's Rules for Non-U.S. Members

The GSD rules currently provide that a non-U.S. entity shall be eligible to become a netting member if FICC has determined that the entity is regulated in its home country in a way that is generally comparable to the way in which similar domestic members are regulated. The comparability determination has been difficult to make because there is no objective set of guidelines that FICC can use to confirm the comparability requirement. As a result, comparability determinations have necessarily become judgment calls made by FICC staff using information provided by the applicant.

Because the netting service is a guaranteed service and FICC only accepts regulated entities as members, FICC should focus on making sure that its non-U.S. members (as is the case with its domestic members) are regulated by a financial regulatory authority in their home country in certain key areas as opposed to being concerned with "comparability" of regulation. These key areas are maintenance of relevant books and records, regular inspections and examinations, and minimum financial standards. Therefore, FICC is proposing to amend the comparability requirement to require that the applicant represent to FICC in writing that it is regulated in these key areas.[4] In conjunction with this change, FICC is also proposing to add a requirement to the GSD's rules that a non-U.S. netting applicant represent in writing that it is in compliance with the financial reporting and responsibility standards of its home country.[5]

4. Amend the GSD's Rules That Require Comparison-Only Applicants and Members to Submit the Same Financial Information as Netting Applicants and Members

The GSD's comparison-only service is not a guaranteed service. Comparison-only members do not have minimum financial requirements and are not required to make clearing fund deposits. While the GSD's rules give FICC the ability to require comparison-only members to submit financial information, FICC has not been obtaining this information from comparison-only applicants or members, and FICC believes that the rules should be amended to reflect actual practice. Therefore, FICC is seeking to eliminate the requirement that GSD comparison-only applicants submit financial information to FICC.

In addition to these proposed rule changes, FICC is proposing a technical change to the rules of the MBSD to move language relating to cross-guaranty agreements to a more appropriate place in the rules.

FICC believes that the proposed rule change is consistent with the requirements of section 17A of the Act[6] and the rules and regulations thereunder applicable to FICC because it will remove impediments to the perfection of a national system for the prompt and accurate clearance and settlement of securities transactions and is not designed to permit unfair discrimination in the admission of participants or among participants in the use of FICC by refining FICC's rules and procedures with regard to applicants and members, and in general will protect investors and the public interest.

[2] The Commission has modified the text of the summaries prepared by FICC.

[3] For example, the GSD rules currently require that a determination be made with respect to whether the membership applicant has adequate personnel, physical facilities, and accounting systems, among other things, to satisfactorily handle transactions.

[4] This approach is currently used by the Emerging Markets Clearing Corporation ("EMCC").

[5] *Id.*

[6] 15 U.S.C. 78q–1.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) By order approve such proposed rule change or (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FICC–2004–01 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–FICC–2004–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://www.ficc.com*. 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–FICC–2004–01 and should be submitted on or before October 14, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2351 Filed 9–22–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50409; File No. SR–NASD–2004–137]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendments to the OATS Rules To Require That ECNs Capture Routed Order Identifier Information

September 17, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 13, 2004, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend NASD Rule 6954 to require that electronic communications networks ("ECNs") that electronically receive routed orders capture and report the transmitting member's unique identifier (routed order identifier) to NASD's Order Audit Trail System ("OATS"). Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

NASD Systems and Programs

6950. Order Audit Trail System

6951 through 6953 No. Change.

6954. Recording of Order Information

(a) and (b) No Change.

(c) Order Transmittal.

Order information required to be recorded under this Rule when an order is transmitted included the following.

(1) and (2) No Change.

(3) When a member electronically transmits an order for execution on an Electronic Communications Network:

(A) No Change.

(B) the receiving Reporting Member operating the Electronic Communications Network shall record.

(i) the fact that the order was received by an Electronic Communications Network,

(ii) the order identifier assigned to the order by the member that transmits the order,

(iii) [(ii)] the market participant symbol assigned by the Association to the transmitting Reporting Member, and

(iv) [(iii)] other information items in Rule 6954(b) that apply with respect to such order, which must include information items (1), (2), (3), (6), (7), (8), (10), (11), (12), (13), (15), and (16).

(4) through (6) No Change.

(d) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

rule change. The text of these statements may be examined at the places specified in Item III below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

On March 6, 1998, the SEC approved NASD Rules 6950 through 6957 ("OATS Rules").[3] OATS provides a substantially enhanced body of information regarding orders and transactions that the NASD believes improves its ability to conduct surveillance and investigations of member firms for potential violations of NASD rules and the federal securities laws. In addition, OATS is intended to fulfill one of the undertakings contained in the order issued by the SEC relating to the settlement of an enforcement action against the NASD for failure to adequately enforce its rules.[4] Pursuant to the SEC Order, OATS is required, at a minimum, to: (1) Provide an accurate, time-sequenced record of orders and transactions, beginning with the receipt of an order at the first point of contact between the broker/dealer and the customer or counterparty and further documenting the life of the order through the process of execution; and (2) provide for market-wide synchronization of clocks used in connection with the recording of market events.[5]

Since the implementation of OATS, NASD represents that its staff has been closely reviewing OATS activities with the goal of identifying ways in which to improve OATS and enhance the effectiveness of OATS as a regulatory tool. In this regard, NASD identified several changes to OATS that it believed would enhance NASD's automated surveillance for compliance with trading and market making rules such as the NASD's Limit Order Protection Interpretation, the SEC's Order Handling Rules and a member firm's best execution obligations. NASD proposed these changes in SR–NASD–00–23, which remains pending at the SEC.[6]

Pursuant to discussions with SEC staff, NASD now is proposing separately a portion of one of the proposed changes in SR–NASD–00–23, specifically the proposed change to require ECNs that electronically receive routed orders to capture and report a routed order identifier. SR–NASD–00–23, in part, proposes to require that any receiving reporting member, including ECNs, that receive routed orders, electronically or manually, capture and report a routed order identifier.[7] This rule filing is intended to withdraw the portion of that proposal in SR–NASD–00–23 that would require ECNs to capture and report a routed order identifier for electronic orders and is proposing it herein. SR–NASD–00–23 would continue to propose that any receiving reporting member, including ECNs, capture and report a routed order identifier for manual orders that it receives.

Description of Proposal

The use of a routed order identifier reported through OATS permits NASD to track the history of orders routed between firms on an automated basis. If the order does not contain a routed order identifier, the order cannot be linked on an automated basis to subsequent actions, such as further routing or execution by other firms or Nasdaq systems. Given the current level of participation of ECNs in the trading of Nasdaq securities, NASD represents that the lack of a routed order identifier for these electronic orders results in NASD staff having to recreate manually the lifecycle history for a substantial number of orders. Accordingly, NASD is proposing that ECNs that electronically receive routed orders capture and report a routed order identifier. To provide members adequate time for any technological or system changes required by the proposed rule change, NASD is proposing an implementation date for this proposed requirement of 90 days following publication of a Notice to Members, which will be published no later than 60 days from the date of this approval order.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act, which requires, among other things, that NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[8] NASD believes that the proposed rule change will enhance NASD's ability to conduct surveillance and investigations of member firms for violations of NASD's and other applicable rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were solicited by the Commission in response to SR–NASD–00–23, which proposed several changes relating to OATS requirements.[9] The Commission received 13 comment letters from 12 commenters in response to the **Federal Register** publication of SR–NASD–00–23.[10] The proposed rule change described in this filing relates to only a portion of one of the four proposals in SR–NASD–00–23, specifically, the proposal that would require that ECNs that electronically receive routed orders capture and report a routed order identifier. The comments on that proposal are summarized below.

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[3] *See* Securities Exchange Act Release No. 39729 (March 6, 1998), 63 FR 12559 (March 13, 1998).

[4] *See* In the Matter of National Association of Securities Dealers, Inc., Exchange Act Release No. 37538 (August 8, 1996); Administrative Proceeding File No. 3–9056 ("SEC Order").

[5] *Id.*

[6] *See* Securities Exchange Act Release No. 43344 (September 26, 2000), 65 FR 59038 (October 3, 2000). As currently proposed, SR–NASD–00–23 generally would: (1) Provide that the time of order origination and receipt for an electronic order is the time the order is captured by a member's electronic order-routing or execution system; for a manual order that is fewer than 10,000 shares, the time of order origination and receipt is the time the order is received by the member's trading desk or trading department for execution or routing purposes; and for a manual order that is 10,000 shares or greater, the time of order origination and receipt is the time the order is received by the member from the customer; (2) exclude certain members from the definition of "Reporting Member" for those orders that meet specified conditions and are recorded and reported to the OATS by another member; (3) require any receiving reporting member, including ECNs, that receive, electronically or manually, routed orders, to capture and report a routed order identifier; and (4) permit NASD to grant exemptive relief from the OATS reporting requirements for manual orders to members that meet specified criteria.

[7] Currently, a routed order identifier is only required to be captured for routed orders received electronically by Reporting Members that are not ECNs.

[8] 15 U.S.C. 78o–3(b)(6).

[9] *See supra* note 6.

[10] Comment letters were submitted by the following: Krys Boyle Freedman & Sawyer, P.C. on behalf of Rocky Mountain Securities & Investments, Inc.: Mitchell Securities Corporation of Oregon; Storch & Brenner, LLP; A.G. Edwards & Sons, Inc.; Instinet Corporation; First Options of Chicago; Morgan Stanley Dean Witter; Securities Industry Association, Ad Hoc Committee; Weeden & Co., L.P.; Financial Information Forum; Pershing Division of Donaldson, Lufkin & Jenrette Securities Corporation; and two letters submitted by Wachtel & Co., Inc.

While a number of commenters opposed the proposed requirement in SR–NASD–00–23 that members be required to capture and report a routed order identifier for orders routed manually, only one commenter, Instinet Corporation ("Instinet"), specifically opposed the proposed requirement to capture and report a routed order identifier for orders routed electronically to ECNs. Among other things, Instinet noted that the original OATS proposal expressly excluded ECNs from the routed order identifier requirements in acknowledgment of the unique characteristics of ECNs and the significant unmerited operation burdens such requirements would impose on ECNs. Instinet indicated that to add a routed order identifier field would require reconfigurement of thousands of customer interfaces and redesign of the framework of the existing brokerage mechanisms. Further, requiring ECN customers to input a routed order identifier would impede speed, efficiency and innovation and is not counterbalanced by any regulatory benefit.

The use of a routed order identifier reported through OATS permits NASD to track the history of orders routed between firms on an automated basis. If the order does not contain a routed order identifier, the order cannot be linked on an automated basis to subsequent actions, such as further routing or execution by other firms or Nasdaq systems. As noted in the Purpose section of this filing, given the current level of participation of ECNs in the trading of Nasdaq securities, the lack of a routed order identifier for these electronic orders results in NASD staff having to recreate manually the lifecycle history for a substantial number of orders.

Subsequent to the submission of its comment letter, Instinet changed its business model and is no longer operating as an ECN.[11] Accordingly, as a non-ECN broker/dealer, Instinet is required under current OATS rules to capture routed order identifier information for electronic orders. On July 13, 2004, NASD staff spoke with a representative from Instinet, who indicated that the concerns raised in its October 25, 2000 letter are no longer an issue for Instinet, given its change in business model. In addition, on August 30, 2004, NASD staff discussed the proposal with a representative from Inet who indicated that the proposed requirement to capture a routed order identifier for electronic orders would required technological changes to Inet's current systems but would not be overly burdensome if adequate time is provided for implementation. Accordingly, NASD believes that any burdens that do exist are outweighed by the regulatory benefits of capturing the lifecycle of these orders on an automated basis and is therefore proposing the rule change described herein.

[11] In September 2002, Instinet merged with The Island ECN, Inc. (Island ECN). As part of the merger, Instinet's ECN business migrated to Inet ATS, Inc. (Inet), which formerly was Island ECN.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2004–137 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–137. 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 respects to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–137 and should be submitted on or before October 14, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[12] In particular, the Commission finds that proposed rule change is consistent with section 15A(b)(6) of Act, which requires, among other things, that NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[13] Specifically, the Commission believes that the proposed rule change should enhance OATS information and improve NASD's ability to conduct effective surveillance and timely investigations relating to compliance with NASD and other applicable rule in an efficient manner.

The Commission notes that Instinet commented on this proposed change in response to the notice of SR–NASD–00–23.[14] At that time, Instinet argued that the proposal to require ECNs to capture and report a routed order identifier for orders routed electronically to ECNs would cause significant unmerited operational burdens to be placed on ECNs and that requiring ECN customers to input a routed order identifier would impede speed, efficiency, and innovation.

Since that time, given recent changes in the Nasdaq market, NASD represents that its inability, without a routed order identifier, to link an order to an automated basis to subsequent action requires NASD staff to recreate manually the lifecycle history for the significant number of ECN orders. Consequently, NASD contacted Instinet to discuss Instinet's concerns raised by the proposed rule change. According to NASD, Instinet explained that as it was no longer operating as an ECN, the concerns it expressed previously no longer applied it. NASD next spoke with

[12] In approving this proposed rule change, the Commission has considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[13] 15 US.C. 78o–3(b)(6).

[14] *See* note 6, *supra*.

representatives of Inet,[15] about the issues originally raised by Instinet. Again according to NASD, while Inet explained that the proposed requirements to capture a routed order identifier for electronic orders would require the ECN to make technological changes, it did not believe these changes would be overly burdensome as long as NASD allowed an adequate implementation period. Accordingly, the Commission believes that the regulatory benefits to be derived from the greater automation provided by the proposed rule change should outweigh the burden imposed on ECNs.

Because this proposal was previously noticed for public comment as part of NASD–00–23,[16] and, as described above, NASD has adequately responded to comments received on the proposal, the Commission finds good cause, pursuant to section 19(b)(2) of the Act,[17] for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The proposed rule change will be become effective 90 days following publication of a Notice to Members, which will be published no later than 60 days from the date of this approval order.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change (SR–NASD–2004–137) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–21371 Filed 9–22–04; 8:45 am]

BILLING CODE 8010–01–M

[15] *See* note, 11, *supra.*

[16] *See* note 6, *supra.*

[17] 15 U.S.C. 78s(b)(2).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50406; File No. SR–NASD–2004–119]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Regarding Fees for Orders and Quotes Executed in the Nasdaq Closing Cross

September 16, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 10, 2004, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On August 23, 2004, Nasdaq amended the proposed rule change.[3] On September 13, 2004, Nasdaq amended the proposed rule change.[4] Nasdaq has designated the proposed rule change as "establishing or changing a due, fee, or other charge" under Section 19(b)(3)(A) of the Act,[5] and Rule 19b–4(f)(2) thereunder,[6] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing this proposed rule change to establish fees for quotes and orders executed in the Nasdaq Closing Cross. The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].[7]

* * * * *

Rule 7010. System Services

(a)–(h) No Change.

(i) Nasdaq Market Center order execution)

(1) and (2) No Change.

(3) [Pilot—] Closing Cross

[For a period of three months commencing on the date Nasdaq implements its Closing Cross (as described in Rule 4709) members shall not be charged Nasdaq Market Center execution fees, or receive Nasdaq Market Center liquidity provider credits, for those quotes and orders executed in the Nasdaq Closing Cross.]

Market-on-Close and Limit-on-executed: $0.0005 per share.

Close orders executed in the Nasdaq Closing Cross.

All other quotes and orders executed in the Nasdaq Closing Cross: No charge for execution.

(j)–(u) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 20, 2004 ("Amendment No. 1"). In Amendment No. 1, Nasdaq restated the proposed rule change in its entirety.

[4] *See* letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated September 10, 2004 ("Amendment No. 2"). In Amendment No. 2, Nasdaq restated the proposed rule change in its entirety.

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(2).

[7] The proposed rule language is marked to show changes to Rule 7010(i) as currently reflected in the NASD Manual available at *www.nasd.com*, as amended by SR–NASD–2004–076 (filed May 5, 2004 and amended on July 2, 2004 and July 23, 2004), Securities Exchange Act Release No. 50074 (July 23, 2004); 69 FR 49866 (July 30, 2004), and SR–NASD–2004–106, Securities Exchange Act Release No. 50038 (July 19, 2004); 69 FR 44699 (July 27, 2004). Amendment 2 to SR–NASD–2004–076, filed on July 23, 2004, inadvertently omitted modifications to the language of Rule 7010(i) that were made effective on July 12, 2004 by SR–NASD–2004–106. Amendment 1 to SR–NASD–2004–119, filed on August 23, 2004, then omitted to reflect the changes effected by Amendment 2 to SR–NASD–2004–076. This amendment is marked to reflect the changes to Rule 7010(i) from SR–NASD–2004–076 and to ensure that the language of Rule 7010(i) is properly reflected in the NASD manual.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission recently approved the Nasdaq Closing Cross, which is a new process for determining the Nasdaq Official Closing Price for the most liquid Nasdaq stocks.[8] The Nasdaq Closing Cross is designed to create a more robust close that allows for price discovery, and an execution that results in an accurate, tradable closing price. Nasdaq established a pilot program, commencing with the launch of the Closing Cross, during which no execution charges were charged, and no liquidity provider credits were offered, for those quotes and orders executed in the Nasdaq market center as part of the Nasdaq Closing Cross.[9]

Nasdaq has determined to end the pilot program and establish the following pricing for the Nasdaq Closing Cross. Nasdaq will assess a fee of $0.0005 per share executed during the Nasdaq Closing Cross for all Market-on-Close and Limit-on-Close orders. At this time, Nasdaq will assess no fees and offer no rebates for quotations and other orders executed during the Nasdaq Closing Cross.[10] Nasdaq will monitor the effectiveness of the proposed pricing schedule in preserving and enhancing the success of the Nasdaq Closing Cross to date.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[11] in general, and with Section 15A(b)(5),[12] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that NASD operates or controls. Nasdaq believes that the proposed fees for Market-on-Close and Limit-on-Close orders are consistent with the statute in that they are designed to result in an execution charge approximating the execution charge for quotes and orders entered and executed in the Nasdaq Market Center throughout the trading day. Nasdaq believes that assessing no fee and offering no rebate for quotations and other orders executed during the Nasdaq Closing Cross is consistent with the statute because it is designed to encourage the entry of Imbalance Only orders to minimize imbalances resulting from the Closing Cross algorithm, and to preserve the Closing Cross liquidity provided by quotations and orders from the continuous market.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become immediately effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[13] and subparagraph (f)(2) of Rule 19b–4 thereunder,[14] because it establishes or changes a due, fee, or other charge imposed by Nasdaq. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2004–119 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR-NASD–2004–119. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–119 and should be submitted on or before October 14, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2348 Filed 9–22–04; 8:45 am]

BILLING CODE 8010–01–P

[8] Securities Exchange Act Release No. 49406 (March 11, 2004); 69 FR 12879 (March 18, 2004)(SR–NASD–2004–173).

[9] Securities Exchange Act Release No. 49576 (April 16, 2004); 69 FR 22112 (April 23, 2004)(SR–NASD–2004–048).

[10] In the event Nasdaq determines to assess such fees, Nasdaq will file a rule proposal with the Commission.

[11] 15 U.S.C. 78*o*–3.

[12] 15 U.S.C. 78*o*–3(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 240.19b–4(f)(2).

[15] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on September 15, 2004, the date Nasdaq filed Amendment No. 2. *See* 15 U.S.C. 78s(b)(3)(C).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50405; File No. SR–NASD–2004–071]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Improved Nasdaq Opening Process

September 16, 2004.

I. Introduction

On April 23, 2004, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to improve the opening process for Nasdaq securities. On May 27, 2004, Nasdaq amended the proposed rule change.[3]

The proposed rule change, as amended by Amendment No. 1, was published for comment in the **Federal Register** on June 17, 2004.[4] The Commission received two comment letters on the proposal, as amended.[5] Nasdaq submitted a response to the comment letters.[6] On September 15, 2004, Nasdaq amended the proposed rule change.[7] This order approves the proposed rule change, as amended.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated May 26, 2004 ("Amendment No. 1"). In Amendment No. 1, Nasdaq restated the proposed rule change in its entirety.

[4] *See* Securities Exchange Act Release No. 49842 (June 9, 2004), 69 FR 33971.

[5] *See* letter from James P. Selway III, Managing Director, White Cap Trading LLC, to Jonathan G. Katz, Secretary, Commission, dated July 7, 2004 ("White Cap Letter"); and letter from Kim Bang, President and Chief Executive Officer, Bloomberg Tradebook LLC, to Jonathan G. Katz, Secretary, Commission, dated July 13, 2004 ("Bloomberg Letter").

[6] *See* letter from Jeffrey Davis, Associate General Counsel, Nasdaq, to Katherine England, Division of Market Regulation, Commission, dated July 21, 2004 ("Nasdaq Response Letter").

[7] *See* letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated September 15, 2004 ("Amendment No. 2"). In Amendment No. 2, Nasdaq revised the language of Rule 4706(a)(1)(B)(xiii) to reflect changes made by File No. SR–NASD–2004–076. *See* Securities Exchange Act Release No. 50074 (July 23, 2004), 69 FR 45866 (July 30, 2004). This was a technical amendment and is not subject to notice and comment.

II. Description of Proposed Rule Change

The proposed rule change is intended by Nasdaq to improve the pre-open trading environment for Nasdaq-listed securities, and to create two new voluntary opening processes that would together constitute the beginning of the trading day for all Nasdaq-listed securities. The changes to the pre-open environment would eliminate the Trade-or-Move process contained in NASD Rule 4613(e), create pre-opening eligible order types, and open all market participant quotes at 9:25 a.m. rather than 9:29:30 a.m.

The new 9:30 a.m. opening process would take one of two forms: The Nasdaq Opening Cross or the Modified Nasdaq Opening. Certain Nasdaq-listed stocks would be designated to participate in the Nasdaq Opening Cross, which Nasdaq has designed to complement the recently implemented Nasdaq Closing Cross. There would be three components of the Nasdaq Opening Cross: (1) The creation of On Open and Imbalance Only order types; (2) the dissemination of an order imbalance indicator via a Nasdaq proprietary data feed; and (3) opening cross processing in the Nasdaq Market Center at 9:30 a.m. that would execute the maximum number of shares at a single, representative price that would be the Nasdaq Official Opening Price. Upon initial implementation, Nasdaq plans to apply the Nasdaq Opening Cross to securities included in the Nasdaq 100 Index, the S&P 500 Index, and the Nasdaq Biotech Index, although Nasdaq would have the authority to apply the Nasdaq Opening Cross to any and all Nasdaq securities. Nasdaq designed the proposal to create a more robust opening that allows for price discovery, and executions that result in an accurate, tradable opening price.

For those Nasdaq securities that do not participate in the Nasdaq Opening Cross, the Modified Nasdaq Opening would integrate quotes and orders entered during pre-market hours with orders designated for execution during the normal trading day (9:30 a.m. to 4 p.m.), create an unlocked inside bid and offer in the Nasdaq Market Center, and facilitate an orderly process for opening trading at 9:30 a.m. These securities would continue to have their Nasdaq Official Opening Price calculated as today.

III. Comment Summary

The White Cap Letter supported Nasdaq's proposed rule change. In particular, the White Cap Letter stated that the Nasdaq Opening Cross would remedy a long-standing problem with Nasdaq's market structure: *i.e.*, the lack of a formalized and transparent opening process. White Cap stated that, based on its experience with the Nasdaq Closing Cross over the preceding three months, it believed that the Nasdaq Opening Cross would afford market participants the opportunity to enter on-open orders for execution at a single price, to view indicated prices and volumes as well as any imbalances, and to interact with such indications on a competitive basis. White Cap acknowledged the fact that order-delivery electronic communication networks ("ECNs") would not participate in the Nasdaq Opening Cross as a consequence of technological concerns and competitive realities. White Cap believed that, because the Nasdaq Opening Cross would be directly accessible to all interested and qualified parties, its benefits should redound to the marketplace regardless of the fact that certain quotes do not participate.

The Bloomberg Letter objected to the requirement that trading interest be subject to automatic execution in order to take part in the Nasdaq Opening Cross, which it said would effectively eliminate participating ECNs from the process. The Bloomberg Letter opined that, because the Nasdaq Opening Cross would exclude trades, and therefore liquidity, in Nasdaq securities that occur on ECNs that have elected order delivery rather than automatic execution, the opening price likely would be inaccurate, incomplete and misleading, harm participating ECNs and their investor participants, and make it more difficult for broker-dealers participating in SuperMontage to meet their best execution obligations. Bloomberg stated that Nasdaq had offered no legitimate basis for excluding ECNs from the Nasdaq Opening Cross. The Bloomberg Letter also argued that the amendments to the pre-opening process would effectively mean that the Nasdaq market would open at 9:25 a.m., and that Nasdaq had not explained this in the proposed rule change. The Bloomberg Letter opined that mixing firm quotes of ECNs with the indicative quotations of market makers in an undifferentiated data stream would not be in the public interest. The Bloomberg Letter stated that Nasdaq has "buried secret rules in its technical specification," that should have been the subject of public disclosure and public comment. Finally, the Bloomberg Letter commented that the proposed rule change would violate Section 15A(b)(6) of the Act,[8] which requires that the rules of a national securities

[8] 15 U.S.C. 78*o*–3(b)(6).

association not be designed to permit unfair discrimination between customers, issuers, brokers or dealers, and would constitute a constructive denial of access to ECNs, which would constitute, in turn, an unnecessary or inappropriate burden on competition in violation of Section 15A(b)(8) of the Act.[9]

In its response letter, Nasdaq acknowledged the White Cap Letter and spoke to the comments raised in the Bloomberg Letter. Nasdaq stated that Bloomberg's business decision to execute orders internally within Bloomberg's book rather than offering automatic execution on SuperMontage should not impede Nasdaq from proceeding with a market enhancement. Nasdaq suggested that there are multiple options that Bloomberg could pursue to satisfy its customers' interest in participating fully in the Nasdaq Opening Cross, such as (1) by participating in the Opening Cross on an automatic execution basis; (2) by routing standing limit orders through another participant that participates on an automatic execution basis, or (3) by discussing with Nasdaq the possibility of establishing a second market participant identifier for the entry of orders eligible to participate in the Nasdaq Opening Cross. Moreover, Nasdaq stated that the Opening Cross is inherently a "match"—matching interest of buyers and sellers at a single instant in time—and is not conducive to an iterative order delivery process, which would create substantial technical difficulties for Nasdaq and unwarranted risk for other market participants. Nasdaq pointed out that participation in the Nasdaq Opening Cross is completely voluntary and that Bloomberg is effectively excluding itself from the process.

Nasdaq stated that Bloomberg misunderstood the proposed rule change with respect to the pre-opening process, saying that Nasdaq is modifying the pre-opening process in order to improve and emphasize the official open at 9:30 a.m., and that the 9:25 a.m. opening of quotes would dramatically improve the 9:30 a.m. open, not replace it. Nasdaq also pointed out that, with respect to Nasdaq's "buried secret rules," Nasdaq has a practice of making its technical specifications publicly available far in advance of its proposed launch dates and has a natural interest in having the document widely scrutinized and used by market participants.[10]

Nasdaq stated that the Closing Cross has performed as it was designed and, overall has improved the Nasdaq closing process. Thus, Nasdaq believes that the Nasdaq Opening Cross will provide similar benefits to the opening process.

IV. Discussion and Commission's Findings

After careful consideration of the proposed rule change, the comment letters, and Nasdaq's response to the comment letters, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[11] The Commission believes that the proposed rule change is consistent with Section 15A(b) of the Act,[12] in general, and furthers the objectives of Section 15A(b)(6),[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

The Commission believes that Nasdaq has adequately addressed the comments raised in the comment letters. The Commission also believes that the proposed rule change, as amended, should provide useful information to market participants and increase transparency and order interaction at the open. In addition, the Commission believes that the proposed rule change, as amended, should result in the public dissemination of information that more accurately reflects the trading in a particular security at the open.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder applicable to a national securities association, and, in particular, Section 15A(b) of the Act.[14]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–NASD–2004–071), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2349 Filed 9–22–04; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78*o*–3(b)(8).

[10] Nasdaq published the technical specifications on June 17, 2004.

[11] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78*o*–3(b).

[13] 15 U.S.C. 78*o*–3(b)(6).

[14] 15 U.S.C. 78*o*–3(b).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50403; File No. SR–NASD–2004–110]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Divestiture of American Stock Exchange

September 16, 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 16, 2004, the National Association of Securities Dealers, Inc. ("NASD"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by NASD. On August 10, 2004, NASD amended the proposal.[3] NASD further amended the proposal on August 25, 2004,[4] and on September 3, 2004.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 10, 2004 ("Amendment No. 1"). Amendment No. 1 replaced NASD's original filing in its entirety.

[4] *See* letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated August 25, 2004 ("Amendment No. 2"). Amendment No. 2 replaced NASD's earlier amended filing in its entirety.

[5] *See* letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated September 2, 2004 ("Amendment No. 3"). Amendment No. 3 modified Exhibit 1 and made certain technical corrections to the proposal. Amendment No. 3 replaced NASD's earlier amended filing in its entirety.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend provisions of its By-Laws to reflect NASD's pending divestiture of its ownership interest in the American Stock Exchange LLC ("Amex"). NASD is also proposing to make parallel changes to the definitional and conflict-of-interest provisions of the By-Laws of NASD Regulation, Inc. ("NASD Regulation") and NASD Dispute Resolution, Inc. ("Dispute Resolution"), to terminate certain undertakings NASD assumed when it acquired Amex in 1998, and to make certain other clarifying amendments. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Proposed Revisions to By-Laws of National Association of Securities Dealers, Inc.

Article I

Definitions

* * * * *

(n) "Industry Director" means a Director of the NASD Regulation Board or NASD Dispute Resolution Board (excluding the Presidents) who: (1) Is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (2) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (3) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership; (5) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership; or (6) has a consulting or employment relationship with or provides professional services to the NASD, NASD Regulation, NASD Dispute Resolution, [Nasdaq,] or [Amex (and any predecessor)] *a market for which NASD provides regulation*, or has had any such relationship or provided any such services at any time within the prior three years;

(o) "Industry Governor" or "Industry committee member" means a Governor (excluding the Chief Executive Officer of the NASD and the President of NASD Regulation) or committee member who: (1) Is or has served in the prior three years as an officer, director or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (2) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (3) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Governor or committee member or 20 percent or more of the gross revenues received by the Governor's or committee member's firm or partnership; (5) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Governor or committee member or 20 percent or more of the gross revenues received by the Governor's or committee member's firm or partnership; [(6) is a Floor Governor,] or ([7]*6*) has a consulting or employment relationship with or provides professional services to the NASD, NASD Regulation, NASD Dispute Resolution, [Nasdaq or Amex (and any predecessor)] *or a market for which NASD provides regulation*, or has had any such relationship or provided any such services at any time within the prior three years;

* * * * *

(bb) "Non-Industry Director" means a Director of the NASD Regulation Board or NASD Dispute Resolution Board (excluding the Presidents of NASD Regulation and NASD Dispute Resolution) who is: (1) a Public Director; (2) an officer or employee of an issuer of securities listed on [Nasdaq or Amex, or] *a market for which NASD provides regulation; (3) an officer or employee of an issuer of unlisted securities that are* traded in the over-the-counter market; or ([3]*4*) any other individual who would not be an Industry Director;

(cc) "Non-Industry Governor" or "Non-Industry committee member" means a Governor (excluding the Chief Executive Officer and any other officer of the NASD, the President of NASD Regulation)[, any Floor Governor, and the Chief Executive Officer of Amex)] or committee member who is: (1) A Public Governor or committee member; (2) an officer or employee of an issuer of securities listed on [Nasdaq or Amex, or] *a market regulated by NASD; (3) an officer or employee of an issuer of unlisted securities that are* traded in the over-the-counter market; or ([3]*4*) any other individual who would not be an Industry Governor or committee member;

* * * * *

(ee) "Public Director" means a Director of the NASD Regulation Board or NASD Dispute Resolution Board who has no material business relationship with a broker or dealer or the NASD, NASD Regulation, NASD Dispute Resolution, or [Nasdaq] a *market for which NASD provides regulation;*

(ff) "Public Governor" or "Public committee member" means a Governor or committee member who has no material business relationship with a broker or dealer or the NASD, NASD Regulation, NASD Dispute Resolution, or [Nasdaq] *a market for which NASD provides regulation;*

* * * * *

[(ii) "Floor Governor" or "Amex Floor Governor" means a Floor Governor of Amex elected pursuant to Article II, Section .01(a) of the Amex By-Laws;

(jj) "Amex" means American Stock Exchange LLC; and

(kk) "Amex Board" means the Board of Governors of Amex.]

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Article VII

Board of Governors

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Composition and Qualifications of the Board

Sec. 4. (a) The Board shall consist of no fewer than [17] *15* nor more than [27] *25* Governors, comprising (i) the Chief Executive Officer of the NASD, (ii) if the Board of Governors determines, from time to time, in its sole discretion, that the appointment of a second officer of the NASD to the Board of Governors is advisable, a second officer of the NASD, (iii) the President of NASD Regulation, (iv) the Chair of the National Adjudicatory Council, [(v) the Chief Executive Officer and one Floor Governor of Amex,] and [(vi)] *(v)* no fewer than 12 and no more than 22 Governors elected by the members of the NASD. The Governors elected by the members of the NASD shall include a representative of an issuer of investment company shares or an affiliate of such an issuer, a representative of an insurance company, a representative of a national retail firm, a representative of a regional retail or independent financial planning member firm, a representative of a firm that provides clearing services to other NASD members, and a representative of an NASD member having not more than 150 registered persons. The number of Non-Industry Governors shall exceed the number of Industry Governors. If the number of Industry and Non-Industry Governors is [15 to 17] *13 to 15*, the Board shall include at least four Public Governors. If the number of Industry and Non-Industry Governors is [18 to 19] *16–17*, the Board shall include at least five Public Governors. If the number of Industry and Non-Industry Governors is [20–25] *18–23*, the Board shall include at least six Public Governors.

* * * * *

Term of Office of Governors

Sec. 5. (a) The Chief Executive Officer and, if appointed, the second officer of the NASD, *and* the President of NASD Regulation[, and the Chief Executive Officer of Amex] shall serve as Governors until a successor is elected, or until death, resignation, or removal (or, in addition, in the case of a second officer of the NASD, until the Board of Governors, in its sole discretion, determines that such appointment is no longer advisable).

(b) The Chair of the National Adjudicatory Council shall serve as a Governor for a term of one year, or until a successor is duly elected and qualified, or until death, resignation, disqualification, or removal. A Chair of the National Adjudicatory Council may not serve more than two consecutive one-year terms as a Governor, unless a Chair of the National Adjudicatory Council is appointed to fill a term of less than one year for such office. In such case, the Chair of the National Adjudicatory Council may serve an initial term as a Governor and up to two consecutive one-year terms as a Governor following the expiration of such initial term. After serving as a Chair of the National Adjudicatory Council, an individual may serve as a Governor elected by the members of the NASD.

[(c) The Amex Floor Governor shall serve as a Governor for a term of two years, or until a successor is duly elected and qualified, or until death, resignation, disqualification, or removal. An Amex Floor Governor may not serve more than three consecutive two-year terms as a Governor, unless such Amex Floor Governor is appointed to fill a term of less than one year for such office. In such case, the Amex Floor Governor may serve that initial term as a Governor and up to three consecutive two-year terms as a Governor following the expiration of the initial term.]

(*c* [d]) The Governors elected by the members of the NASD shall be divided into three classes and hold office for a term of no more than three years, such term to be fixed by the Board at the time of the nomination or certification of each such Governor, or until a successor is duly elected and qualified, or until death, resignation, disqualification, or removal. A Governor elected by the members of the NASD may not serve more than two consecutive terms. If a Governor is elected by the Board to fill a term of less than one year, the Governor may serve up to two consecutive terms following the expiration of the Governor's initial term. The term of office of Governors of the first class shall expire at the January 1999 Board meeting, of the second class one year thereafter, and of the third class two years thereafter. At each annual election, commencing January 1999, Governors shall be elected for a term of three years to replace those whose terms expire.

* * * * *

Article IX

Committees

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Executive Committee

Sec. 4. (a) The Board may appoint an Executive Committee, which shall, to the fullest extent permitted by the General Corporation Law of the State of Delaware and other applicable law, have and be permitted to exercise all the powers and authority of the Board in the management of the business and affairs of the NASD between meetings of the Board, and which may authorize the seal of the NASD to be affixed to all papers that may require it.

(b) The Executive Committee shall consist of no fewer than [six]*five* and no more than [nine]*eight* Governors. The Executive Committee shall include the Chief Executive Officer of the NASD, *and* at least one Director of NASD Regulation. [, at least one Governor of Amex, and at least two Governors who are not members of either the NASD Regulation Board, or the Amex Board.] The Executive Committee shall have a percentage of Non-Industry committee members at least as great as the percentage of Non-Industry Governors on the whole Board and a percentage of Public committee members at least as great as the percentage of Public Governors on the whole Board.

(c) An Executive Committee member shall hold office for a term of one year.

(d) At all meetings of the Executive Committee, a quorum for the transaction of business shall consist of a majority of the Executive Committee, including not less than 50 percent of the Non-Industry committee members. In the absence of a quorum, a majority of the committee members present may adjourn the meeting until a quorum is present.

* * * * *

Article XV

Limitation of Powers

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Conflicts of Interest

Sec. 4. (a) A Governor or a member of a committee shall not directly or indirectly participate in any adjudication of the interests of any party if such Governor or committee member has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case, the Governor or committee member shall recuse himself or herself or shall be disqualified in accordance with the Rules of the Association.

(b) No contract or transaction between the NASD and one or more of its Governors or officers, or between the NASD and any other corporation, partnership, association, or other organization in which one or more of its Governors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason if: (i) The material facts pertaining to such Governor's or officer's relationship or interest and the contract or transaction are disclosed or

are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Governors, even though the disinterested governors be less than a quorum; or (ii) the material facts are disclosed or become known to the Board or committee after the contract or transaction is entered into, and the Board or committee in good faith ratifies the contract or transaction by the affirmative vote of a majority of the disinterested Governors even though the disinterested governors be less than a quorum. Only disinterested Governors may be counted in determining the presence of a quorum at the portion of a meeting of the Board or of a committee that authorizes the contract or transaction. This subsection shall not apply to any contract or transaction between the NASD and NASD Regulation, Nasdaq, *or* NASD Dispute Resolution[, or Amex].

* * * * *

Proposed Revisions to By-Laws of NASD Regulation, Inc.

Article I

Definitions

* * * * *

(q) "Industry Director" or "Industry member" means a Director (excluding the President of NASD Regulation and the Chief Executive Officer of NASD) or a National Adjudicatory Council or committee member who (1) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (2) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (3) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; (5) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; or (6) has a consulting or employment relationship with or provides professional services to the NASD, NASD Regulation, [Nasdaq,] NASD Dispute Resolution, or [Amex (and any Predecessor),] *a market for which NASD provides regulation,* or has had any such relationship or provided any such services at any time within the prior three years;

* * * * *

(y) "Non-Industry Director" or "Non-Industry member" means a Director (excluding the President of NASD Regulation and the Chief Executive Officer of NASD) or a National Adjudicatory Council or committee member who is (1) a Public Director or Public member; (2) an officer or employee of an issuer of securities listed on [Nasdaq or Amex,] *a market for which NASD provides regulation; (3) an officer or employee of an issuer of unlisted securities that are* traded in the over-the-counter market; or [(3)](*4*) any other individual who would not be an Industry Director or Industry member;

* * * * *

(aa) "Public Director" or "Public member" means a Director or National Adjudicatory Council or committee member who has no material business relationship with a broker or dealer or the NASD, NASD Regulation, or [Nasdaq;] *a market for which NASD provides regulation;*

* * * * *

[(dd) "Floor Governor" or "Amex Floor Governor" means a Floor Governor of Amex elected pursuant to Article I, Section 01(a) of the Amex By-Laws;

(ee) "Nasdaq-Amex" means Nasdaq-Amex Market Group, Inc.;

(ff) "Amex" means American Stock Exchange LLC;

(gg) "Amex Board" means the Board of Governors of Amex;]

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Article IV

Board of Directors

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Sec. 4.14 (a) Conflicts of Interest; Contracts and Transactions Involving Directors

Sec. 4.14 (a) A Director or a National Adjudicatory Council or committee member shall not directly or indirectly participate in any adjudication of the interests of any party if that Director or National Adjudicatory Council or committee member has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case, the Director or National Adjudicatory Council or committee member shall recuse himself or herself or shall be disqualified in accordance with the Rules of the Association.

(b) No contract or transaction between NASD Regulation and one or more of its Directors or officers, or between NASD Regulation and any other corporation, partnership, association, or other organization in which one or more of its Directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason if: (i) the material facts pertaining to such Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Directors; (ii) the material facts are disclosed or become known to the Board or committee after the contract or transaction is entered into, and the Board or committee in good faith ratifies the contract or transaction by the affirmative vote of a majority of the disinterested Directors; or (iii) the material facts pertaining to the Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the stockholder entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholder. Only disinterested Directors may be counted in determining the presence of a quorum at the portion of a meeting of the Board or of a committee that authorizes the contract or transaction. This subsection shall not apply to a contract or transaction between NASD Regulation and[:] the NASD, *NASD Dispute Resolution, or* Nasdaq[, Nasdaq-Amex, or Amex].

* * * * *

Proposed Amendments to By-Laws of NASD Dispute Resolution, Inc.

Article I

Definitions

When used in these By-Laws, unless the context otherwise requires, the term:

(a) "Act" means the Securities Exchange Act of 1934, as amended;

[(b) "Amex" means American Stock Exchange LLC;]

(b) [(c)] "Board" means the Board of Directors of NASD Dispute Resolution;

(c) [(d)] "broker" shall have the same meaning as in Section 3(a)(4) of the Act;

(d) [(e)] "Commission" means the Securities and Exchange Commission;

(e) [(f)] "day" means calendar day;

(f) [(g)] "dealer" shall have the same meaning as in Section 3(a)(5) of the Act;

(g) [(h)] "Delaware law" means the General Corporation Law of the State of Delaware;

(h) [(i)] "Delegation Plan" means the "Plan of Allocation and Delegation of Functions by NASD to Subsidiaries" as approved by the Commission, and as amended from time to time;

(i) [(j)] "Director" means a member of the Board, excluding the Chief Executive Officer of the NASD;

(j) [(k)] "Executive Representative" means the executive representative of an NASD member appointed pursuant to Article IV, Section 3 of the NASD By-Laws;

(k) [(l)] "Industry Director" or "Industry member" means a Director (excluding the President) or a committee member who (1) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (2) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (3) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; (5) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; or (6) has a consulting or employment relationship with or provides professional services to the NASD, NASD Regulation, [Nasdaq,] NASD Dispute Resolution, or [Amex (and any predecessor),] *a market for which NASD provides regulation,* or has had any such relationship or provided any such services at any time within the prior three years;

(l) [(m)] "NASD" means the National Association of Securities Dealers, Inc.;

(m) [(n)] "NASD Board" means the NASD Board of Governors;

(n) [(o)] "NASD Dispute Resolution" means NASD Dispute Resolution, Inc.;

(o) [(p)] "NASD member" means any broker or dealer admitted to membership in the NASD;

(p) [(q)] "NASD Regulation" means NASD Regulation, Inc.;

(q) [(r)] "Nasdaq" means The Nasdaq Stock Market, Inc.;

[(s) "Nasdaq-Amex" means Nasdaq-Amex Market Group, Inc.;]

(r) [(t)] "National Nominating Committee" means the National Nominating Committee appointed pursuant to Article VII, Section 9 of the NASD By-Laws;

(s) [(u)] "Non-Industry Director" or "Non-Industry member" means a Director (excluding the President) or committee member who is (1) a Public Director or Public member; (2) an officer or employee of an issuer of securities listed on [Nasdaq or Amex, or] *a market for which NASD provides regulation; (3) an officer or employee of an issuer of unlisted securities that are* traded in the over-the-counter market; or [(3)]*(4)* any other individual who would not be an Industry Director or Industry member;

(t) [(v)] "person associated with a member" or "associated person of a member" means: (1) A natural person registered under the Rules of the Association; or (2) a sole proprietor, partner, officer, director, or branch manager of a member, or a natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with the NASD under these By-Laws or the Rules of the Association;

(u) [(w)] "Public Director" or "Public member" means a Director or committee member who has no material business relationship with a broker or dealer or the NASD, NASD Regulation, [Nasdaq,] *a market for which NASD provides regulation,* or NASD Dispute Resolution;

(v) [(x)] "Rules of the Association" or "Rules" means the numbered rules set forth in the NASD Manual beginning with the Rule 0100 Series, as adopted by the NASD Board pursuant to the NASD By-Laws, as hereafter amended or supplemented.

* * * * *

Article IV

Board of Directors

* * * * *

Conflicts of Interest; Contracts and Transactions Involving Directors

Sec. 4.14(a) A Director or a committee member shall not directly or indirectly participate in any determinations regarding the interests of any party if that Director or committee member has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case, the Director or committee member shall recuse himself or herself or shall be disqualified in accordance with the Rules of the Association.

(b) No contract or transaction between NASD Dispute Resolution and one or more of its Directors or officers, or between NASD Dispute Resolution and any other corporation, partnership, association, or other organization in which one or more of its Directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason if: (i) The material facts pertaining to such Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Directors; (ii) the material facts are disclosed or become known to the Board or committee after the contract or transaction is entered into, and the Board or committee in good faith ratifies the contract or transaction by the affirmative vote of a majority of the disinterested Directors; or (iii) the material facts pertaining to the Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the

stockholder entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholder. Only disinterested Directors may be counted in determining the presence of a quorum at the portion of a meeting of the Board or of a committee that authorizes the contract or transaction. This subsection shall not apply to a contract or transaction between NASD Dispute Resolution and the NASD, NASD Regulation, *or* Nasdaq[, Nasdaq-Amex, or Amex].

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD 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. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change will reverse a number of changes that NASD made to the By-Laws of NASD, NASD Regulation, and Dispute Resolution in 1998, when NASD acquired Amex. In addition, NASD proposes to withdraw certain representations it made in 1998 regarding its relationship with Amex following the Amex acquisition. Finally, NASD proposes to make certain other clarifying changes.

Proposed NASD By-Law Revisions

The proposed NASD By-Law changes are discussed briefly below. Where noted, parallel changes will be made to the By-Laws of NASD Regulation and Dispute Resolution.

Article I (Definitions)

The amendments will eliminate references to both Amex and Nasdaq from the definitions of "Industry Director" and "Industry Governor," "Non-Industry Director" and "Non-Industry Governor," "Public Director" and "Public Governor." The current references to Nasdaq and Amex will be replaced with references to "a market for which NASD provides regulation." For example, the definition of "Industry Governor" currently includes persons with a consulting or employment relationship with NASD, NASD Regulation, NASD Dispute Resolution, Nasdaq, or Amex. Under the proposed amendments, the "Industry Governor" definition will include persons with a consulting or employment relationship with "a market regulated by NASD," a term that embraces markets with which NASD has entered a contract to provide regulatory services, but in which NASD does not necessarily have an ownership interest. Because NASD has entered into a regulatory services agreement with Amex, and continues to provide regulatory services to Nasdaq, for example, the amended definition of "Industry Governor" will continue to encompass individuals who have a consulting or employment relationship with Amex or Nasdaq. NASD believes that, given the difficulty and expense involved in amending the NASD By-Laws when regulatory clients are added or deleted, substituting "a market regulated by NASD" is preferable to identifying such clients by name in the By-Laws.

In addition, clarifying amendments are proposed for the definitions of "Non-Industry Director" and "Non-Industry Governor," which currently include an officer or employee of an issuer of securities "traded in the over-the-counter market." Historically, NASD has interpreted this provision as applying only to officers and employees of unlisted securities traded in the over-the-counter market; NASD has never applied the provision to include officers and employees of listed securities that were traded off-exchange. However, since both listed and unlisted securities may be traded in the over-the-counter market, Article I, Sections (bb) and (cc) have been amended to reflect NASD's historical interpretation of the definitions. The proposed amendments make no substantive change to the definitions; rather, the amendments simply seek to clarify that (renumbered) Subsections 3 of the "Non-Industry Director" and "Non-Industry Governor" definitions include an officer or employee of only an issuer of unlisted securities that are traded exclusively in the over-the-counter market.

Finally, the definitions of and references to "Floor Governor," "Amex," and "Amex Board" have been eliminated.

Parallel changes are proposed for the definitional provisions of the NASD Regulation and Dispute Resolution By-Laws.

Article VII (Board of Governors)

The proposed amendments will eliminate two seats on the NASD Board that have been reserved for the Chief Executive of Amex and an Amex Floor Governor. The elimination of these seats will permit NASD to reduce the overall size of the Board. The current authorized size of the Board is between 17 and 27 members. With the elimination of the Amex seats, the authorized size of the Board will be reduced to between 15 and 25.

The proposed amendments will leave unchanged the existing requirement that the NASD Board include a minimum of four to six Public Governors. However, the numeric thresholds for these minimums will be adjusted downward to reflect the smaller overall Board size. For example, the By-Laws currently require a minimum of four Public Governors when the combined number of Industry and Non-Industry Governors is 15 to 17; under the proposed amendments, a minimum of four Public Governors will be required when the combined number of Industry and Non-Industry Governors is 13 to 15.

No change is proposed to the existing requirement that the number of Non-Industry Governors exceed the number of Industry Governors.

Under Delaware law, the NASD Board determines how many of the authorized seats should be filled. Because smaller boards tend to function more efficiently than larger boards, NASD has repeatedly stated a preference to avoid filling all authorized seats if the compositional requirements set forth in the By-Laws can be met without the maximum permissible number of Governors.

In addition, the proposed amendments will eliminate from Section 5 of Article VII the provision that sets the maximum permissible term of the Amex Floor Governor.

Article IX (Committees)

Article IX establishes the NASD Executive Committee, which is authorized to act on behalf of the NASD Board between meetings of the NASD Board. Currently, the committee must include six to nine members, at least one of whom must be an Amex representative, but at least two of whom may not be members of the boards of either NASD Regulation or the Amex.

The proposed amendments will reduce the authorized size range of the committee by one, and eliminate the requirement that an Amex representative be included on the committee. The proposed amendments also will eliminate the current requirement that at least two members

of the committee be members of neither the Amex nor NASD Regulation boards. NASD notes that requiring at least two NASD-only members of the Executive Committee appears to have responded to concerns that arose when there were multiple subsidiaries (at various times Nasdaq, Amex, and/or NASD Regulation) that were entitled to representation on both the NASD Board and the Executive Committee.[6]

NASD notes that avoiding possible domination of NASD affairs by market interests, and a corresponding diminution of NASD's performance of its regulatory responsibilities, has represented a primary consideration in NASD corporate governance since the Select Committee Report was issued in 1995.[7] With the elimination of "status" seats reserved for Nasdaq and Amex representatives, however, NASD believes concerns that these markets could dominate NASD decision-making also are eliminated.

The elimination of mandatory market representation on the Executive Committee will leave NASD Regulation as the sole remaining subsidiary entitled to be represented on the committee. Under the proposed rule change, NASD Regulation will continue to be entitled to at least one representative on the Executive Committee. However, because NASD believes the possibility that regulatory interests could improperly dominate NASD decision making would not raise the same concerns as the possibility of market-interest domination, the proposed amendments do not specify any minimum number of NASD-only Governors who must be included on the Executive Committee. NASD believes that the proposed changes to the Executive Committee composition are consistent with the Select Committee Report and the Section 21(a) Report.

Article XV (Limitation of Powers)

Subsection 4(b) of Article XV governs participation in transactions in which Governors have a conflict of interest. The subsection currently does not apply to contracts or transactions between NASD and NASD Regulation, Nasdaq, NASD Dispute Resolution, or Amex. The proposed amendments will eliminate Amex from this exemptive provision. As a result of this change, an Amex-affiliated Governor could no longer be counted as disinterested for purposes of determining the presence of a quorum at the portion of a meeting of the Board that authorizes a contract or transaction with Amex.

Parallel changes are proposed for the conflict-of-interest provisions of the NASD Regulation and Dispute Resolution By-Laws.

1998 Undertakings Regarding NASD-Amex Relationship

In 1998, NASD articulated certain principles that would guide the organization in fulfilling its responsibilities as parent company of Amex with ultimate responsibility for Amex's compliance with its statutory responsibilities as a self-regulatory organization ("SRO").[8] Upon completion of NASD's divestiture of its ownership interest in Amex, these principles will no longer be applicable. Instead, the NASD-Amex relationship will be governed by the regulatory services agreement into which the organizations have entered. Because the Commission approved the 1998 undertakings as NASD rules,[9] NASD now seeks the Commission's approval of the withdrawal of the undertakings.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(4) of the Act[10] which requires, among other things, that NASD's rules assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of NASD, broker or dealer. NASD also believes the proposed rule change is consistent with section 15A(b)(6) of the Act,[11] which requires that NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[6] In 1997, NASD made extensive modifications to its corporate documents in response to the Report of the Select Committee on Structure and Governance to the NASD Board of Governors ("Select Committee Report") and the Commission's 1996 Report Pursuant to Section 21(a) of the Act ("Section 21(a) Report"). Among other things, Article IX, Section 4 was amended to authorize the appointment of the Executive Committee. The 1997 amendments included requirements that: (i) Nasdaq and NASD Regulation be represented on the committee; and (ii) at least two of the committee members not be affiliated with those subsidiaries. *See* Exchange Act Release No. 39326 (November 14, 1997), 62 FR 62385 (November 21, 1997). Following the acquisition of Amex in 1998, Amex was added to the entities entitled to representation on the Committee. *See* Exchange Act Release No. 40622 (October 30, 1998), 63 FR 59819 (November 5, 1998). Nasdaq's right to representation on the committee was terminated in 2001. *See* Exchange Act Release No. 44280 (May 8, 2001), 66 FR 26892 (May 15, 2001).

[7] Telephone conversation between Anne H. Wright, Associate Vice President and Associate General Counsel, NASD and Rebekah C. Liu, Special Counsel, Division, Commission, on September 13, 2004.

[8] Among other things, NASD represented that it would exercise its powers and its managerial influence to ensure that Amex fulfilled its self-regulatory obligations by directing Amex to take action necessary to effectuate its purposes and functions as a national securities exchange operating pursuant to the Act, and ensuring that Amex had and appropriately allocated such financial, technological, technical, and personnel resources as may be necessary or appropriate to meet its obligations under the Act. NASD also committed to refraining from taking any action with respect to Amex that would impede efforts by Amex to carry out its SRO obligations. *See* Exchange Act Release No. 40443 (September 16, 1998), 63 FR 51108 (September 24, 1998) (File No. SR–NASD–98–67—Policies Regarding Authority Over American Stock Exchange LLC and Composition of Board of Governors of American Stock Exchange LLC).

[9] *See* Exchange Act Release No. 40622 (October 30, 1998), 63 FR 59819 (November 5, 1998) (describing NASD's undertakings regarding Amex).

[10] 15 U.S.C. 78*o*–3(b)(4).

[11] 15 U.S.C. 78*o*–3(b)(6).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2004–110 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–110. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–110 and should be submitted on or before October 14, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2354 Filed 9–22–04; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50404; File No. SR–NYSE–2004–33]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto To Amend Exchange Rule 345A ("Continuing Education for Registered Persons")

September 16, 2004.

On June 28, 2004, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] to rescind all currently effective exemptions from required participation in the Regulatory Element programs. On August 4, 2004, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on August 17, 2004.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

NYSE Rule 345A currently provides, in part, that no member or member organization shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person, unless such person has complied with the Regulatory Element of the continuing education requirement set forth in this Rule.[5] The Regulatory Element component of NYSE Rule 345A requires each registered person to complete a standardized, computer-based, interactive continuing education program within 120 days of their second registration anniversary date and every three years thereafter, or as otherwise prescribed by the Exchange. Persons who fail to complete the Regulatory Element are deemed inactive and may not perform in any capacity or be compensated in any way requiring registration.

Currently, registered persons who were continuously registered, without a serious disciplinary action,[6] for more than ten years as of the Rule's effective date (*i.e.*, July 1, 1995) were initially, and continue to be, exempt from Regulatory Element requirements under NYSE Rule 345A. The "graduated" exemption, although discontinued as of July 1998,[7] continues to apply to registered persons who were "graduated"[8] prior to the discontinuation of the exemption.

However, in response to recommendations made by the Securities Industry/Regulatory Council on Continuing Education (the "Council"), the NYSE submitted a proposed rule change to rescind all currently effective exemptions from required participation in Regulatory Element programs.[9] The Council believes that there is great value in exposing all registered industry participants to the full benefit of Regulatory Element programs.

Proposed amendments are expected to become effective on April 4, 2005, due to changes that would have to be made to the CRD System. Should the necessary CRD System changes be delayed, the effective date would be within 30 days of the implementation of such changes. NYSE membership will be notified via an Information Memo.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of section 6 of the Act,[10] and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds that the proposed rule change is consistent

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated August 3, 2004 ("Amendment No. 1"). In Amendment No. 1, the NYSE made technical corrections and clarifications to the filing.

[4] *See* Securities Exchange Act Release No. 50177 (August 10, 2004), 69 FR 51134 (August 17, 2004).

[5] *See* NYSE Rule 345A(a).

[6] For purposes of NYSE Rule 345A, a "disciplinary action" includes statutory disqualification as defined in Section 3(a)(39) of the Act; suspension or imposition of a fine of $5,000 or more; or being subject to an order from a securities regulator to re-enter the Regulatory Element program. *See* Rule 345A(a)(3)(i)–(iii).

[7] *See* Securities Exchange Act Release No. 39712 (March 3, 1998), 63 FR 11939 (March 11, 1998)(SR–NYSE–97–33).

[8] Once the tenth anniversary program requirement was satisfied, the registered person became exempt from Regulatory Element requirements going forward (absent a serious disciplinary event).

[9] The Council recommended at its December 2003 meeting that SRO Rules (*e.g.*, NYSE Rule 345A) be amended to eliminate existing exemptions from the Regulatory Element and to require all "grandfathered" and "graduated" persons to fully participate in future standardized continuing education programs, according to the Rule's prescribed schedule. *See* proposed NYSE Rule 345A(a)(1). Note that the proposed amendments renumber existing paragraphs of the Rule; the Rule's prescribed schedule is currently found in NYSE Rule 345A(a).

[10] 15 U.S.C. 78f(6).

[11] In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

with section 6(b)(5) of the Act,[12] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change should help to ensure that all registered persons are kept up-to-date on regulatory, compliance, and sales practice-related industry issues. Further, the Commission believes that the proposed rule change will reinforce the importance of compliance with just and equitable principles of trade by exposing all registered industry participants to the full benefits of the Regulatory Element programs, which include a new Regulatory Element module that focuses specifically on ethics.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR–NYSE–2004–33), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2353 Filed 9–22–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50401; File No. SR–Phlx–2004–39]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto Relating to Retroactive Application of Permit Holder Fees and Billing Policies

September 16, 2004.

On June 30, 2004, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to: (1) Apply retroactively a recent amendment to its schedule of fees and charges ("Fee Schedule") that adopted a permit fee category, designated as "Other," for permit holders who did not fit within any other permit fee categories; (2) apply retroactively a billing policy that set the date of notification for terminating a permit as the date that permit fee billing would cease; and (3) assess retroactively only one monthly permit fee in certain limited situations where two monthly permit fees otherwise would be imposed.[3] The proposal would apply these Fee Schedule changes and billing policies retroactively to February 2, 2004, the date that the permit fees were first imposed. On July 12, 2004, Phlx filed Amendment No. 1 to the proposed rule change.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on August 6, 2004.[5] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[6] and, in particular, the requirements of section 6(b) of the Act[7] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act,[8] which requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The proposed rule change would apply recent amendments to the Exchange's Fee Schedule and billing policies retroactively to February 2, 2004, the date that permit fees were first imposed by the Exchange in connection with its recent demutualization.[9] The proposed rule change is intended to remedy the fact that a few permit holders did not fit into any of the permit fee categories initially established by the Exchange and thus were not subject to permit fees as of February 2, 2004. Thus, the proposed rule change is intended to apply the Exchange's permit fees and permit fee billing practices in an even-handed manner to all Exchange member organizations since the introduction of the permit fees on February 2, 2004.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR-Phlx-2004–39), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2350 Filed 9–22–04; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Phlx previously adopted these changes to its Fee Schedule and billing policies in a rule change that was effective on May 3, 2004, the date it was filed with the Commission. *See* Securities Exchange Act Release No. 49856 (June 15, 2004), 69 FR 3441 (June 21, 2004) (SR–Phlx–2004–32).

[4] *See* letter from Murray L. Ross, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, SEC, dated July 9, 2004 ("Amendment No. 1"). In Amendment No. 1, the Exchange removed references in the Fee Schedule to the proposed date that the retroactive fees would take effect.

[5] *See* Securities Exchange Act Release No. 50129 (July 30, 2004), 69 FR 47970.

[6] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *See* Securities Exchange Act Release No. 49098 (January 16, 2004), 69 FR 3974 (January 27, 2004) (Order approving the demutualization of Phlx).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4836]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: International Education Training Program

Announcement Type: Cooperative Agreement.

Funding Opportunity Number: ECA/A/S/A–05–12.

Catalog of Federal Domestic Assistance Number: 00.000.

Dates: None.

Application Deadline: November 12, 2004.

Executive Summary: Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3), including consortia, may submit proposals to train international education professionals from accredited U.S. colleges and universities throughout the United States to work effectively with international students, scholars, international exchange programs, and U.S. study abroad programs and to enhance community involvement with participants in these programs. Funded activities must be open to staff from any accredited U.S. institution of higher education.

I. Funding Opportunity Description

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the

United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Purpose:

(1) To support the training and development of international educational exchange professionals based at U.S. institutions of higher learning who assist international students and scholars studying in the U.S. and American students seeking to study overseas.

(2) To support the involvement of international students with the U.S. institutions and local communities where they study and live. Through programs that enable foreign students and scholars to achieve a better understanding of the United States during their time in this country and that encourage them to help Americans learn more about the world outside our borders, the potential of foreign students to contribute to international understanding is enhanced.

Overview: International educational exchanges advance the mutual understanding and cooperation of people in the United States with the rest of the world. A growing number of international education professionals work with international students and scholars, American students, international exchange programs, and U.S. study abroad programs on U.S. campuses and in the communities served by these institutions. The work of these international education professionals complements the efforts undertaken by the State Department through its Public Affairs Sections as well as through bi-national Fulbright Commissions, helping to provide the basis for managing educational exchanges professionally and for ensuring that these exchanges benefit the students and scholars who participate in them.

International education professionals need specific skills and tools in order to manage and expand their institutions' international exchange agendas. The training of these professionals should be designed to strengthen the programs and services offered by their institutions. When international education professionals receive up-to-date training in their field, international students and scholars gain a more well-rounded U.S. experience and a broader appreciation of U.S. academic and community values, while U.S. students become engaged more frequently in study abroad programs and learn more about how the U.S. relates to the rest of the world than they could learn at home.

The issues confronted by international exchange professionals are more complex than they had been prior to September 11, 2001. There are new laws and regulations governing visa processing, and new, security-related procedures for the entry and exit of foreign nationals. A new information processing system—SEVIS (the Student and Exchange Visitor Information System)—has been established to screen students and scholars before their entry into the United States and to monitor their status after they arrive. Responsible officials at educational institutions must be familiar with the system and how to use it. New visa application procedures add time to the academic application process, and new regulations require closer tracking of students during their stay in the U.S.

At the same time, other countries have increased their attempts to attract international students, and U.S. institutions must now compete with other countries for talented international students just as they compete for the best U.S. students.

While in recent years the number of U.S. students who study and travel abroad has increased, they still represent only a small fraction of the total number of U.S. students at U.S. institutions of higher education. U.S. institutions continue to struggle to engage more U.S. students in study abroad programs.

This RFGP invites proposals to train international educational exchange professionals in U.S. higher education in ways that will equip them to improve the capacity of their institutions to participate effectively in international exchanges of scholars and students. The Bureau encourages applicant organizations to propose a program designed to address creatively the current challenges faced by U.S. educational institutions in the development and administration of their international programs. The program proposed must include the following initiative:

- Training for U.S. international education professionals with eligibility for participation open to staff from any accredited U.S. institution of higher education. The training programs should encourage and reinforce cooperation among professionals in this field by ensuring that they have up-to-date knowledge of current issues in international education and that they are equipped to provide the human resources that are required to administer international programs on their campuses. U.S. Department of State sponsorship will be recognized at all training events, and appropriate ECA representatives should be invited to attend.

The proposed program could include the following optional components:

- Cooperative grants to institutions participating in international education training to enhance the involvement of international students in the U.S. with American life and culture on their campuses. These grants should be given to institutions for substantive, high impact activities.
- Publications, materials, and workshops that promote international education and educational exchange at U.S. institutions of higher education and that contribute to the internationalization of U.S. post-secondary education.

II. Award Information

Type of Award: Cooperative Agreement.

Fiscal Year Funds: FY 2005.

Approximate Total Funding: $535,000.

Approximate Number of Awards: One.

Approximate Average Award: $535,000.

Anticipated Award Date: Pending availability of funds, January 1, 2005.

Anticipated Project Completion Date: December 31, 2005.

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, the Bureau of Educational and Cultural Affairs may renew this cooperative agreement for two additional fiscal years before openly competing it again.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3). Both single institutions and consortia may apply.

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs that are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

(a) Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates awarding one cooperative agreement, in an amount up to $535,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

(b) Technical Eligibility: All proposals must comply with the following: proposals must address the requirements listed in this Request for Grant Proposals and the technical eligibility requirements outlined in the accompanying Proposal Submission Instructions (PSI) document. In addition, proposals must develop a program open to all accredited U.S. institutions of higher education or they will be declared technically ineligible and given no further consideration in the review process.

IV. Application and Submission Information

Note: Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information To Request an Application Package

Please contact the Educational Information and Resources Branch of the Global Educational Programs Office, ECA/A/S/A, Room 349, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone number 202–619–5434 and fax number 202–401–1433, e-mail address *frisbiejz@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A/S/A–05–12 located at the top of this announcement when making your request.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document that consists of required application forms and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Bureau Program Officer Jean Frisbie and refer to the Funding Opportunity Number ECA/A/S/A–05–12 located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm*. Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The original and six copies of the application should be sent per the instructions under IV.3e. "Submission Dates and Times section" below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please refer to the solicitation package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Diversity, Freedom and Democracy Guidelines. Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.1. Program Monitoring and Evaluation. Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning

as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are "smart" (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes*, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. *Participant satisfaction* with the program and exchange experience.

2. *Participant learning*, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. *Participant behavior*, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. *Institutional changes*, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

Describe your plans for: sustainability, overall program management, staffing, and coordination with ECA.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3e.2. Allowable costs for the program include the following:

(1) Salaries and benefits.

(2) Office supplies and expenses, including communications, postage, and shipping.

(3) Other direct and indirect costs.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Submission Dates and Times: Application Deadline Date: Friday, November 12, 2004.

Explanation of Deadlines: In light of recent events and heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. ECA will *not* notify you upon receipt of application. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered. Applications may not be submitted electronically at this time.

Applicants must follow all instructions in the Solicitation Package.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to "ECA/EX/PM".

The original and six copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/A–05–12, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department

elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for grants resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the Program Idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission. Proposals must be responsive to the objectives stated in this document.

2. *Program Planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability to Achieve Program Objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan. The timeline for programs should be realistic and appropriate.

4. *Multiplier Effect/Impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information.

5. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events.

9. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended.

10. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

VI. Award Administration Information

VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2. Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, "Cost Principles for Nonprofit Organizations"

Office of Management and Budget Circular A–21, "Cost Principles for Educational Institutions"

OMB Circular A–87, "Cost Principles for State, Local and Indian Governments"

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants., http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI*

VI.3. Reporting Requirements

You must provide ECA with a hard copy original plus two copies of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) Quarterly financial reports and quarterly program reports that contain descriptions and evaluations of activities carried on during that period.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VII. Agency Contacts

For questions about this announcement, contact: Program Officer Jean Frisbie, Educational Information and Resources Branch, Global Educational Programs Office, Room 349, ECA/A/S/A, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone 202–619–5434 and fax 202–401–1433, *frisbiejz@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/S/A–05–12.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the

part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: September 14, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 04–21385 Filed 9–22–04; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–19120]

Notice of Receipt of Petition for Decision That Nonconforming 2001 Ducati 900 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2001 Ducati 900 motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2001 Ducati 900 motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is 30 days after publication in the **Federal Register**.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9 a.m. to 5 p.m.) Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (volume 65, number 70; pages 19477–78), or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

J.K. Technologies of Baltimore, Maryland ("JK") (Registered Importer 90–006) has petitioned NHTSA to decide whether non-U.S. certified 2001 Ducati 900 motorcycles are eligible for importation into the United States. The vehicles that JK believes are substantially similar are 2001 Ducati 900 motorcycles that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it compared non-U.S. certified 2001 Ducati 900 motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

JK submitted information with its petition intended to demonstrate that non-U.S. certified 2001 Ducati 900 motorcycles as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2001 Ducati 900 motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses,* 111 *Rearview Mirrors,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* 120 *Tire Selection and Rims for Vehicles other than Passenger Cars,* 122 *Motorcycle Brake Systems,* and 205 *Glazing Materials.*

The petitioner further contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated below:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of U.S.-model front and rear reflex reflectors.

Standard No. 123 *Motorcycle Controls and Displays:* installation of U.S.-model speedometer and left commutator.

The petitioner also states that a certification label must be affixed to the motorcycle to comply with the requirements of 49 CFR part 567.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 04–21378 Filed 9–22–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–19121]

Notice of Receipt of Petition for Decision That Nonconforming 2000 BMW R1150 GS Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2000 BMW R1150 GS motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2000 BMW R1150 GS motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is 30 days after publication in the **Federal Register**.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9 a.m. to 5 p.m.) Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (volume 65, number 70; pages 19477–78), or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. (WETL) (Registered Importer 90–005) has petitioned NHTSA to decide whether non-U.S. certified 2000 BMW R1150 GS motorcycles are eligible for importation into the United States. The vehicles that WETL believes are substantially similar are 2000 BMW R1150 GS motorcycles that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2000 BMW R1150 GS motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

WETL submitted information with its petition intended to demonstrate that non-U.S. certified 2000 BMW R1150 GS motorcycles as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2000 BMW R1150 GS motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses*, 111 *Rearview Mirrors*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, 122 *Motorcycle Brake Systems*, and 205 *Glazing Materials*.

The petitioner further contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated below:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of the following components (a) U.S.-model headlamps; and (b) U.S.-model front and rear reflex reflectors.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* (a) Installation of a tire information placard; and (b) inspection of all vehicles to ensure compliance with rim marking requirements, and replacement of rims that are not properly marked.

Standard No. 123 *Motorcycle Controls and Displays:* installation of U.S.-model speedometer and odometer units, or modification of the speedometer and odometer unit components so that the speedometer reads in miles per hour.

The petitioner also states that a certification label must be affixed to the motorcycle to comply with the requirements of 49 CFR part 567.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 04–21377 Filed 9–22–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Application for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's

Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Name of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before October 25, 2004.

ADDRESSES: Address Comments To: Record Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If Confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the application are available for inspection in the Records Center, Nassif Building, 400 7th Street, SW., Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of exemption is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on September 27, 2004.

R. Ryan Posten,

Exemption Program Officer, Office of Hazardous Materials Safety Exemptions and Approvals.

NEW EXEMPTION

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
13856–N	.....	Dow Chemical Company, Midland MI.	49 CFR 172.203(a); 173.26 and 179.13.	To authorize the manufacture and use of DOT class 111S tank cars exceeding the presently authorized weight limit for use in transporting Class 3 materials. (mode 2.)
13858–N	.....	US Ecology Idaho, Inc. (USEI) Grand View, ID.	49 CFR 173.427(b)	To authorize the transportation in commerce of exclusive use shipments of bulk soil-like radioactive LSA–II waste material in covered dump trucks. (mode 1.)
13859–N	.....	Degussa Corporation, Parsippany, NJ.	49 CFR 177.848	To authorize the transportation in commerce of certain hazardous materials to be transported together in the same transport vehicle.
13860–N	.....	United States Enrichment Corporation (USEC), Paducah, KY.	49 CFR 173.420(a)(3)(ii) and (iii).	To authorize the transportation in commerce of non-specification DOT cylinders for use in transporting uranium hexafluoride, class 7. (mode 1.)
13876–N	.....	City of Kotzebue, Kotzebue, AK.	49 CFR 173.159	To authorize the transportation in commerce of wet batteries for disposal to be transported in non-DOT specification packaging. (modes 4, 5.)
13896–N	.....	FIBA Technologies, Inc., Westboro, MA.	49 CFR 180.211	To authorize the repair of DOT–3 series cylinders by external re-threading of the cylinder neck. (modes 1, 6.)

[FR Doc. 04–21379 Filed 9–22–04; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Request of modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new application for exemption to facilitate processing.

DATES: Comments must be received on or before October 8, 2004.

ADDRESSES: *Address Comments to:* Record Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the application are available for inspection in the Records Center, Nassif Building, 400 7th Street, SW., Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of exemption is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on September 16, 2004.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Exemptions & Approvals.

MODIFICATION EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Modification exemption	Nature of exemption thereof
9275–M		Alcoa Inc. Pittsburgh, PA.	49 CFR Parts 100–180.	9275	To modify the exemption to authorize revising the proper shipping description to allow transportation of medical screening solutions containing ethyl alcohol liquids.
10791–M		Con-Quest Products, Inc. Elk Grove Village, IL.	49 CFR 173.12(b)(2)	10791	To modify the exemption to authorize a design change of the UN 4G fiberboard box filled with a polyethylene film bag liner for the transportation of various Hazard Class/Division waste hazardous materials.
11536–M		The Boeing Company Los Angeles, CA.	49 CFR 173.302; 173.62; 173.159; 173.304.	11536	To modify the exemption to authorize an increase of spacecraft pressure vessels from two to four and the transportation of an additional Division 2.1 material.
11670–M		Oilphase Schlumberger Dyce, Aberdeen Scotland.	49 CFR 178.36	11670	To modify the exemption to authorize the use of a newly designed non-DOT specification oil well sampling cylinder for the transportation of Division 2.1 materials.
12744–M	RSPA–01–10126	Alcoa Inc. Pittsburgh, PA.	49 CFR 171–180	12744	To modify the exemption to authorize a Division 4.3, PGI material be allowed to be transported as a "material of trade" item.
13321–M	RSPA–03–16598	Quest Diagnostics, Inc. Collegeville, PA.	49 CFR 173.28(b)(3)	13321	To modify the exemption to authorize passenger-carrying aircraft as an additional mode of transportation for certain Division 6.2 materials.
13442–M		PRC-DeSoto International Mojave, CA.	49 CFR 173.173(b)(2).	13442	To reissue the exemption originally issued on an emergency basis for a Class 3 material in inner plastic packagings not exceeding 5 L capacity in addition to the glass and metal packagings.
13796–M	RSPA–04–18891	Rhodia Inc. Cranbury, NJ.	49 CFR 173.188	13796	To reissue the exemption originally issued on an emergency basis for the transportation of a Division 4.2 material while under water in alternative packaging.

[FR Doc. 04–21380 Filed 9–22–04; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Potential for Damage to Pipeline Facilities Caused by the Passage of Hurricane Ivan

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

ACTION: Notice; issuance of advisory bulletin.

SUMMARY: RSPA is issuing this advisory bulletin to owners and operators of gas and hazardous liquid pipelines to communicate the potential for damage to pipeline facilities caused by the passage of Hurricane Ivan on September 16, 2004.

ADDRESSES: This document can be viewed on the Office of Pipeline Safety (OPS) home page at: *http://ops.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Richard Huriaux, (202) 366–4565, or by e-mail at *richard.hurriaux@rspa.dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of this advisory bulletin is to warn all operators of gas and hazardous liquid pipelines in the Gulf of Mexico and adjacent state waters that pipeline safety problems may have been caused by the passage of Hurricane Ivan on September 16, 2004. RSPA received several reports of damage to pipeline facilities in the offshore and inland areas of Louisiana, Mississippi, Alabama, and the Florida Panhandle.

It was reported in newspapers that officials with Houston-based Transocean found the semi-submersible drilling rig Deepwater Nautilus late Thursday, 70 miles from its original mooring site south of Mobile, Ala. No crew was aboard the rig, which likely rode through winds in excess of 140 mph and seas as high as 40 feet. The rig is built to handle winds of 120 mph, according to company data.

It was also reported that Diamond Offshore Drilling reported one of its rigs, the Ocean Star, was found drifting 12 miles from its mooring 80 miles south of Mobile, Ala.

Energy companies evacuated workers from 545 platforms and 69 drilling rigs in the Gulf, shutting in almost 4 million barrels of oil and 17 billion cubic feet of natural gas according to the U.S. Department of the Interior's Minerals Management Service.

The Federal pipeline safety regulations at 49 CFR parts 192 and 195 require operators to shut down and start up pipeline facilities in a safe manner and to conduct periodic pipeline patrols to detect unusual operating and maintenance conditions and to take corrective action if conditions are unsafe. Because this patrolling is generally by aircraft, pipelines exposed or damaged on the sea floor may not be visually detected. It is likely that some pipeline facilities and pipelines located in the area of Hurricane Ivan's impact are damaged or exposed.

The gas and hazardous liquid pipeline safety regulations require that operators mitigate the safety condition if a pipeline facility is damaged or if a pipeline is exposed on the sea floor or constitutes a hazard to navigation. The regulations require that damaged pipeline facilities or exposed pipelines must be repaired, replaced, or reburied

to eliminate the hazard. And, pipelines that are a hazard to navigation must be promptly reported to the National Response Center (NRC) at 1–800–424–8802.

II. Advisory Bulletin (ADB–04–04)

To: Owners and operators of gas and hazardous liquid pipeline systems.

Subject: Potential for damage to pipeline facilities caused by the passage of Hurricane Ivan.

Advisory: All operators of gas and hazardous liquid pipelines in the Gulf of Mexico and adjacent state waters are warned that pipeline safety problems may have been caused by the passage of Hurricane Ivan on September 16, 2004. RSPA received several reports of damage to pipeline facilities, particularly offshore Louisiana.

Pipeline operators should consider taking the following actions regarding the gas and hazardous liquid pipelines located in areas impacted by Hurricane Ivan:

1. Identify persons who normally engage in shallow water commercial fishing, shrimping, and other marine vessel operations and caution them that submerged offshore pipelines may have become unprotected on the sea floor. Marine vessels operating in water depths comparable to a vessel's draft or when operating bottom dragging equipment can be damaged and their crews endangered by an encounter with a submerged pipeline.

2. Identify and caution marine vessel operators in offshore shipping lanes and other offshore areas where Hurricane Ivan may have affected a pipeline that deploying fishing nets or anchors, and dredging operations may damage the pipeline, their vessels, and endanger their crews.

3. In the process of bringing offshore and inland transmission facilities back online, operators are advised to check for structural damage to piping, valves, emergency shutdown systems, risers and supporting systems. Aerial inspections of pipeline routes should be conducted to check for leaks in the transmission systems. In areas where floating and jack-up rigs have moved and their path could have been over the pipelines, operators are advised to review possible routes and to check for sub-sea pipeline damage where required.

4. Identify and correct any conditions on the pipeline that violate the Federal pipeline safety regulations. (49 U.S.C. Chapter 601; 49 CFR 1.53).

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 04–21382 Filed 9–22–04; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub No. 5) (2004–4)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the fourth quarter 2004 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The fourth quarter 2004 RCAF (Unadjusted) is 1.097. The fourth quarter 2003 RCAF (Adjusted) is 0.544. The fourth quarter 2004 RCAF–5 is 0.519.

EFFECTIVE DATE: October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Mac Frampton, (202) 565–1541. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, call ASAP Document Solutions at (301) 577–2600. [Assistance for the hearing impaired is available through FIRS: 1–800–877–8339.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: September 13, 2004.

By the Board, Chairman Nober, Vice Chairman Mulvey, and Commissioner Buttrey.

Vernon A. Williams,

Secretary.

[FR Doc. 04–21355 Filed 9–22–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Deposits and Savings Accounts by Office

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

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 comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to continue the information collection of deposit and savings account information by office.

DATES: Submit written comments on or before November 22, 2004.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Pamela Schaar, Information Systems & Finance, (202) 906–7205, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information

collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Deposits and Savings Accounts by Office.

OMB Number: 1550–0004.

Form Number: OTS Form 248.

Description: This information collection provides deposit data essential for analysis of the market share of deposits required to evaluate the competitive impact of mergers, acquisitions, and branching applications on which OTS must act.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 902.

Estimated Burden Hours per Response: 1 hour.

Estimated Frequency of Response: Annually.

Estimated Total Burden: 902 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Mark Menchik, (202) 395–3176, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503.

Dated: September 14, 2004.

By the Office of Thrift Supervision

James E. Gilleran,

Director.

[FR Doc. 04–21391 Filed 9–22–04; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Homeless Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Homeless Veterans will be held from Monday, October 25, 2004, through Wednesday, October 27, 2004, in Room 427 at the Doubletree Hotel, 3203 Quebec Street, Denver, CO 80207. On October 25, the session will convene at 1 p.m. and end at 4:30 p.m. On October 26–27, the sessions will convene at 8 a.m. The session will end at 4 p.m. on October 26 and at 12 noon on October 27. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs with an ongoing assessment of the effectiveness of the policies, organizational structures, and services of the Department in assisting homeless veterans. The Committee shall assemble and review information relating to the needs of homeless veterans and provide ongoing advice on the most appropriate means of providing assistance to homeless veterans. The Committee will make recommendations to the Secretary regarding such activities.

In the morning of October 25, the Committee will tour Chronic Homeless Initiative and Homeless Grant and Per Diem Programs in Denver, Colorado. In the afternoon, the Committee will receive follow-up information about improving access to mental health and substance abuse services, review of initiatives for veterans who have been incarcerated, and review VA's Compensated Work Therapy Program. On October 26, the Committee will receive reports and follow-up information in response to its 2004 Annual Report to the Secretary. On October 27, the Committee will continue to receive reports and hold discussions on issues of housing, employment, healthcare and overall coordination of services for homeless veterans.

Those wishing to attend the meeting should contact Mr. Pete Dougherty, Designated Federal Officer, at (202) 273–5764. No time will be allocated for receiving oral presentations during the public meeting. However, the Committee will accept written comments from interested parties on issues affecting homeless veterans. Such comments should be referred to the Committee at the following address: Advisory Committee on Homeless Veterans, Homeless Veterans Programs Office (075D), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: September 13, 2004.

By direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 04–21409 Filed 9–22–04; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

National Research Advisory Council; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the National Research Advisory Council will hold a meeting on Thursday, October 7, 2004, at the Hamilton Crowne Plaza Hotel, 14th & K Streets, NW., Washington, DC, from 8:30 a.m. until 3 p.m. The meeting is open to the public. The purpose of the Council is to provide external advice and review for VA's research mission.

The meeting will begin with opening remarks by the Acting Chief Research and Development Officer. The Council will receive information briefings on the status of the VA research program.

Any member of the public wishing to attend the meeting or wishing further information should contact Ms. Karen Scott, Designated Federal Officer, at (202) 254–0200. Oral comments from the public will not be accepted at the meeting. Written statements or comments should be transmitted electronically to *karen.scott@hq.med.va.gov* or mailed to Ms. Scott at Department of Veterans Affairs, Office of Research and Development (12C), 810 Vermont Ave., NW., Washington, DC 20420. Items mailed via United States Postal Service require 7–10 days for delivery due to delays resulting from security measures.

Dated: September 15, 2004.

By direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 04–21408 Filed 9–22–04; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Executive Committee to the Voluntary Service National Advisory Committee; Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463

(Federal Advisory Committee Act) that the Executive Committee to the Department of Veterans Affairs Voluntary Services (VAVS) National Advisory Committee (NAC) will meet October 18–19, 2004, at the Double Tree Paradise Valley Resort, Scottsdale, Arizona. The sessions will begin at 8:30 a.m. each day and end at 4:30 p.m. on October 18 and at 12 noon on October 19. The meeting is open to the public.

The NAC consists of sixty-three national organizations and advises the Secretary, through the Acting Under Secretary for Health, on the coordination and promotion of volunteer activities within VA health care facilities. The Executive Committee consists of nineteen representatives from the NAC member organizations and acts as the NAC governing body in the interim period between NAC annual meetings.

Business topics for the October 18 morning session include: review goals and objectives, review of minutes, Veterans Health Administration update and a VAVS update of the Voluntary Service program's progress since the 2004 NAC annual meeting, Parke Board update, review of the 2004 annual meeting evaluations and the VAVS Partner's Treasurer report. The October 18 afternoon business session topics include: The 59th annual meeting plans, workshop and plenary sessions/ suggestions. The October 19 morning business session topics include: 2006 NAC annual meeting planning, review of recommendations from the 58th VAVS NAC meeting, subcommittee reports, standard operating procedure revisions, new business and Executive Committee appointments.

No time will be allocated at this meeting for receiving oral presentations from the public. However, interested persons may either attend or file statements with the Committee. Written statements may be filed either before the meeting or within 10 days after the meeting and addressed to: Ms. Laura Balun, Designated Federal Officer, Voluntary Service Office (10C2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Individuals interested in attending are encouraged to contact Ms. Balun at (202) 273–8952.

By Direction of the Secretary.

Dated: September 13, 2004.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 04–21410 Filed 9–22–04; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Thursday,
September 23, 2004

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Final Frameworks for Late-Season Migratory Bird Hunting Regulations; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AT53

Migratory Bird Hunting; Final Frameworks for Late-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service or we) prescribes final late-season frameworks from which States may select season dates, limits, and other options for the 2004–05 migratory bird hunting seasons. These late seasons include most waterfowl seasons, the earliest of which commences on September 25, 2004. The effect of this final rule is to facilitate the States' selection of hunting seasons and to further the annual establishment of the late-season migratory bird hunting regulations.

DATES: This rule takes effect on September 23, 2004.

ADDRESSES: States should send their season selections to: Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms MBSP–4107–ARLSQ, 1849 C Street, NW., Washington, DC 20240. You may inspect comments during normal business hours at the Service's office in room 4107, 4501 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2004

On March 22, 2004, we published in the **Federal Register** (69 FR 13440) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and dealt with the establishment of seasons, limits, the proposed regulatory alternatives for the 2004–05 duck hunting season, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 9, 2004, we published in the **Federal Register** (69 FR 32418) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks and the regulatory alternatives for the 2004–05 duck hunting season. The June 9 supplement also provided detailed information on the 2004–05 regulatory schedule and announced the Service Migratory Bird Regulations Committee (SRC) and Flyway Council meetings.

On June 23 and 24, we held open meetings with the Flyway Council Consultants at which the participants reviewed information on the current status of migratory shore and upland game birds and developed recommendations for the 2004–05 regulations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands, special September waterfowl seasons in designated States, special sea duck seasons in the Atlantic Flyway, and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2004–05 regular waterfowl seasons. On July 21, we published in the **Federal Register** (69 FR 43694) a third document specifically dealing with the proposed frameworks for early-season regulations. In the August 30, 2004, **Federal Register** (69 FR 52970), we published final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected 2003–04 early-season hunting dates, hours, areas, and limits. Subsequently, on September 1, 2004, we published a final rule in the **Federal Register** (69 FR 53564) amending subpart K of title 50 CFR part 20 to set hunting seasons, hours, areas, and limits for early seasons.

On July 28–29, 2004, we held open meetings with the Flyway Council Consultants, at which the participants reviewed the status of waterfowl and developed recommendations for the 2004–05 regulations for these species. On August 24, 2004, we published in the **Federal Register** (69 FR 52128) the proposed frameworks for the 2004–05 late-season migratory bird hunting regulations. This document establishes final frameworks for late-season migratory bird hunting regulations for the 2004–05 season. We will publish State selections in the **Federal Register** as amendments to §§ 20.101 through 20.107, and § 20.109 of title 50 CFR part 20.

Population Status and Harvest

A brief summary of information on the status and harvest of waterfowl excerpted from various reports was included in the August 24 supplemental proposed rule. For more detailed information on methodologies and results, complete copies of the various reports are available at the address indicated under **ADDRESSES** or from our Web site at *http://migratorybirds.fws.gov*.

Review of Public Comments and Flyway Council Recommendations

The preliminary proposed rulemaking, which appeared in the March 22, 2004, **Federal Register**, opened the public comment period for migratory game bird hunting regulations. The supplemental proposed rule, which appeared in the June 9, 2004, **Federal Register**, discussed the regulatory alternatives for the 2003–04 duck hunting season. Late-season comments are summarized below and numbered in the order used in the March 22 **Federal Register** document. We have included only the numbered items pertaining to late-season issues for which we received written comments. Consequently, the issues do not follow in direct numerical or alphabetical order.

We received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the annual review of the frameworks performed by the Councils, support for continuation of last year's frameworks is assumed for items for which no recommendations were received. Council recommendations for changes in the frameworks are summarized below.

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) Harvest Strategy Considerations, (B) Regulatory Alternatives, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. The categories correspond to previously published issues/discussion, and only those containing substantial recommendations are discussed below.

A. Harvest Strategy Considerations

Council Recommendations: The Atlantic, Central, and Pacific Flyway Councils and the Upper- and Lower-Regulations Committees of the Mississippi Flyway Council recommended the adoption of the "liberal" regulatory alternative, with the exception of some specific bag limits described below in section 1.D. Special Seasons/Species Management. More specifically, recommendations concerned sections iii. Black Ducks, iv. Canvasbacks, and v. Pintails.

Service Response: The Service is continuing development of an AHM protocol that would allow hunting regulations to vary among Flyways in a manner that recognizes each Flyway's unique breeding-ground derivation of mallards. For the 2004 hunting season, we believe that the prescribed regulatory choice for the Mississippi, Central, and Pacific Flyways should continue to depend on the status of midcontinent mallards and that the regulatory choice for the Atlantic Flyway should continue to depend on the status of eastern mallards.

For the 2004 hunting season, the Service is continuing to utilize the same regulatory alternatives as those used last year. The nature of the restrictive, moderate, and liberal alternatives has remained essentially unchanged since 1997, except that extended framework dates have been offered in the moderate and liberal regulatory alternatives since 2002. Also, the Service agreed last year to place a constraint on closed seasons in the western three Flyways whenever the midcontinent mallard breeding-population size (traditional survey area plus Minnesota, Michigan, and Wisconsin) is ≥5.5 million.

Optimal AHM strategies for the 2004 hunting season were calculated using: (1) Harvest-management objectives specific to each mallard stock; (2) the 2004 regulatory alternatives; and (3) current population models and associated weights for midcontinent and eastern mallards. Based on this year's survey results of 8.36 million midcontinent mallards (traditional surveys area plus Minnesota, Michigan, and Wisconsin), 2.51 million ponds in Prairie Canada, and 1.11 million eastern mallards, the prescribed regulatory choice for all four Flyways is the liberal alternative.

Therefore, we concur with the recommendations of the Atlantic, Mississippi, Central, and Pacific Flyways regarding selection of the "liberal" regulatory alternative and adopt the "liberal" regulatory alternative, as described in the June 9 **Federal Register**.

D. Special Seasons/Species Management

iii. Black Ducks

Council Recommendations: The Atlantic Flyway Council recommended allowing States the opportunity to return to a 2-black-duck daily bag limit providing they close the black duck season one day for each day a 2-black-duck bag limit is employed. No offset would be required for days when the black duck bag limit was restricted to 1 bird. Both increased bag days and closed days must be consecutive, except that 1 split is allowed.

Service Response: Last fall the Service began working with the Atlantic Flyway Council and others to develop assessment procedures that could be used to better inform black duck harvest management in the United States. These procedures were intended to help the Service assess the biological implications of any proposed changes to hunting regulations, as well as complement the ongoing effort to develop an international program for the adaptive management of black duck harvests. Based on one phase of this assessment framework, historical harvest rates of black ducks generally have been consistent with the dual management objectives of maximizing sustainable harvest and attaining the North American Waterfowl Management Plan population goal for black ducks. Since 1995, however, overall harvest rates of black ducks have been higher than what seems to be optimal for meeting these management objectives. Unfortunately, not all phases of the assessment work were completed this year, mainly predicting changes in black duck harvest rates associated with proposed changes in hunting regulations. Therefore, the Service believes that it is premature to adopt any proposed changes to black duck hunting regulations without first considering the appropriateness of departing from the traditional management objectives. Further, if regulatory changes are deemed appropriate, any proposal to do so should be accompanied by an assessment to predict what changes in harvest rates would result. Additional concerns relate to the reliability of the black duck breeding ground survey data and the lack of coordination with the Mississippi Flyway or other stakeholders. Thus, we do not support the Atlantic Flyway Council's proposal and encourage the Atlantic Flyway to complete the assessment work we requested last year.

iv. Canvasbacks

Council Recommendations: The Atlantic and Pacific Flyway Councils and the Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the Service allow a "restrictive" canvasback season consisting of a 1-bird daily bag limit and a 30-day season in the Atlantic and Mississippi Flyways and 60-day season in the Pacific Flyway.

The Central Flyway Council recommended that canvasbacks be managed using the "Hunter's Choice Bag Limit" (described in the August 19, 2003, **Federal Register** (68 FR 50016)). However, until the "Hunter's Choice Bag Limit" becomes available, the Council recommends a 39-day season with a 1-bird daily bag limit, which may be split according to applicable zones/split duck hunting configurations approved for each State.

Service Response: Based on regulatory actions in recent years and recommendations from the Flyway Councils, the canvasback harvest strategy was modified this year in the July 21 **Federal Register** to allow partial seasons within the regular duck season. The modification allows a canvasback season length equal to that of the "restrictive" AHM regulatory alternative if a full season is not supported, but the reduced harvest from the restricted season predicts a spring abundance the following year equal to or greater than the objective of 500,000 birds. Otherwise, the season on canvasbacks is closed. Further, based on a recommendation from the Pacific Flyway Council, Alaska has a 1-bird daily bag limit for the entire regular duck season in all years unless the Service determines that it is in the best interest of the canvasback resource to close the season in Alaska as well as the lower 48 States.

This year's spring survey resulted in an estimate of 617,228 canvasbacks. However, the estimate of ponds in Prairie Canada was 2,512,608, which was 25% below average. The allowable harvest in the United States calculated from these numbers is 109,000, which is below the predicted U.S. harvest of 119,000 associated with the "liberal" duck season alternative. Thus, for 2004–05, a canvasback season the entire length of the regular season is not supported. However, the "restrictive" season length within the regular duck season is expected to result in a harvest of about 62,000 canvasbacks, and is supported. Thus, we will adopt a season length at the level of the "restrictive" AHM alternative (*i.e.*, 30 days in the Atlantic and Mississippi Flyways, 39 days in the Central Flyway, and 60 days in the Pacific Flyway) for this year. Seasons may be split according to applicable zones/split duck hunting configurations approved for each State.

v. Pintails

Council Recommendations: The Atlantic, Central, and Pacific Flyway Councils and the Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended a "restrictive" season for pintails consisting of a 1-bird daily bag limit and a 30-day season in the Atlantic

and Mississippi Flyways, a 39-day season in the Central Flyway, and a 60-day season in the Pacific Flyway.

Service Response: For the past two years, partial seasons ("restrictive" AHM alternative) have been used for pintails, which was a departure from the existing interim pintail harvest strategy. This year, the Service requested that the Flyway Councils review the existing strategy; specifically, the provision that provides for a full season with a 1-bird daily bag limit whenever the pintail population exceeds the closure threshold established in the strategy, regardless of projected population impacts. Discussions resulted in our July 21 decision to modify the existing strategy for 2004 as follows:

- Season closed when the breeding-population estimate (BPOP) is less than 1.5 million *and* the projected Fall Flight is less than 2.0 million.
- Partial season (restrictive alternative) when the BPOP *or* Fall Flight exceeds the closure level but the BPOP is less than 2.5 million *and* projections in the strategy predict a decline in the following year's BPOP (not including a 6% growth factor).
- Full season, minimum 1-bird daily bag limit when the BPOP exceeds 2.5 million, regardless of the following year's BPOP projection.
- All other existing provisions of the strategy continue to apply.

Based on the modified strategy, a pintail breeding-population estimate of 2.18 million and a Fall-Flight projection of 2.64 million results in a projected 20 percent decline in next year's breeding population with a full season and 1-bird daily bag limit. Therefore, we are adopting a season length at the level of the "restrictive" AHM alternative (*i.e.*, 30 days in the Atlantic and Mississippi Flyways, 39 days in the Central Flyway, and 60 days in the Pacific Flyway) for this year. Seasons may be split according to applicable zones/split duck hunting configurations approved for each State.

In addition, we recommend that further review of the strategy be cooperatively undertaken during the coming year prior to finalizing a pintail strategy to be used until a full incorporation of pintails into the formal AHM process is achieved.

4. Canada Geese

B. Regular Seasons

The Atlantic Flyway Council recommended that the Atlantic Population (AP) Canada goose season consist of a 45-day season with a daily bag limit of 3 geese in the New England and Mid-Atlantic Regions with a framework opening date of the fourth Saturday in October and a closing date of January 31. In the Chesapeake Region (except Back Bay, Virginia), the Council recommended a season length of 45 days, with a daily bag limit of 1 goose during the first 25 days and 2 geese during the last 20 days of the season. The framework opening date in the Chesapeake Region would be November 15 and the closing date would be January 31. The Council recommended that remaining AP harvest areas (*i.e*, Northeast Hunt Unit in coastal North Carolina and Back Bay, Virginia) remain closed.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended a number of changes in season length, season dates, bag limits, and quotas for Minnesota, Iowa, and Missouri in response to changes in the status of the Eastern Prairie Canada goose population and in Kentucky, Tennessee, Wisconsin, Michigan, and Illinois in response to changes in the status of the Mississippi Valley Population Canada goose population.

The Pacific Flyway Council recommended increasing the season length in Humboldt and Del Norte Counties in California from 16 days to 100 days and increasing the daily bag limit for small Canada geese from 1 to 2 per day.

Service Response: We concur with all the Council recommendations. Further, last year we encouraged the Atlantic Flyway to specify population objectives for AP geese and provide a strategy to guide future harvest management. We appreciate the Flyway's effort during this past year to provide this information.

C. Special Late Season

Council Recommendations: The Atlantic Flyway Council recommended that Connecticut's special late Canada goose season become operational.

Service Response: We concur.

5. White-Fronted Geese

Council Recommendations: The Pacific Flyway Council recommended increasing the season length in the Balance-of-the-State Zone in California from 86 days to 100 days and increasing the daily bag limit for white-fronted geese from 2 to 3 per day except in the Sacramento Valley Special Management Area (west).

Service Response: We concur.

6. Brant

Council Recommendations: The Atlantic Flyway Council recommended a 50-day season with a 2-bird daily bag limit for Atlantic brant in 2004.

Service Response: We concur.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with the Environmental Protection Agency on June 9, 1988. We published a Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341).

In a proposed rule published in the April 30, 2001, **Federal Register** (66 FR 21298), we expressed our intent to begin the process of developing a new Supplemental Environmental Impact Statement for the migratory bird hunting program. We plan to begin the public scoping process in 2005.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat. * * *" Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to adversely affect any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed, and the final frameworks reflect any such modifications. Our biological opinions resulting from this Section 7 consultation are public documents available for public inspection at the address indicated under **ADDRESSES**.

Executive Order 12866

The migratory bird hunting regulations are economically significant and were reviewed by the Office of Management and Budget (OMB) under

Executive Order 12866. As such, a cost/benefit analysis was initially prepared in 1981. This analysis was subsequently revised annually from 1990 to 1996, and then updated in 1998. We have updated again this year. It is further discussed below under the heading Regulatory Flexibility Act. Results from the 2004 analysis indicate that the expected welfare benefit of the annual migratory bird hunting frameworks is on the order of $734 million to $1.064 billion, with a midpoint estimate of $899 million. Copies of the cost/benefit analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.migratorybirds.gov.*

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis discussed under Executive Order 12866. This analysis was revised annually from 1990 through 1995. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, and 2004. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2004 Analysis was based on the 2001 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $481 million and $1.2 billion at small businesses in 2004. Copies of the Analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.migratorybirds.gov.*

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date required by 5 U.S.C. 801 under the exemption contained in 5 U.S.C. 808 (1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 10/31/2004). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations.

A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Civil Justice Reform-Executive Order 12988

The Department, in promulgating this rule, has determined that it will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order-12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, States would have insufficient time to select season dates and limits; to communicate those selections to us; and to establish and publicize the necessary regulations and procedures to implement their decisions. We therefore find that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

Therefore, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended (16 U.S.C. 703–711), we prescribe final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials will select hunting season dates and other options. Upon receipt of season and option selections from these officials, we will publish in the **Federal Register** a final rulemaking amending 50 CFR part 20 to reflect seasons, limits, and shooting hours for the conterminous United States for the 2004–05 season.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2004–05 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

Dated: September 9, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

Final Regulations Frameworks for 2004–05 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department has approved the following frameworks for season lengths, shooting hours, bag and possession limits, and outside dates within which States may select seasons for hunting waterfowl and coots between the dates of September 1, 2004, and March 10, 2005.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Flyways and Management Units

Waterfowl Flyways: Atlantic Flyway—includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway—includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway—includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway—includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

Management Units: High Plains Mallard Management Unit—roughly defined as that portion of the Central Flyway that lies west of the 100th meridian.

Definitions: For the purpose of hunting regulations listed below, the collective terms "dark" and "light" geese include the following species:

Dark geese: Canada geese, white-fronted geese, brant, and all other goose species except light geese.

Light geese: snow (including blue) geese and Ross' geese.

Area, Zone, and Unit Descriptions: Geographic descriptions related to late-season regulations are contained in a later portion of this document.

Area-Specific Provisions: Frameworks for open seasons, season lengths, bag and possession limits, and other special provisions are listed below by Flyway.

Compensatory Days in the Atlantic Flyway: In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, and Virginia, where Sunday hunting is prohibited statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

Atlantic Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 25) and the last Sunday in January (January 30).

Hunting Seasons and Duck Limits: 60 days, except pintails and canvasbacks which may not exceed 30 days, and season splits must conform to each State's zone/split configuration for duck hunting. The daily bag limit is 6 ducks, including no more than 4 mallards (2 hens), 3 scaup, 1 black duck, 1 pintail, 1 canvasback, 1 mottled duck, 1 fulvous whistling duck, 2 wood ducks, 2 redheads, and 4 scoters. A single pintail and canvasback may also be included in the 6-bird daily bag limit for designated youth-hunt days.

Closures: The season on harlequin ducks is closed.

Sea Ducks: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

Merganser Limits: The daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Lake Champlain Zone, New York: The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Lake Champlain Zone of Vermont.

Connecticut River Zone, Vermont: The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Inland Zone of New Hampshire.

Zoning and Split Seasons: Delaware, Florida, Georgia, Maryland, North Carolina, Rhode Island, South Carolina, and Virginia may split their seasons into three segments; Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Vermont, and West Virginia may select hunting seasons by zones and may split their seasons into two segments in each zone.

Canada Geese

Season Lengths, Outside Dates, and Limits: Specific regulations for Canada geese are shown below by State. Unless specified otherwise, seasons may be split into two segments. In areas within States where the framework closing date for Atlantic Population (AP) goose seasons overlaps with special late-season frameworks for resident geese, the framework closing date for AP goose seasons is January 14.

Connecticut: North Atlantic Population (NAP) Zone: Between October 1 and January 31, a 60-day season may be held with a 2-bird daily bag limit in the H Unit and a 70-day season with a 3-bird daily bag in the L Unit.

Atlantic Population (AP) Zone: A 45-day season may be held between the fourth Saturday in October (October 23) and January 31, with a 3-bird daily bag limit.

South Zone: A special experimental season may be held between January 15 and February 15, with a 5-bird daily bag limit.

Delaware: A 45-day season may be held between November 15 and January 31, with a 1-bird daily bag limit during the first 25 days and a 2-bird daily bag limit during the last 20 days.

Florida: A 70-day season may be held between November 15 and February 15, with a 5-bird daily bag limit.

Georgia: In specific areas, a 70-day season may be held between November 15 and February 15, with a 5-bird daily bag limit.

Maine: A 60-day season may be held Statewide between October 1 and January 31, with a 2-bird daily bag limit.

Maryland: Resident Population (RP) Zone: A 70-day season may be held between November 15 and February 15, with a 5-bird daily bag limit.

AP Zone: A 45-day season may be held between November 15 and January 31, with a 1-bird daily bag limit during the first 25 days and a 2-bird daily bag limit during the last 20 days.

Massachusetts: NAP Zone: A 60-day season may be held between October 1 and January 31, with a 2-bird daily bag limit. Additionally, a special season may be held from January 15 to February 15, with a 5-bird daily bag limit.

AP Zone: A 45-day season may be held between the fourth Saturday in October (October 23) and January 31, with a 3-bird daily bag limit.

New Hampshire: A 60-day season may be held statewide between October 1 and January 31, with a 2-bird daily bag limit.

New Jersey: Statewide: A 45-day season may be held between the fourth Saturday in October (October 23) and January 31, with a 3-bird daily bag limit.

Special Late Goose Season Area: An experimental season may be held in designated areas of North and South New Jersey from January 15 to February 15, with a 5-bird daily bag limit.

New York: Southern James Bay Population (SJBP) Zone: A 70-day season may be held between the last Saturday in October (October 25) and January 31, with a 2-bird daily bag limit.

NAP Zone: Between October 1 and January 31, a 60-day season may be held, with a 2-bird daily bag limit in the High Harvest areas; and a 70-day season may be held, with a 3-bird daily bag limit in the Low Harvest areas.

Special Late Goose Season Area: An experimental season may be held between January 15 and February 15, with a 5-bird daily bag limit in designated areas of Chemung, Delaware, Tioga, Broome, Sullivan, Westchester, Nassau, Suffolk, Orange, Dutchess, Putnam, and Rockland Counties.

AP Zone: A 45-day season may be held between the fourth Saturday in October (October 23) and January 31, with a 3-bird daily bag limit.

RP Zone: A 70-day season may be held between the last Saturday in October (October 25) and February 15, with a 5-bird daily bag limit.

North Carolina: SJBP Zone: A 70-day season may be held between October 1 and December 31, with a 2-bird daily bag limit, except for the Northeast Hunt Unit and Northampton County, which is closed.

RP Zone: A 70-day season may be held between October 1 and February 15, with a 5-bird daily bag limit.

Pennsylvania: SJBP Zone: A 40-day season may be held between November 15 and January 14, with a 2-bird daily bag limit.

Pymatuning Zone: A 35-day season may be held between October 1 and January 31, with a 1-bird daily bag limit.

RP Zone: A 70-day season may be held between November 15 and February 15, with a 5-bird daily bag limit.

AP Zone: A 45-day season may be held between the fourth Saturday in October (October 23) and January 31, with a 3-bird daily bag limit.

Special Late Goose Season Area: An experimental season may be held from January 15 to February 15, with a 5-bird daily bag limit.

Rhode Island: A 60-day season may be held between October 1 and January 31, with a 2-bird daily bag limit. An experimental season may be held in designated areas from January 15 to February 15, with a 5-bird daily bag limit.

South Carolina: In designated areas, a 70-day season may be held during November 15 to February 15, with a 5-bird daily bag limit.

Vermont: A 45-day season may be held between the fourth Saturday in October (October 23) and January 31, with a 3-bird daily bag limit.

Virginia: SJBP Zone: A 40-day season may be held between November 15 and January 14, with a 2-bird daily bag limit. Additionally, an experimental season may be held between January 15 and February 15, with a 5-bird daily bag limit.

AP Zone: A 45-day season may be held between November 15 and January 31, with a 1-bird daily bag limit during the first 25 days and a 2-bird daily bag limit during the last 20 days.

RP Zone: A 70-day season may be held between November 15 and February 15, with a 5-bird daily bag limit.

Back Bay Area: Season is closed.

West Virginia: A 70-day season may be held between October 1 and January 31, with a 3-bird daily bag limit.

Light Geese

Season Lengths, Outside Dates, and Limits: States may select a 107-day season between October 1 and March 10, with a 15-bird daily bag limit and no possession limit. States may split their seasons into three segments, except in Delaware and Maryland, where, following the completion of their duck season, and until March 10, Delaware and Maryland may split the remaining portion of the season to allow hunting on Mondays, Wednesdays, Fridays, and Saturdays only.

Brant

Season Lengths, Outside Dates, and Limits: States may select a 50-day season between the Saturday nearest September 24 (September 25) and January 31, with a 2-bird daily bag limit. States may split their seasons into two segments.

Mississippi Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 25) and the last Sunday in January (January 30).

Hunting Seasons and Duck Limits: 60 days, except that the season for pintails and canvasbacks may not exceed 30 days for each species, and season splits must conform to each State's zone/split configuration for duck hunting. The daily bag limit is 6 ducks, including no more than 4 mallards (no more than 2 of which may be females), 3 mottled ducks, 3 scaup, 1 black duck, 1 pintail, 1 canvasback, 2 wood ducks, and 2 redheads. A single pintail and canvasback may also be included in the 6-bird daily bag limit for designated youth-hunt days.

Merganser Limits: The daily bag limit is 5, only 1 of which may be a hooded merganser. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, only one of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Alabama, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Missouri, Ohio, Tennessee, and Wisconsin may select hunting seasons by zones.

In Alabama, Indiana, Iowa, Kentucky, Louisiana, Michigan, Ohio, Tennessee, and Wisconsin, the season may be split into two segments in each zone.

In Arkansas, Minnesota, and Mississippi, the season may be split into three segments.

Geese

Split Seasons: Seasons for geese may be split into three segments. Three-way split seasons for Canada geese require Mississippi Flyway Council and U.S. Fish and Wildlife Service approval and a 3-year evaluation by each participating State.

Season Lengths, Outside Dates, and Limits: States may select seasons for light geese not to exceed 107 days, with 20 geese daily between the Saturday nearest September 24 (September 25) and March 10; for white-fronted geese not to exceed 86 days, with 2 geese daily or 107 days with 1 goose daily between the Saturday nearest September 24 (September 25) and the Sunday nearest February 15 (February 13); and for brant not to exceed 70 days, with 2 brant daily or 107 days with 1 brant daily between the Saturday nearest September 24 (September 25) and January 31. There is no possession limit for light geese. Specific regulations for Canada geese and exceptions to the above general provisions are shown below by State. Except as noted below, the outside dates for Canada geese are the Saturday nearest September 24 (September 25) and January 31.

Alabama: In the SJBP Goose Zone, the season for Canada geese may not exceed 50 days. Elsewhere, the season for Canada geese may extend for 70 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

Arkansas: In the Northwest Zone, the season for Canada geese may extend for 33 days, provided that one segment of at least 9 days occurs prior to October 15. In the remainder of the State, the season may not exceed 23 days. The season may extend to February 15, and may be split into 2 segments. The daily bag limit is 2 Canada geese.

Illinois: The total harvest of Canada geese in the State will be limited to 74,200 birds. The daily bag limit is 2 Canada geese. The possession limit is 10 Canada geese.

(a) North Zone—The season for Canada geese will close after 86 days or when 15,300 birds have been harvested in the Northern Illinois Quota Zone, whichever occurs first.

(b) Central Zone—The season for Canada geese will close after 86 days or when 17,500 birds have been harvested in the Central Illinois Quota Zone, whichever occurs first.

(c) South Zone—The season for Canada geese will close after 86 days or when 8,600 birds have been harvested in the Southern Illinois Quota Zone, whichever occurs first.

Indiana: The season for Canada geese may extend for 70 days, except in the SJBP Zone, where the season may not exceed 50 days. The daily bag limit is 2 Canada geese. .

Iowa: The season may extend for 60 days. The daily bag limit is 2 Canada geese.

Kentucky: (a) Western Zone—The season for Canada geese may extend for 66 days (81 days in Fulton County), and the harvest will be limited to 10,300 birds. Of the 10,300-bird quota, 6,700 birds will be allocated to the Ballard Reporting Area and 2,600 birds will be allocated to the Henderson/Union Reporting Area. If the quota in either reporting area is reached prior to completion of the 66-day season, the season in that reporting area will be closed. If the quotas in both the Ballard and Henderson/Union reporting areas are reached prior to completion of the 66-day season, the season in the counties and portions of counties that comprise the Western Goose Zone (listed in State regulations) may continue for an additional 7 days, not to exceed a total of 66 days (81 days in Fulton County). The season in Fulton County may extend to February 15. The daily bag limit is 2 Canada geese.

(b) Pennyroyal/Coalfield Zone—The season may extend for 50 days. The daily bag limit is 2 Canada geese.

(c) Remainder of the State—The season may extend for 50 days. The daily bag limit is 2 Canada geese.

Louisiana: The season for Canada geese may extend for 9 days. During the season, the daily bag limit is 1 Canada goose and 2 white-fronted geese with an 86-day white-fronted goose season or 1 white-fronted goose with a 107-day season. Hunters participating in the Canada goose season must possess a special permit issued by the State.

Michigan: (a) MVP Zone—The total harvest of Canada geese will be limited to 50,000 birds. The framework opening date for all geese is September 16, and the season for Canada geese may extend for 30 days. The daily bag limit is 2 Canada geese.

(1) Allegan County GMU—The Canada goose season will close after 25 days or when 1,500 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(2) Muskegon Wastewater GMU—The Canada goose season will close after 25 days or when 500 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(b) SJBP Zone—The framework opening date for all geese is September 16, and the season for Canada geese may extend for 30 days. The daily bag limit is 2 Canada geese.

(1) Saginaw County GMU—The Canada goose season will close after 50 days or when 2,000 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(2) Tuscola/Huron GMU—The Canada goose season will close after 50 days or when 750 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(c) Southern Michigan and Central Michigan GMUs—A special Canada goose season may be held between January 1 and January 30. The daily bag limit is 5 Canada geese.

Minnesota: (a) West Zone.

(1) West Central Zone—The season for Canada geese may extend for 25 days. The daily bag limit is 1 Canada goose.

(2) Remainder of West Zone—The season for Canada geese may extend for 35 days. The daily bag limit is 1 Canada goose.

(b) Northwest Zone—The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(c) Remainder of the State—The season for Canada geese may extend for 60 days. The daily bag limit is 2 Canada geese.

(d) Special Late Canada Goose Season—A special Canada goose season of up to 10 days may be held in December, except in the West Central Goose zone. During the special season, the daily bag limit is 5 Canada geese, except in the Southeast Goose Zone, where the daily bag limit is 2.

Mississippi: The season for Canada geese may extend for 70 days. The daily bag limit is 3 Canada geese.

Missouri: (a) Southeast Zone—The season for Canada geese may extend for 77 days. The season may be split into 3 segments, provided that at least 1 segment occurs prior to December 1. The daily bag limit is 3 Canada geese through October 31 and 2 Canada geese thereafter.

(b) Remainder of the State—

(1) North Zone—The season for Canada geese may extend for 77 days, with no more than 30 days occurring after November 30. The season may be split into 3 segments, provided that 1 segment of at least 9 days occurs prior to October 15. The daily bag limit is 3 Canada geese through October 31, 2 Canada geese from November 1 to November 30, and 1 Canada goose thereafter.

(2) Middle Zone—The season for Canada geese may extend for 77 days, with no more than 30 days occurring after November 30. The season may be split into 3 segments, provided that 1 segment of at least 9 days occurs prior

to October 15. The daily bag limit is 3 Canada geese through October 31, 2 Canada geese from November 1 to November 30, and 1 Canada goose thereafter.

(3) South Zone—The season for Canada geese may extend for 77 days. The season may be split into 3 segments, provided that at least 1 segment occurs prior to December 1. The daily bag limit is 3 Canada geese through October 31 and 2 Canada geese thereafter.

Ohio: The season for Canada geese may extend for 70 days in the respective duck-hunting zones, with a daily bag limit of 2 Canada geese, except in the Lake Erie SJBP Zone, where the season may not exceed 35 days and the daily bag limit is 1 Canada goose. A special Canada goose season of up to 22 days, beginning the first Saturday after January 10, may be held in the following Counties: Allen (north of U.S. Highway 30), Fulton, Geauga (north of Route 6), Henry, Huron, Lucas (Lake Erie Zone closed), Seneca, and Summit (Lake Erie Zone closed). During the special season, the daily bag limit is 2 Canada geese.

Tennessee: (a) Northwest Zone—The season for Canada geese may not exceed 72 days, and may extend to February 15. The daily bag limit is 2 Canada geese.

(b) Southwest Zone—The season for Canada geese may extend for 59 days, at least 9 of which must occur before Oct. 16. The daily bag limit is 2 Canada geese.

(c) Kentucky/Barkley Lakes Zone—The season for Canada geese may extend for 59 days, at least 9 of which must occur before Oct. 16. The daily bag limit is 2 Canada geese.

(d) Remainder of the State—The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

Wisconsin: The total harvest of Canada geese in the State will be limited to 49,200 birds.

(a) Horicon Zone—The framework opening date for all geese is September 16. The harvest of Canada geese is limited to 19,000 birds. The season may not exceed 95 days. All Canada geese harvested must be tagged. The daily bag limit is 2 Canada geese, and the season limit will be the number of tags issued to each permittee.

(b) Collins Zone—The framework opening date for all geese is September 16. The harvest of Canada geese is limited to 700 birds. The season may not exceed 68 days. All Canada geese harvested must be tagged. The daily bag limit is 2 Canada geese, and the season limit will be the number of tags issued to each permittee.

(c) Exterior Zone—The framework opening date for all geese is September 16. The harvest of Canada geese is limited to 29,500 birds, 500 of which are allocated to the Mississippi River Subzone. The season may not exceed 95 days, except in the Mississippi River Subzone, where the season may not exceed 71 days. The daily bag limit is 2 Canada geese. In that portion of the Exterior Zone outside the Mississippi River Subzone, the progress of the harvest must be monitored, and the season closed, if necessary, to ensure that the harvest does not exceed 29,000 birds.

Additional Limits: In addition to the harvest limits stated for the respective zones above, an additional 4,500 Canada geese may be taken in the Horicon Zone under special agricultural permits.

Quota Zone Closures: When it has been determined that the quota of Canada geese allotted to the Northern Illinois, Central Illinois, and Southern Illinois Quota Zones in Illinois; the Ballard and Henderson-Union Subzones in Kentucky; the Allegan County, Muskegon Wastewater, Saginaw County, and Tuscola/Huron Goose Management Units in Michigan; and the Exterior Zone in Wisconsin will have been filled, the season for taking Canada geese in the respective zone (and associated area, if applicable) will be closed, either by the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

Central Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 25) and the last Sunday in January (January 30).

Hunting Seasons and Duck Limits: (1) High Plains Mallard Management Unit (roughly defined as that portion of the Central Flyway which lies west of the 100th meridian): 97 days, except pintails and canvasbacks, which may not exceed 39 days, and season splits must conform to each State's zone/split configuration for duck hunting. The daily bag limit is 6 ducks, including no more than 5 mallards (no more than 2 of which may be hens), 1 mottled duck, 1 pintail, 1 canvasback, 2 redheads, 3 scaup, and 2 wood ducks. The last 23 days may start no earlier than the Saturday nearest December 10 (December 11). A single pintail and canvasback may also be included in the 6-bird daily bag limit for designated youth-hunt days.

(2) Remainder of the Central Flyway: 74 days, except pintails and canvasbacks, which may not exceed 39 days, and season splits must conform to each State's zone/split configuration for duck hunting. The daily bag limit is 6 ducks, including no more than 5 mallards (no more than 2 of which may be hens), 1 mottled duck, 1 pintail, 1 canvasback, 2 redheads, 3 scaup, and 2 wood ducks. A single pintail and canvasback may also be included in the 6-bird daily bag limit for designated youth-hunt days.

Merganser Limits: The daily bag limit is 5 mergansers, only 1 of which may be a hooded merganser. In States that include mergansers in the duck daily bag limit, the daily limit may be the same as the duck bag limit, only one of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Kansas (Low Plains portion), Montana, Nebraska (Low Plains portion), New Mexico, Oklahoma (Low Plains portion), South Dakota (Low Plains portion), Texas (Low Plains portion), and Wyoming may select hunting seasons by zones.

In Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming, the regular season may be split into two segments.

In Colorado, the season may be split into three segments.

Geese

Split Seasons: Seasons for geese may be split into three segments. Three-way split seasons for Canada geese require Central Flyway Council and U.S. Fish and Wildlife Service approval, and a 3-year evaluation by each participating State.

Outside Dates: For dark geese, seasons may be selected between the outside dates of the Saturday nearest September 24 (September 25) and the Sunday nearest February 15 (February 13). For light geese, outside dates for seasons may be selected between the Saturday nearest September 24 (September 25) and March 10. In the Rainwater Basin Light Goose Area (East and West) of Nebraska, temporal and spatial restrictions consistent with the experimental late-winter snow goose hunting strategy endorsed by the Central Flyway Council in July 1999, are required.

Season Lengths and Limits:

Light Geese: States may select a light goose season not to exceed 107 days.

The daily bag limit for light geese is 20 with no possession limit.

Dark Geese: In Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and the Eastern Goose Zone of Texas, States may select a season for Canada geese (or any other dark goose species except white-fronted geese) not to exceed 95 days with a daily bag limit of 3. Additionally, in the Eastern Goose Zone of Texas, an alternative season of 107 days with a daily bag limit of 1 Canada goose may be selected. For white-fronted geese, these States may select either a season of 86 days with a bag limit of 2 or a 107-day season with a bag limit of 1.

In South Dakota, for Canada geese in the Big Stone Power Plant Area of Canada Goose Unit 3, the daily bag limit is 3 until November 30, and 2 thereafter.

In Montana, New Mexico and Wyoming, States may select seasons not to exceed 107 days. The daily bag limit for dark geese is 5 in the aggregate.

In Colorado, the season may not exceed 95 days. The daily bag limit is 3 dark geese in the aggregate.

In the Western Goose Zone of Texas, the season may not exceed 95 days. The daily bag limit for Canada geese (or any other dark goose species except white-fronted geese) is 3. The daily bag limit for white-fronted geese is 1.

Pacific Flyway

Ducks, Mergansers, Coots, Common Moorhens, and Purple Gallinules

Hunting Seasons and Duck Limits: Concurrent 107 days, except that the season for pintails and canvasbacks may not exceed 60 days, and season splits must conform to each State's zone/split configuration for duck hunting. The daily bag limit is 7 ducks and mergansers, including no more than 2 female mallards, 1 pintail, 1 canvasback, 4 scaup, and 2 redheads. A single pintail and canvasback may also be included in the 7-bird daily bag limit for designated youth-hunt days.

The season on coots and common moorhens may be between the outside dates for the season on ducks, but not to exceed 107 days.

Coot, Common Moorhen, and Purple Gallinule Limits: The daily bag and possession limits of coots, common moorhens, and purple gallinules are 25, singly or in the aggregate.

Outside Dates: Between the Saturday nearest September 24 (September 25) and the last Sunday in January (January 30).

Zoning and Split Seasons: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may select hunting seasons by zones.

Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may split their seasons into two segments.

Colorado, Montana, New Mexico, and Wyoming may split their seasons into three segments.

Colorado River Zone, California: Seasons and limits shall be the same as seasons and limits selected in the adjacent portion of Arizona (South Zone).

Geese

Season Lengths, Outside Dates, and Limits:

California, Oregon, and Washington: Except as subsequently noted, 100-day seasons may be selected, with outside dates between the Saturday nearest October 1 (October 2), and the last Sunday in January (January 30). Basic daily bag limits are 3 light geese and 4 dark geese, except in California, Oregon, and Washington, where the dark goose bag limit does not include brant.

Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming: Except as subsequently noted, 107-day seasons may be selected, with outside dates between the Saturday nearest September 24 (September 25), and the last Sunday in January (January 30). Basic daily bag limits are 3 light geese and 4 dark geese.

Split Seasons: Unless otherwise specified, seasons for geese may be split into up to 3 segments. Three-way split seasons for Canada geese and white-fronted geese require Pacific Flyway Council and U.S. Fish and Wildlife Service approval and a 3-year evaluation by each participating State.

Brant Season

A 16-consecutive-day season may be selected in Oregon. A 16-day season may be selected in Washington, and this season may be split into 2-segments. A 30-consecutive-day season may be selected in California. In these States, the daily bag limit is 2 brant and is in addition to dark goose limits.

Arizona: The daily bag limit for dark geese is 3.

California: Northeastern Zone: The daily bag limit is 3 geese and may include no more than 2 dark geese; including not more than 1 cackling Canada goose or 1 Aleutian Canada goose.

Southern Zone: In the Imperial County Special Management Area, light geese only may be taken from the end of the general goose hunting season through the first Sunday in February (February 6).

Balance-of-the-State Zone: Limits may not include more than 3 geese per day, of which not more than 1 may be a cackling Canada goose or Aleutian Canada goose, except in Del Norte and Humboldt Counties where the daily bag limit may include 2 Cackling or Aleutian Canada geese.

Two areas in the Balance-of-the-State Zone are restricted in the hunting of certain geese:

(1) In the Sacramento Valley Special Management Area (West), the season on white-fronted geese must begin no earlier than the last Saturday in October and end on or before December 14, and the daily bag limit shall contain no more than 2 white-fronted geese.

(2) In the Sacramento Valley Special Management Area (East), there will be no open season for Canada geese.

Oregon: Except as subsequently noted, the dark goose daily bag limit is 4, including not more than 1 cackling Canada goose or Aleutian Canada goose.

Harney, Klamath, Lake, and Malheur County Zone—For Lake County only, the daily dark goose bag limit may not include more than 2 white-fronted geese.

Northwest Special Permit Zone: Except for designated areas, there will be no open season on Canada geese. In the designated areas, individual quotas will be established that collectively will not exceed 165 dusky Canada geese. See section on quota zones. In those designated areas, the daily bag limit of dark geese is 4 and may include no more than 1 Aleutian Canada goose. Season dates in the Lower Columbia/N. Willamette Valley Management Area may be different than the remainder of the Northwest Special Permit Zone; however, for those season segments different from the Northwest Special Permit Zone, the cackling Canada goose limit is 2.

Closed Zone: Those portions of Coos and Curry Counties south of Bandon and west of U.S. 101 and all of Tillamook County.

Washington: The daily bag limit is 4 geese, including 4 dark geese but not more than 3 light geese. A 107-day season may be selected in Areas 4 and 5 (eastern Washington).

Southwest Quota Zone: In the Southwest Quota Zone, except for designated areas, there will be no open season on Canada geese. In the designated areas, individual quotas will be established that collectively will not exceed 85 dusky Canada geese. See section on quota zones. In this area, the daily bag limit of dark geese is 4 and may include 4 cackling Canada geese. In Southwest Quota Zone Area 2B (Pacific and Grays Harbor Counties), the dark goose bag limit may include 1 Aleutian Canada goose.

Colorado: The daily bag limit for dark geese is 3 geese.

Idaho: Northern Unit: The daily bag limit is 4 geese, including 4 dark geese, but not more than 3 light geese.

Southwest Unit and Southeastern Unit: The daily bag limit on dark geese is 4.

Montana: West of Divide Zone and East of Divide Zone: The daily bag limit of dark geese is 4.

Nevada: The daily bag limit for dark geese is 3 except in the Lincoln and Clark County Zone, where the daily bag limit of dark geese is 2.

New Mexico: The daily bag limit for dark geese is 3.

Utah: The daily bag limit for dark geese is 3.

Wyoming: The daily bag limit for dark geese is 4.

Quota Zones: Seasons on dark geese must end upon attainment of individual quotas of dusky Canada geese allotted to the designated areas of Oregon and Washington. The September Canada goose season, the regular goose season, any special late dark goose season, and any extended falconry season, combined, must not exceed 107 days, and the established quota of dusky Canada geese must not be exceeded. Hunting of dark geese in those designated areas will only be by hunters possessing a State-issued permit authorizing them to do so. In a Service-approved investigation, the State must obtain quantitative information on hunter compliance of those regulations aimed at reducing the take of dusky Canada geese. If the monitoring program cannot be conducted, for any reason, the season must immediately close. In the designated areas of the Washington Southwest Quota Zone, a special late dark goose season may be held between the Saturday following the close of the general goose season and March 10. In the Northwest Special Permit Zone of Oregon, the framework closing date is extended to the Sunday closest to March 1 (February 27). Regular dark goose seasons may be split into 3 segments within the Oregon and Washington quota zones.

Swans

In portions of the Pacific Flyway (Montana, Nevada, and Utah), an open season for taking a limited number of swans may be selected. Permits will be issued by the State and will authorize each permittee to take no more than 1 swan per season. Each State's season may open no earlier than the Saturday nearest October 1 (October 2). These seasons are also subject to the following conditions:

Montana: No more than 500 permits may be issued. The season must end no later than December 1. The State must implement a harvest-monitoring program to measure the species composition of the swan harvest and should use appropriate measures to maximize hunter compliance in reporting bill measurement and color information.

Utah: No more than 2,000 permits may be issued. During the swan season, no more than 10 trumpeter swans may be taken. The season must end no later than the second Sunday in December (December 12) or upon attainment of 10 trumpeter swans in the harvest, whichever occurs earliest. The Utah season remains subject to the terms of the Memorandum of Agreement entered into with the Service in August 2001, regarding harvest monitoring, season closure procedures, and education requirements to minimize the take of trumpeter swans during the swan season.

Nevada: No more than 650 permits may be issued. During the swan season, no more than 5 trumpeter swans may be taken. The season must end no later than the Sunday following January 1 (January 2) or upon attainment of 5 trumpeter swans in the harvest, whichever occurs earliest.

In addition, the States of Utah and Nevada must implement a harvest-monitoring program to measure the species composition of the swan harvest. The harvest-monitoring program must require that all harvested swans or their species-determinant parts be examined by either State or Federal biologists for the purpose of species classification. The States should use appropriate measures to maximize hunter compliance in providing bagged swans for examination. Further, the States of Montana, Nevada, and Utah must achieve at least an 80-percent compliance rate, or subsequent permits will be reduced by 10 percent. All three States must provide to the Service by June 30, 2004, a report detailing harvest, hunter participation, reporting compliance, and monitoring of swan populations in the designated hunt areas.

Tundra Swans

In portions of the Atlantic Flyway (North Carolina and Virginia) and the Central Flyway (North Dakota, South Dakota [east of the Missouri River], and that portion of Montana in the Central Flyway), an open season for taking a limited number of tundra swans may be selected. Permits will be issued by the States that authorize the take of no more than 1 tundra swan per permit. A second permit may be issued to hunters from unused permits remaining after the first drawing. The States must obtain harvest and hunter participation data. These seasons are also subject to the following conditions:

In the Atlantic Flyway:

—The season is experimental.
—The season may be 90 days, from October 1 to January 31.
—In North Carolina, no more than 5,000 permits may be issued.
—In Virginia, no more than 600 permits may be issued.

In the Central Flyway:

—The season may be 107 days, from the Saturday nearest October 1 (October 2) to January 31.
—In the Central Flyway portion of Montana, no more than 500 permits may be issued.
—In North Dakota, no more than 2,200 permits may be issued.
—In South Dakota, no more than 1,300 permits may be issued.

Area, Unit, and Zone Descriptions

Ducks (Including Mergansers) and Coots

Atlantic Flyway

Connecticut: North Zone: That portion of the State north of I–95.

South Zone: Remainder of the State.

Maine: North Zone: That portion north of the line extending east along Maine State Highway 110 from the New Hampshire and Maine State line to the intersection of Maine State Highway 11 in Newfield; then north and east along Route 11 to the intersection of U.S. Route 202 in Auburn; then north and east on Route 202 to the intersection of Interstate Highway 95 in Augusta; then north and east along I–95 to Route 15 in Bangor; then east along Route 15 to Route 9; then east along Route 9 to Stony Brook in Baileyville; then east along Stony Brook to the United States border.

South Zone: Remainder of the State.

Massachusetts: Western Zone: That portion of the State west of a line extending south from the Vermont State line on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut State line.

Central Zone: That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire State line on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island State line; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River

upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone: That portion of Massachusetts east and south of the Central Zone.

New Hampshire: Coastal Zone: That portion of the State east of a line extending west from the Maine State line in Rollinsford on NH 4 to the city of Dover, south to NH 108, south along NH 108 through Madbury, Durham, and Newmarket to NH 85 in Newfields, south to NH 101 in Exeter, east to NH 51 (Exeter-Hampton Expressway), east to I–95 (New Hampshire Turnpike) in Hampton, and south along I–95 to the Massachusetts State line.

Inland Zone: That portion of the State north and west of the above boundary and along the Massachusetts State line crossing the Connecticut River to Interstate 91 and northward in Vermont to Route 2, east to 102, northward to the Canadian border.

New Jersey: Coastal Zone: That portion of the State seaward of a line beginning at the New York State line in Raritan Bay and extending west along the New York State line to NJ 440 at Perth Amboy; west on NJ 440 to the Garden State Parkway; south on the Garden State Parkway to the shoreline at Cape May and continuing to the Delaware State line in Delaware Bay.

North Zone: That portion of the State west of the Coastal Zone and north of a line extending west from the Garden State Parkway on NJ 70 to the New Jersey Turnpike, north on the turnpike to U.S. 206, north on U.S. 206 to U.S. 1 at Trenton, west on U.S. 1 to the Pennsylvania State line in the Delaware River.

South Zone: That portion of the State not within the North Zone or the Coastal Zone.

New York: Lake Champlain Zone: The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont State line.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania State line.

Northeastern Zone: That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81 to NY 31, east along NY 31 to NY 13, north along NY 13 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont State line, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

Pennsylvania: Lake Erie Zone: The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

Northwest Zone: The area bounded on the north by the Lake Erie Zone and including all of Erie and Crawford Counties and those portions of Mercer and Venango Counties north of I–80.

North Zone: That portion of the State east of the Northwest Zone and north of a line extending east on I–80 to U.S. 220, Route 220 to I–180, I–180 to I–80, and I–80 to the Delaware River.

South Zone: The remaining portion of Pennsylvania.

Vermont: Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York State line along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

Interior Zone: That portion of Vermont west of the Lake Champlain Zone and eastward of a line extending from the Massachusetts State line at Interstate 91; north along Interstate 91 to U.S. 2; east along U.S. 2 to VT 102; north along VT 102 to VT 253; north along VT 253 to the Canadian border.

Connecticut River Zone: The remaining portion of Vermont east of the Interior Zone.

West Virginia: Zone 1: That portion outside the boundaries in Zone 2.

Zone 2 (Allegheny Mountain Upland): That area bounded by a line extending south along U.S. 220 through Keyser to U.S. 50; U.S. 50 to WV 93; WV 93 south to WV 42; WV 42 south to Petersburg; WV 28 south to Minnehaha Springs; WV 39 west to U.S. 219; U.S. 219 south to I–64; I–64 west to U.S. 60; U.S. 60 west to U.S. 19; U.S. 19 north to I–79, I–79 north to I–68; I–68 east to the Maryland State line; and along the State line to the point of beginning.

Mississippi Flyway

Alabama: South Zone: Mobile and Baldwin Counties.

North Zone: The remainder of Alabama.

Illinois: North Zone: That portion of the State north of a line extending east from the Iowa State line along Illinois Highway 92 to Interstate Highway 280, east along I–280 to I–80, then east along I–80 to the Indiana State line.

Central Zone: That portion of the State south of the North Zone to a line extending east from the Missouri State line along the Modoc Ferry route to Modoc Ferry Road, east along Modoc Ferry Road to Modoc Road, northeasterly along Modoc Road and St. Leo's Road to Illinois Highway 3, north along Illinois 3 to Illinois 159, north along Illinois 159 to Illinois 161, east along Illinois 161 to Illinois 4, north along Illinois 4 to Interstate Highway 70, east along I–70 to the Bond County line, north and east along the Bond County line to Fayette County, north and east along the Fayette County line to Effingham County, east and south along the Effingham County line to I–70, then east along I–70 to the Indiana State line.

South Zone: The remainder of Illinois.

Indiana: North Zone: That portion of the State north of a line extending east from the Illinois State line along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio State line.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois State line along Interstate Highway 64 to New Albany, east along State Road 62 to State Road 56, east along State Road 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio State line.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Iowa: North Zone: That portion of the State north of a line extending east from the Nebraska State line along State Highway 175 to State Highway 37, southeast along State Highway 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I–80 to the Illinois State line.

South Zone: The remainder of Iowa.

Kentucky: West Zone: All counties west of and including Butler, Daviess, Ohio, Simpson, and Warren Counties.

East Zone: The remainder of Kentucky.

Louisiana: West Zone: That portion of the State west and south of a line extending south from the Arkansas State line along Louisiana Highway 3 to Bossier City, east along Interstate Highway 20 to Minden, south along Louisiana 7 to Ringgold, east along

Louisiana 4 to Jonesboro, south along U.S. Highway 167 to Lafayette, southeast along U.S. 90 to the Mississippi State line.

East Zone: The remainder of Louisiana.

Catahoula Lake Area: All of Catahoula Lake, including those portions known locally as Round Prairie, Catfish Prairie, and Frazier's Arm. See State regulations for additional information.

Michigan: North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin State line in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, easterly along U.S. 10 BR to U.S. 10, easterly along U.S. 10 to Interstate Highway 75/U.S. Highway 23, northerly along I–75/U.S. 23 to the U.S. 23 exit at Standish, easterly along U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border.

South Zone: The remainder of Michigan.

Missouri: North Zone: That portion of Missouri north of a line running west from the Illinois State line (Lock and Dam 25) on Lincoln County Highway N to Missouri Highway 79; south on Missouri Highway 79 to Missouri Highway 47; west on Missouri Highway 47 to Interstate 70; west on Interstate 70 to U.S. Highway 54; south on U.S. Highway 54 to U.S. Highway 50; west on U.S. Highway 50 to the Kansas State line.

South Zone: That portion of Missouri south of a line running west from the Illinois State line on Missouri Highway 34 to Interstate 55; south on Interstate 55 to U.S. Highway 62; west on U.S. Highway 62 to Missouri Highway 53; north on Missouri Highway 53 to Missouri Highway 51; north on Missouri Highway 51 to U.S. Highway 60; west on U.S. Highway 60 to Missouri Highway 21; north on Missouri Highway 21 to Missouri Highway 72; west on Missouri Highway 72 to Missouri Highway 32; west on Missouri Highway 32 to U.S. Highway 65; north on U.S. Highway 65 to U.S. Highway 54; west on U.S. Highway 54 to the Kansas State line.

Middle Zone: The remainder of Missouri.

Ohio: North Zone: That portion of the State north of a line extending east from the Indiana State line along U.S. Highway 30 to State Route 37, south along SR 37 to SR 95, east along SR 95 to LaRue-Prospect Road, east along LaRue-Prospect Road to SR 203, south along SR 203 to SR 739, east along SR 739 to SR 4, north along SR 4 to SR 309, east along SR 309 to U.S. 23, north along U.S. 23 to SR 231, north along SR 231 to U.S. 30, east along U.S. 30 to SR 42, north along SR 42 to SR 603, south along SR 603 to U.S. 30, east along U.S. 30 to SR 60, south along SR 60 to SR 39/60, east along SR 39/60 to SR 39, east along SR 39 to SR 241, east along SR 241 to U.S. 30, then east along U.S. 30 to the West Virginia State line.

South Zone: The remainder of Ohio.

Tennessee: Reelfoot Zone: All or portions of Lake and Obion Counties.

State Zone: The remainder of Tennessee.

Wisconsin: North Zone: That portion of the State north of a line extending east from the Minnesota State line along State Highway 77 to State 27, south along State 27 and 77 to U.S. Highway 63, and continuing south along State 27 to Sawyer County Road B, south and east along County B to State 70, southwest along State 70 to State 27, south along State 27 to State 64, west along State 64/27 and south along State 27 to U.S. 12, south and east on State 27/U.S. 12 to U.S. 10, east on U.S. 10 to State 310, east along State 310 to State 42, north along State 42 to State 147, north along State 147 to State 163, north along State 163 to Kewaunee County Trunk A, north along County Trunk A to State 57, north along State 57 to the Kewaunee/Door County Line, west along the Kewaunee/Door County Line to the Door/Brown County Line, west along the Door/Brown County Line to the Door/Oconto/Brown County Line, northeast along the Door/Oconto County Line to the Marinette/Door County Line, northeast along the Marinette/Door County Line to the Michigan State line.

South Zone: The remainder of Wisconsin.

Central Flyway

Kansas: High Plains Zone: That portion of the State west of U.S. 283.

Low Plains Early Zone: That area of Kansas east of U.S. 283, and generally west of a line beginning at the Junction of the Nebraska State line and KS 28; south on KS 28 to U.S. 36; east on U.S. 36 to KS 199; south on KS 199 to Republic Co. Road 563; south on Republic Co. Road 563 to KS 148; east on KS 148 to Republic Co. Road 138; south on Republic Co. Road 138 to Cloud Co. Road 765; south on Cloud Co. Road 765 to KS 9; west on KS 9 to U.S. 24; west on U.S. 24 to U.S. 281; north on U.S. 281 to U.S. 36; west on U.S. 36 to U.S. 183; south on U.S. 183 to U.S. 24; west on U.S. 24 to KS 18; southeast on KS 18 to U.S. 183; south on U.S. 183 to KS 4; east on KS 4 to I–135; south on I–135 to KS 61; southwest on KS 61 to KS 96; northwest on KS 96 to U.S. 56; west on U.S. 56 to U.S. 281; south on U.S. 281 to U.S. 54; and west on U.S. 54 to U.S. 183; north on U.S. 183 to U.S. 56; southwest on U.S. 56 to U.S. 283.

Low Plains Late Zone: The remainder of Kansas.

Montana (Central Flyway Portion): Zone 1: The Counties of Blaine, Carbon, Carter, Daniels, Dawson, Fallon, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Powder River, Richland, Roosevelt, Sheridan, Stillwater, Sweet Grass, Valley, Wheatland, Wibaux, and Yellowstone.

Zone 2: The remainder of Montana.

Nebraska: High Plains Zone: That portion of the State west of highways U.S. 183 and U.S. 20 from the South Dakota State line to Ainsworth, NE 7 and NE 91 to Dunning, NE 2 to Merna, NE 92 to Arnold, NE 40 and NE 47 through Gothenburg to NE 23, NE 23 to Elwood, and U.S. 283 to the Kansas State line.

Low Plains Zone 1: That portion of the State east of the High Plains Zone and north and west of a line extending from the South Dakota State line along NE 26E Spur to NE 12, west on NE 12 to the Knox/Boyd County line, south along the county line to the Niobrara River and along the Niobrara River to U.S. 183 (the High Plains Zone line). Where the Niobrara River forms the boundary, both banks will be in Zone 1.

Low Plains Zone 2: Area bounded by designated Federal and State highways and political boundaries beginning at the Kansas-Nebraska State line on U.S. Hwy. 73; north to NE Hwy. 67 north to U.S. Hwy. 136; east to the Steamboat Trace (Trace); north to Federal Levee R–562; north and west to the Trace/Burlington Northern Railroad right-of-way; north to NE Hwy. 2; west to U.S. Hwy. 75; north to NE Hwy. 2; west to NE Hwy. 43; north to U.S. Hwy. 34; east to NE Hwy. 63; north and west to U.S. Hwy. 77; north to NE Hwy. 92; west to U.S. Hwy. 81; south to NE Hwy. 66; west to NE Hwy. 14; south to U.S. Hwy. 34; west to NE Hwy. 2; south to U.S. Hwy. I–80; west to Gunbarrrel Rd. (Hall/Hamilton county line); south to Giltner Rd.; west to U.S. Hwy. 281; south to

U.S. Hwy. 34; west to NE Hwy. 10; north to County Road "R" (Kearney County) and County Road #742 (Phelps County); west to County Road #438 (Gosper County line); south along County Road #438 (Gosper County line) to County Road #726 (Furnas County Line); east to County Road #438 (Harlan County Line); south to U.S. Hwy. 34; south and west to U.S. Hwy. 136; east to NE Hwy. 10; south to the Kansas-Nebraska State line.

Low Plains Zone 3: The area east of the High Plains Zone, excluding Low Plains Zone 1, north of Low Plains Zone 2.

Low Plains Zone 4: The area east of the High Plains Zone and south of Zone 2.

New Mexico (Central Flyway Portion): North Zone: That portion of the State north of I–40 and U.S. 54.

South Zone: The remainder of New Mexico.

North Dakota: High Plains Unit: That portion of the State south and west of a line from the South Dakota State line along U.S. 83 and I–94 to ND 41, north to U.S. 2, west to the Williams/Divide County line, then north along the County line to the Canadian border.

Low Plains: The remainder of North Dakota.

Oklahoma: High Plains Zone: The Counties of Beaver, Cimarron, and Texas.

Low Plains Zone 1: That portion of the State east of the High Plains Zone and north of a line extending east from the Texas State line along OK 33 to OK 47, east along OK 47 to U.S. 183, south along U.S. 183 to I–40, east along I–40 to U.S. 177, north along U.S. 177 to OK 33, west along OK 33 to I–35, north along I–35 to U.S. 412, west along U.S. 412 to OK 132, then north along OK 132 to the Kansas State line.

Low Plains Zone 2: The remainder of Oklahoma.

South Dakota: High Plains Unit: That portion of the State west of a line beginning at the North Dakota State line and extending south along U.S. 83 to U.S. 14, east along U.S. 14 to Blunt-Canning Road in Blunt, south along Blunt-Canning Road to SD 34, east to SD 47, south to I–90, east to SD 47, south to SD 49, south to Colome and then continuing south on U.S. 183 to the Nebraska State line.

North Zone: That portion of northeastern South Dakota east of the High Plains Unit and north of a line extending east along U.S. 212 to the Minnesota State line.

South Zone: That portion of Gregory County east of SD 47, Charles Mix County south of SD 44 to the Douglas County line, south on SD 50 to Geddes, east on the Geddes Hwy. to U.S. 281, south on U.S. 281 and U.S. 18 to SD 50, south and east on SD 50 to Bon Homme County line, the Counties of Bon Homme, Yankton, and Clay south of SD 50, and Union County south and west of SD 50 and I–29.

Middle Zone: The remainder of South Dakota.

Texas: High Plains Zone: That portion of the State west of a line extending south from the Oklahoma State line along U.S. 183 to Vernon, south along U.S. 283 to Albany, south along TX 6 to TX 351 to Abilene, south along U.S. 277 to Del Rio, then south along the Del Rio International Toll Bridge access road to the Mexico border.

Low Plains North Zone: That portion of northeastern Texas east of the High Plains Zone and north of a line beginning at the International Toll Bridge south of Del Rio, then extending east on U.S. 90 to San Antonio, then continuing east on I–10 to the Louisiana State line at Orange, Texas.

Low Plains South Zone: The remainder of Texas.

Wyoming (Central Flyway portion): Zone 1: The Counties of Converse, Goshen, Hot Springs, Natrona, Platte, and Washakie; and the portion of Park County east of the Shoshone National Forest boundary and south of a line beginning where the Shoshone National Forest boundary meets Park County Road 8VC, east along Park County Road 8VC to Park County Road 1AB, continuing east along Park County Road 1AB to Wyoming Highway 120, north along WY Highway 120 to WY Highway 294, south along WY Highway 294 to Lane 9, east along Lane 9 to Powel and WY Highway 14A, and finally east along WY Highway 14A to the Park County and Big Horn County line.

Zone 2: The remainder of Wyoming.

Pacific Flyway

Arizona—Game Management Units (GMU) as follows: South Zone: Those portions of GMUs 6 and 8 in Yavapai County, and GMUs 10 and 12B–45.

North Zone: GMUs 1–5, those portions of GMUs 6 and 8 within Coconino County, and GMUs 7, 9, 12A.

California: Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of the Klamath River with the California-Oregon line; south and west along the Klamath River to the mouth of Shovel Creek; along Shovel Creek to its intersection with Forest Service Road 46N05 at Burnt Camp; west to its junction with Forest Service Road 46N10; south and east to its Junction with County Road 7K007; south and west to its junction with Forest Service Road 45N22; south and west to its junction with Highway 97 and Grass Lake Summit; south along to its junction with Interstate 5 at the town of Weed; south to its junction with Highway 89; east and south along Highway 89 to Main Street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada State line; north along the California-Nevada State line to the junction of the California-Nevada-Oregon State lines; west along the California-Oregon State line to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada State line south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east seven miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada State line.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and

Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Idaho: Zone 1: Includes all lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of ID 37 and ID 39.

Zone 2: Includes the following Counties or portions of Counties: Adams; Bear Lake; Benewah; Bingham within the Blackfoot Reservoir drainage; those portions of Blaine west of ID 75, south and east of U.S. 93, and between ID 75 and U.S. 93 north of U.S. 20 outside the Silver Creek drainage; Bonner; Bonneville; Boundary; Butte; Camas; Caribou except the Fort Hall Indian Reservation; Cassia within the Minidoka National Wildlife Refuge; Clark; Clearwater; Custer; Elmore within the Camas Creek drainage; Franklin; Fremont; Idaho; Jefferson; Kootenai; Latah; Lemhi; Lewis; Madison; Nez Perce; Oneida; Power within the Minidoka National Wildlife Refuge; Shoshone; Teton; and Valley Counties.

Zone 3: Includes the following Counties or portions of Counties: Ada; Blaine between ID 75 and U.S. 93 south of U.S. 20 and that additional area between ID 75 and U.S. 93 north of U.S. 20 within the Silver Creek drainage; Boise; Canyon; Cassia except within the Minidoka National Wildlife Refuge; Elmore except the Camas Creek drainage; Gem; Gooding; Jerome; Lincoln; Minidoka; Owyhee; Payette; Power west of ID 37 and ID 39 except that portion within the Minidoka National Wildlife Refuge; Twin Falls; and Washington Counties.

Nevada: Lincoln and Clark County Zone: All of Clark and Lincoln Counties.

Remainder-of-the-State Zone: The remainder of Nevada.

Oregon: Zone 1: Clatsop, Tillamook, Lincoln, Lane, Douglas, Coos, Curry, Josephine, Jackson, Linn, Benton, Polk, Marion, Yamhill, Washington, Columbia, Multnomah, Clackamas, Hood River, Wasco, Sherman, Gilliam, Morrow and Umatilla Counties.

Columbia Basin Mallard Management Unit: Gilliam, Morrow, and Umatilla Counties.

Zone 2: The remainder of the State.

Utah: Zone 1: All of Box Elder, Cache, Daggett, Davis, Duchesne, Morgan, Rich, Salt Lake, Summit, Unitah, Utah, Wasatch, and Weber Counties, and that part of Toole County north of I–80.

Zone 2: The remainder of Utah.

Washington: East Zone: All areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Columbia Basin Mallard Management Unit: Same as East Zone.

West Zone: All areas to the west of the East Zone.

Geese

Atlantic Flyway

Connecticut: NAP L-Unit: That portion of Fairfield County north of Interstate 95 and that portion of New Haven County: starting at I–95 bridge on Housatonic River; north of Interstate 95; west of Route 10 to the intersection of Interstate 691; west along Interstate 691 to Interstate 84; west and south on Interstate 84 to Route 67; north along Route 67 to the Litchfield County line, then extending west along the Litchfield County line to the Shepaug River, then south to the intersection of the Litchfield and Fairfield County lines.

NAP H-Unit: All of the rest of the State not included in the AP or NAP-L descriptions.

AP Unit: Litchfield County and the portion of Hartford County, west of a line beginning at the Massachusetts State line in Suffield and extending south along Route 159 to its intersection with Route 91 in Hartford, and then extending south along Route 91 to its intersection with the Hartford/Middlesex County line.

South Zone: Same as for ducks.

North Zone: Same as for ducks.

Maryland: SJBP Zone: Allegheny, Carroll, Frederick, Garrett, Washington Counties and the portion of Montgomery County south of Interstate 270 and west of Interstate 495 to the Potomac River.

AP Zone: Remainder of the State.

Massachusetts: NAP Zone: Central Zone (same as for ducks) and that portion of the Coastal Zone that lies north of route 139 from Green Harbor.

AP Zone: Remainder of the State.

Special Late Season Area: That portion of the Coastal Zone (see duck zones) that lies north of the Cape Cod Canal and east of Route 3, north to the New Hampshire line.

New Hampshire: Same zones as for ducks.

New Jersey: North—that portion of the State within a continuous line that runs east along the New York State boundary line to the Hudson River; then south along the New York State boundary to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with Route 287; then west along Route 287 to its intersection with Route 206 in Bedminster (Exit 18); then north along Route 206 to its intersection with Route 94; then west along Route 94 to the tollbridge in Columbia; then north along the Pennsylvania State boundary in the Delaware River to the beginning point.

South—that portion of the State within a continuous line that runs west from the Atlantic Ocean at Ship Bottom along Route 72 to Route 70; then west along Route 70 to Route 206; then south along Route 206 to Route 536; then west along Route 536 to Route 322; then west along Route 322 to Route 55; then south along Route 55 to Route 553 (Buck Road); then south along Route 553 to Route 40; then east along Route 40 to route 55; then south along Route 55 to Route 552 (Sherman Avenue); then west along Route 552 to Carmel Road; then south along Carmel Road to Route 49; then east along Route 49 to Route 555; then south along Route 555 to Route 553; then east along Route 553 to Route 649; then north along Route 649 to Route 670; then east along Route 670 to Route 47; then north along Route 47 to Route 548; then east along Route 548 to Route 49; then east along Route 49 to Route 50; then south along Route 50 to Route 9; then south along Route 9 to Route 625 (Sea Isle City Boulevard); then east along Route 625 to the Atlantic Ocean; then north to the beginning point.

New York: Lake Champlain Area: that area east and north of a continuous line extending along Route 11 from the New York–Canada boundary south to Route 9B, south along Route 9B to Route 9, south along Route 9 to Route 22 south of Keeseville, south along Route 22 to the west shore of South Bay along and around the shoreline of South Bay to Route 22 on the east shore of South Bay, southeast along Route 22 to Route 4, northeast along Route 4 to the New York–Vermont State line.

St. Lawrence Area: New York State Wildlife Management Units (WMUs): 6A, 6C, and 6H.

Northeast Area: that area north of a continuous line extending from Lake Ontario east along the north shore of the Salmon River to Interstate 81, south along Interstate Route 81 to Route 31, east along Route 31 to Route 13, north along Route 13 to Route 49, east along Route 49 to Route 365, east along Route 365 to Route 28, east along Route 28 to Route 29, east along Route 29 to Interstate Route 87, north along Interstate Route 87 to Route 9 (at Exit 20), north along Route 9 to Route 149, east along Route 149 to Route 4, north along Route 4 to the New York–Vermont boundary, excluding the Lake Champlain and St. Lawrence Areas.

Southwest Area: consists of the following WMUs: 9C, 9G, 9H, 9J, 9K, 9M, 9N, and 9R; that part of WMU 9A lying south of a continuous line extending from the New York–Ontario

boundary east along Interstate Route 190 to State Route 31, then east along Route 31 to Route 78 in Lockport; that part of WMU 9F lying in Erie County; and that part of WMU 8G lying south and west of a continuous line extending from WMU 9F east along the NYS Thruway to Exit 48 in Batavia, then south along State Route 98 to WMU 9H.

South Central Area: consists of the following WMUs: 3A, 3C, 3H, 3K, 3N, 3P, 3R, 4G, 4H, 4N, 4O, 4P, 4R, 4W, 4X, 7R, 7S, 8T, 8W, 8X, 8Y, 9P, 9S, 9T, 9W, 9X, and 9Y; that part of WMU 3G lying in Putnam County; that part of WMU 3S lying northwest of Interstate Route 95; and that part of WMU 7M lying south of a continuous line extending from IR 81 at Cortland east along Route 41 to Route 26, then north along Route 26 to Route 23, then east along Route 23 to Route 8 at South New Berlin.

West Central Area: that area west of a continuous line extending from Lake Ontario east along the north shore of the Salmon River to Interstate Route 81 and then south along Interstate Route 81 to the New York–Pennsylvania boundary, excluding the Southwest and South Central Areas.

East Central Area: that area east of Interstate 81 that is south of a continuous line extending from Interstate Route 81 east along Route 31 to Route 13, north along Route 13 to Route 49, east along Route 49 to Route 365, east along Route 365 to Route 28, east along Route 28 to Route 29, east along Route 29 to Interstate Route 87, north along Interstate Route 87 to Route 9 (at Exit 20), north along Route 9 to Route 149, east along Route 149 to Route 4, north along Route 4 to the New York–Vermont boundary, and northwest of Interstate Route 95 in Westchester County, excluding the South Central Area.

Western Long Island Area: that area of Westchester County and its tidal waters southeast of Interstate Route 95 and that area of Nassau and Suffolk Counties lying west of a continuous line extending due south from the New York–Connecticut boundary to the northern end of Sound Road (near Wading River), then south along Sound Road to North Country Road, then west along North Country Road to Randall Road, then south along Randall Road to State Route 25A, then west along Route 25A to the William Floyd Parkway (County Route 46), then south along William Floyd Parkway to Fire Island Beach Road, then due south to International waters.

Eastern Long Island Area: that area of Suffolk County that is not part of the Western Long Island Area.

Special Late Hunting Area: consists of that area of Westchester County lying southeast of Interstate Route 95 and that area of Nassau and Suffolk Counties lying north of State Route 25A and west of a continuous line extending northward from State Route 25A along Randall Road (near Shoreham) to North Country Road, then east to Sound Road and then north to Long Island Sound and then due north to the New York–Connecticut boundary.

North Carolina: SJBP Hunt Zone: Includes the following counties or portions of counties: Anson, Cabarrus, Chatham, Davidson, Durham, Halifax (that portion east of NC 903), Iredell (that portion south of Interstate 40), Montgomery (that portion west of NC 109), Northampton (all of the county with the exception of that portion that is both north of U.S. 158 and east of NC 35), Richmond (that portion south of NC 73 and west of U.S. 220 and north of U.S. 74), Rowan, Stanly, Union, and Wake.

RP Hunt Zone: Includes the following counties or portions of counties: Alamance, Alleghany, Alexander, Ashe, Avery, Beaufort, Bertie (that portion south and west of a line formed by NC 45 at the Washington Co. line to U.S. 17 in Midway, U.S. 17 in Midway to U.S. 13 in Windsor, U.S. 13 in Windsor to the Hertford Co. line), Bladen, Brunswick, Buncombe, Burke, Caldwell, Carteret, Caswell, Catawba, Cherokee, Clay, Cleveland, Columbus, Craven, Cumberland, Davie, Duplin, Edgecombe, Forsyth, Franklin, Gaston, Gates, Graham, Granville, Greene, Guilford, Halifax (that portion west of NC 903), Harnett, Haywood, Henderson, Hertford, Hoke, Iredell (that portion north of Interstate 40), Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, McDowell, Macon, Madison, Martin, Mecklenburg, Mitchell, Montgomery (that portion that is east of NC 109), Moore, Nash, New Hanover, Onslow, Orange, Pamlico, Pender, Person, Pitt, Polk, Randolph, Richmond (all of the county with exception of that portion that is south of NC 73 and west of U.S. 220 and north of U.S. 74), Robeson, Rockingham, Rutherford, Sampson, Scotland, Stokes, Surry, Swain, Transylvania, Vance, Warren, Watauga, Wayne, Wilkes, Wilson, Yadkin, and Yancey.

Northeast Hunt Unit: Includes the following counties or portions of counties: Bertie (that portion north and east of a line formed by NC 45 at the Washington County line to U.S. 17 in Midway, U.S. 17 in Midway to U.S. 13 in Windsor, U.S. 13 in Windsor to the Hertford Co. line), Camden, Chowan, Currituck, Dare, Hyde, Northampton (that portion that is both north of U.S. 158 and east of NC 35), Pasquotank, Perquimans, Tyrrell, and Washington.

Pennsylvania: Resident Canada Goose Zone: All of Pennsylvania except for Crawford, Erie, and Mercer Counties and the area east of I–83 from the Maryland State line to the intersection of U.S. Route 30 to the intersection of SR 441 to the intersection of I–283, east of I–283 to I–83, east of I–83 to the intersection of I–81, east of I–81 to the intersection of U.S. Route 322, east of U.S. Route 322 to the intersection of SR 147, east of SR 147 to the intersection of I–180, east of I–180 to the intersection of U.S. Route 220, east of U.S. Route 220 to the New York State line.

SJBP Zone: Erie, Mercer and Crawford Counties, except for the Pymatuning Zone (the area south of SR 198 from the Ohio State line to the intersection of SR 18 to the intersection of U.S. Route 322/SR 18, to the intersection of SR 3013, south to the Crawford/Mercer County line).

Pymatuning Zone: The area south of SR 198 from the Ohio State line to the intersection of SR 18 to the intersection of U.S. Route 322/SR 18, to the intersection of SR 3013, south to the Crawford/Mercer County line.

AP Zone: The area east of I–83 from the Maryland State line to the intersection of U.S. Route 30 to the intersection of SR 441 to the intersection of I–283, east of I–283 to I–83, east of I–83 to the intersection of I–81, east of I–81 to the intersection of U.S. Route 322, east of U.S. Route 322 to the intersection of SR 147, east of SR 147 to the intersection of I–180, east of I–180 to the intersection of U.S. Route 220, east of U.S. Route 220 to the New York State line.

Special Late Canada Goose Season Area: The SJBP zone (excluding the Pymatuning zone) and the northern portion of the AP zone defined as east of U.S. Route 220 from the New York State line, east of U.S. Route 220 to the intersection of I–180, east of I–180 to the intersection of SR 147, east of SR 147 to the intersection of U.S. Route 322, east of U.S. Route 322 to the intersection of I–81, north of I–81 to the intersection of I–80, and north of I–80 to the New Jersey State line.

Rhode Island: Special Area for Canada Geese: Kent and Providence Counties and portions of the towns of Exeter and North Kingston within Washington County (see State regulations for detailed descriptions).

South Carolina: Canada Goose Area: Statewide except for Clarendon County and that portion of Lake Marion in Orangeburg County and Berkeley County.

Vermont: Same zones as for ducks.

Virginia: AP Zone: The area east and south of the following line—the Stafford County line from the Potomac River west to Interstate 95 at Fredericksburg, then south along Interstate 95 to Petersburg, then Route 460 (SE) to City of Suffolk, then south along Route 32 to the North Carolina line.

SJBP Zone: The area to the west of the AP Zone boundary *and* east of the following line: the "Blue Ridge" (mountain spine) at the West Virginia–Virginia Border (Loudoun County–Clarke County line) south to Interstate 64 (the Blue Ridge line follows county borders along the western edge of Loudoun-Fauquier-Rappahannock-Madison-Greene-Albemarle and into Nelson Counties), then east along Interstate Rt. 64 to Route 15, then south along Rt. 15 to the North Carolina line.

RP Zone: The remainder of the State west of the SJBP Zone.

Back Bay Area: The waters of Back Bay and its tributaries and the marshes adjacent thereto, and on the land and marshes between Back Bay and the Atlantic Ocean from Sandbridge to the North Carolina line, and on and along the shore of North Landing River and the marshes adjacent thereto, and on and along the shores of Binson Inlet Lake (formerly known as Lake Tecumseh) and Red Wing Lake and the marshes adjacent thereto.

West Virginia: Same zones as for ducks.

Mississippi Flyway

Alabama: Same zones as for ducks, but in addition:

SJBP Zone: That portion of Morgan County east of U.S. Highway 31, north of State Highway 36, and west of U.S. 231; that portion of Limestone County south of U.S. 72; and that portion of Madison County south of Swancott Road and west of Triana Road.

Arkansas: Northwest Zone: Benton, Carroll, Baxter, Washington, Madison, Newton, Crawford, Van Buren, Searcy, Sebastion, Scott, Franklin, Logan, Johnson, Pope, Yell, Conway, Perry, Faulkner, Pulaski, Boone, and Marion Counties.

Illinois: Same zones as for ducks, but in addition:

North Zone:

Northern Illinois Quota Zone: The Counties of McHenry, Lake, Kane, DuPage, and those portions of LaSalle and Will Counties north of Interstate Highway 80.

Central Zone:

Central Illinois Quota Zone: The Counties of Woodford, Peoria, Knox, Fulton, Tazewell, Mason, Cass, Morgan, Pike, Calhoun, and Jersey, and those portions of Grundy, LaSalle and Will Counties south of Interstate Highway 80.

South Zone:

Southern Illinois Quota Zone: Alexander, Jackson, Union, and Williamson Counties.

Indiana: Same zones as for ducks, but in addition:

SJBP Zone: Jasper, LaGrange, LaPorte, Starke, and Steuben Counties, and that portion of the Jasper-Pulaski Fish and Wildlife Area in Pulaski County.

Iowa: North Zone: That portion of the State north of U.S. Highway 20.

South Zone: The remainder of Iowa.

Kentucky: Western Zone: That portion of the State west of a line beginning at the Tennessee State line at Fulton and extending north along the Purchase Parkway to Interstate Highway 24, east along I–24 to U.S. Highway 641, north along U.S. 641 to U.S. 60, northeast along U.S. 60 to the Henderson County line, then south, east, and northerly along the Henderson County line to the Indiana State line.

Ballard Reporting Area: That area encompassed by a line beginning at the northwest city limits of Wickliffe in Ballard County and extending westward to the middle of the Mississippi River, north along the Mississippi River and along the low-water mark of the Ohio River on the Illinois shore to the Ballard-McCracken County line, south along the county line to Kentucky Highway 358, south along Kentucky 358 to U.S. Highway 60 at LaCenter; then southwest along U.S. 60 to the northeast city limits of Wickliffe.

Henderson-Union Reporting Area: Henderson County and that portion of Union County within the Western Zone.

Pennyroyal/Coalfield Zone: Butler, Daviess, Ohio, Simpson, and Warren Counties and all counties lying west to the boundary of the Western Goose Zone.

Michigan: MVP Zone: The MVP Zone consists of an area north and west of the point beginning at the southwest corner of Branch county, north continuing along the western border of Branch and Calhoun counties to the northwest corner of Calhoun county, then easterly to the southwest corner of Eaton county, then northerly to the southern border of Ionia County, then easterly to the southwest corner of Clinton County, then northerly along the western border of Clinton County continuing northerly along the county border of Gratiot and Montcalm Counties to the southern border of Isabella County, then easterly to the southwest corner of Midland County, then northerly along the west Midland County border to Highway M–20, then easterly to U.S. Highway 10, then easterly to U.S. Interstate 75/U.S. Highway 23, then northerly along I–75/U.S. 23 to the U.S. 23 exit at Standish, then easterly on U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border.

SJBP Zone is the rest of the State, that area south and east of the boundary described above.

Tuscola/Huron Goose Management Unit (GMU): Those portions of Tuscola and Huron Counties bounded on the south by Michigan Highway 138 and Bay City Road, on the east by Colwood and Bay Port Roads, on the north by Kilmanagh Road and a line extending directly west off the end of Kilmanagh Road into Saginaw Bay to the west boundary, and on the west by the Tuscola-Bay County line and a line extending directly north off the end of the Tuscola-Bay County line into Saginaw Bay to the north boundary.

Allegan County GMU: That area encompassed by a line beginning at the junction of 136th Avenue and Interstate Highway 196 in Lake Town Township and extending easterly along 136th Avenue to Michigan Highway 40, southerly along Michigan 40 through the city of Allegan to 108th Avenue in Trowbridge Township, westerly along 108th Avenue to 46th Street, northerly 2 mile along 46th Street to 109th Avenue, westerly along 109th Avenue to I–196 in Casco Township, then northerly along I–196 to the point of beginning.

Saginaw County GMU: That portion of Saginaw County bounded by Michigan Highway 46 on the north; Michigan 52 on the west; Michigan 57 on the south; and Michigan 13 on the east.

Muskegon Wastewater GMU: That portion of Muskegon County within the boundaries of the Muskegon County wastewater system, east of the Muskegon State Game Area, in sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, and 32, T10N R14W, and sections 1, 2, 10, 11, 12, 13, 14, 24, and 25, T10N R15W, as posted.

Special Canada Goose Seasons:

Southern Michigan GMU: That portion of the State, including the Great Lakes and interconnecting waterways and excluding the Allegan County GMU, south of a line beginning at the Ontario border at the Bluewater Bridge in the city of Port Huron and extending westerly and southerly along Interstate Highway 94 to I–69, westerly along I–69 to Michigan Highway 21, westerly along Michigan 21 to I–96, northerly along I–

96 to I–196, westerly along I–196 to Lake Michigan Drive (M–45) in Grand Rapids, westerly along Lake Michigan Drive to the Lake Michigan shore, then directly west from the end of Lake Michigan Drive to the Wisconsin State line.

Central Michigan GMU: That portion of the Lower Peninsula north of the Southern Michigan GMU but south of a line beginning at the Wisconsin State line in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, easterly along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, easterly along U.S. 10 BR to U.S. 10, easterly along U.S. 10 to Interstate Highway 75/U.S. Highway 23, northerly along I–75/U.S. 23 to the U.S. 23 exit at Standish, easterly along U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border, excluding the Tuscola/Huron GMU, Saginaw County GMU, and Muskegon Wastewater GMU.

Minnesota: West Zone: That portion of the State encompassed by a line beginning at the junction of State Trunk Highway (STH) 60 and the Iowa State line, then north and east along STH 60 to U.S. Highway 71, north along U.S. 71 to Interstate Highway 94, then north and west along I–94 to the North Dakota State line.

West Central Zone: That area encompassed by a line beginning at the intersection of State Trunk Highway (STH) 29 and U.S. Highway 212 and extending west along U.S. 212 to U.S. 59, south along U.S. 59 to STH 67, west along STH 67 to U.S. 75, north along U.S. 75 to County State Aid Highway (CSAH) 30 in Lac qui Parle County, west along CSAH 30 to the western boundary of the State, north along the western boundary of the State to a point due south of the intersection of STH 7 and CSAH 7 in Big Stone County, and continuing due north to said intersection, then north along CSAH 7 to CSAH 6 in Big Stone County, east along CSAH 6 to CSAH 21 in Big Stone County, south along CSAH 21 to CSAH 10 in Big Stone County, east along CSAH 10 to CSAH 22 in Swift County, east along CSAH 22 to CSAH 5 in Swift County, south along CSAH 5 to U.S. 12, east along U.S. 12 to CSAH 17 in Swift County, south along CSAH 17 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 40, east along STH 40 to STH 29, then south along STH 29 to the point of beginning.

Northwest Zone: That portion of the State encompassed by a line extending east from the North Dakota State line along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Special Canada Goose Seasons:

Southeast Zone: That part of the State within the following described boundaries: beginning at the intersection of U.S. Highway 52 and the south boundary of the Twin Cities Metro Canada Goose Zone; thence along the U.S. Highway 52 to State Trunk Highway (STH) 57; thence along STH 57 to the municipal boundary of Kasson; thence along the municipal boundary of Kasson County State Aid Highway (CSAH) 13, Dodge County; thence along CSAH 13 to STH 30; thence along STH 30 to U.S. Highway 63; thence along U.S. Highway 63 to the south boundary of the State; thence along the south and east boundaries of the State to the south boundary of the Twin Cities Metro Canada Goose Zone; thence along said boundary to the point of beginning.

Missouri: Same zones as for ducks but in addition:

Middle Zone

Southeast Zone: That portion of the State encompassed by a line beginning at the intersection of Missouri Highway (MO)-34 and Interstate 55 and extending south along I–55 to U.S. Highway 62, west along U.S. 62 to MO 53, north along MO 53 to MO 51, north along MO 51 to U.S. 60, west along U.S. 60 to MO 21, north along MO 21 to MO 72, east along MO 72 to MO 34, then east along MO 34 to I–55.

Ohio: Same zones as for ducks but in addition:

North Zone

Lake Erie SJBP Zone: That portion of the State encompassed by a line beginning in Lucas County at the Michigan State line on I–75, and extending south along I–75 to I–280, south along I–280 to I–80, east along I–80 to the Pennsylvania State line in Trumbull County, north along the Pennsylvania State line to SR 6 in Ashtabula County, west along SR 6 to the Lake/Cuyahoga County line, north along the Lake/Cuyahoga County line to the shore of Lake Erie.

Tennessee: Southwest Zone: That portion of the State south of State Highways 20 and 104, and west of U.S. Highways 45 and 45W.

Northwest Zone: Lake, Obion, and Weakley Counties and those portions of Gibson and Dyer Counties not included in the Southwest Tennessee Zone.

Kentucky/Barkley Lakes Zone: That portion of the State bounded on the west by the eastern boundaries of the Northwest and Southwest Zones and on the east by State Highway 13 from the Alabama State line to Clarksville and U.S. Highway 79 from Clarksville to the Kentucky State line.

Wisconsin: Same zones as for ducks but in addition:

Horicon Zone: That area encompassed by a line beginning at the intersection of State Highway 21 and the Fox River in Winnebago County and extending westerly along State 21 to the west boundary of Winnebago County, southerly along the west boundary of Winnebago County to the north boundary of Green Lake County, westerly along the north boundaries of Green Lake and Marquette Counties to State 22, southerly along State 22 to State 33, westerly along State 33 to Interstate Highway 39, southerly along Interstate Highway 39 to Interstate Highway 90/94, southerly along I–90/94 to State 60, easterly along State 60 to State 83, northerly along State 83 to State 175, northerly along State 175 to State 33, easterly along State 33 to U.S. Highway 45, northerly along U.S. 45 to the east shore of the Fond Du Lac River, northerly along the east shore of the Fond Du Lac River to Lake Winnebago, northerly along the western shoreline of Lake Winnebago to the Fox River, then westerly along the Fox River to State 21.

Collins Zone: That area encompassed by a line beginning at the intersection of Hilltop Road and Collins Marsh Road in Manitowoc County and extending westerly along Hilltop Road to Humpty Dumpty Road, southerly along Humpty Dumpty Road to Poplar Grove Road, easterly and southerly along Poplar Grove Road to County Highway JJ, southeasterly along County JJ to Collins Road, southerly along Collins Road to the Manitowoc River, southeasterly along the Manitowoc River to Quarry Road, northerly along Quarry Road to Einberger Road, northerly along Einberger Road to Moschel Road, westerly along Moschel Road to Collins

Marsh Road, northerly along Collins Marsh Road to Hilltop Road.

Exterior Zone: That portion of the State not included in the Horicon or Collins Zones.

Mississippi River Subzone: That area encompassed by a line beginning at the intersection of the Burlington Northern & Santa Fe Railway and the Illinois State line in Grant County and extending northerly along the Burlington Northern & Santa Fe Railway to the city limit of Prescott in Pierce County, then west along the Prescott city limit to the Minnesota State line.

Rock Prairie Subzone: That area encompassed by a line beginning at the intersection of the Illinois State line and Interstate Highway 90 and extending north along I–90 to County Highway A, east along County A to U.S. Highway 12, southeast along U.S. 12 to State Highway 50, west along State 50 to State 120, then south along 120 to the Illinois State line.

Brown County Subzone: That area encompassed by a line beginning at the intersection of the Fox River with Green Bay in Brown County and extending southerly along the Fox River to State Highway 29, northwesterly along State 29 to the Brown County line, south, east, and north along the Brown County line to Green Bay, due west to the midpoint of the Green Bay Ship Channel, then southwesterly along the Green Bay Ship Channel to the Fox River.

Central Flyway

Colorado (Central Flyway Portion):

Northern Front Range Area: All lands in Adams, Boulder, Clear Creek, Denver, Gilpin, Jefferson, Larimer, and Weld Counties west of I–25 from the Wyoming State line south to I–70; west on I–70 to the Continental Divide; north along the Continental Divide to the Jackson-Larimer County Line to the Wyoming State line.

South Park/San Luis Valley Area: Alamosa, Chaffee, Conejos, Costilla, Custer, Fremont, Lake, Park, Teller, and Rio Grande Counties and those portions of Hinsdale, Mineral, and Saguache Counties east of the Continental Divide.

North Park Area: Jackson County.

Arkansas Valley Area: Baca, Bent, Crowley, Kiowa, Otero, and Prowers Counties.

Pueblo County Area: Pueblo County.

Remainder: Remainder of the Central Flyway portion of Colorado.

Eastern Colorado Late Light Goose Area: that portion of the State east of Interstate Highway 25.

Nebraska:

Dark Geese

Niobrara Unit: Keya Paha County east of U.S. 183 and all of Boyd County, including the boundary waters of the Niobrara River. Where the Niobrara River forms the boundary, both banks will be in the Niobrara Unit.

East Unit: That area north and east of U.S. 281 at the Kansas/Nebraska State line, north to Giltner Road (near Doniphan), east to NE 14, north to NE 66, east to U.S. 81, north to NE 22, west to NE 14 north to NE 91, east to U.S. 275, south to U.S. 77, south to NE 91, east to U.S. 30, east to Nebraska-Iowa State line.

Platte River Unit: That area south and west of U.S. 281 at the Kansas/Nebraska State line, north to Giltner Road (near Doniphan), east to NE 14, north to NE 66, east to U.S. 81, north to NE 22, west to NE 14 north to NE 91, west along NE 91 to NE 11, north to the Holt County line, west along the northern border of Garfield, Loup, Blaine and Thomas Counties to the Hooker County line, south along the Thomas/Hooker County lines to the McPherson County line, east along the south border of Thomas County to the western line of Custer County, south along the Custer/Logan County line to NE 92, west to U.S. 83, north to NE 92, west to NE 61, north along NE 61 to NE 2, west along NE 2 to the corner formed by Garden B Grant B Sheridan Counties, west along the north border of Garden, Morrill and Scotts Bluff Counties to the Wyoming State line.

North-Central Unit: The remainder of the State.

Light Geese

Rainwater Basin Light Goose Area (West): The area bounded by the junction of U.S. 283 and U.S. 30 at Lexington, east on U.S. 30 to U.S. 281, south on U.S. 281 to NE 4, west on NE 4 to U.S. 34, continue west on U.S. 34 to U.S. 283, then north on U.S. 283 to the beginning.

Rainwater Basin Light Goose Area (East): The area bounded by the junction of U.S. 281 and U.S. 30 at Grand Island, north and east on U.S. 30 to NE 92, east on NE 92 to NE 15, south on NE 15 to NE 4, west on NE 4 to U.S. 281, north on U.S. 281 to the beginning.

Remainder of State: The remainder portion of Nebraska.

New Mexico (Central Flyway Portion):

Dark Geese

Middle Rio Grande Valley Unit: Sierra, Socorro, and Valencia Counties.

Remainder: The remainder of the Central Flyway portion of New Mexico.

South Dakota:

Canada Geese

Unit 1: Statewide except for Units 2, 3 and 4.

Big Stone Power Plant Area: That portion of Grant and Roberts Counties east of SD 15 and north of SD 20.

Unit 2: Bon Homme, Brule, Buffalo, Charles Mix, Gregory, Hughes, Lyman, Stanley, and Sully Counties, that portion of Dewey County south of U.S. 212, that portion of Hyde County south of U.S. Highway 14, and that portion of Potter County west of U.S. Highway 83.

Unit 3: Clark, Codington, Day, Deuel, Grant, Hamlin, Marshall, and Roberts Counties.

Unit 4: Bennett County.

Texas: Northeast Goose Zone: That portion of Texas lying east and north of a line beginning at the Texas-Oklahoma border at U.S. 81, then continuing south to Bowie and then southeasterly along U.S. 81 and U.S. 287 to I–35W and I–35 to the juncture with I–10 in San Antonio, then east on I–10 to the Texas-Louisiana border.

Southeast Goose Zone: That portion of Texas lying east and south of a line beginning at the International Toll Bridge at Laredo, then continuing north following I–35 to the juncture with I–10 in San Antonio, then easterly along I–10 to the Texas-Louisiana border.

West Goose Zone: The remainder of the State.

Wyoming (Central Flyway Portion):

Dark Geese

Area 1: Converse, Hot Springs, Natrona, and Washakie Counties, and the portion of Park County east of the Shoshone National Forest boundary and south of a line beginning where the Shoshone National Forest boundary crosses Park County Road 8VC, easterly along said road to Park County Road 1AB, easterly along said road to Wyoming Highway 120, northerly along said highway to Wyoming Highway 294, southeasterly along said highway to Lane 9, easterly along said lane to the town of Powel and Wyoming Highway 14A, easterly along said highway to the Park County and Big Horn County Line.

Area 2: Albany, Campbell, Crook, Johnson, Laramie, Niobrara, Sheridan, and Weston Counties, and that portion of Carbon County east of the Continental Divide; that portion of Park County west of the Shoshone National Forest boundary, and that portion of Park County north of a line beginning where the Shoshone National Forest boundary crosses Park County Road 8VC, easterly along said road to Park County Road 1AB, easterly along said road to Wyoming Highway 120, northerly along said highway to Wyoming Highway 294,

southeasterly along said highway to Lane 9, easterly along said lane to the town of Powel and Wyoming Highway 14A, easterly along said highway to the Park County and Big Horn County Line.

Area 3: Goshen and Platte Counties.

Area 4: Big Horn and Fremont Counties.

Pacific Flyway

Arizona: North Zone: Game Management Units 1–5, those portions of Game Management Units 6 and 8 within Coconino County, and Game Management units 7, 9, and 12A.

South Zone: Those portions of Game Management Units 6 and 8 in Yavapai County, and Game Management Units 10 and 12B–45.

California: Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of the Klamath River with the California-Oregon line; south and west along the Klamath River to the mouth of Shovel Creek; along Shovel Creek to its intersection with Forest Service Road 46N05 at Burnt Camp; west to its junction with Forest Service Road 46N10; south and east to its Junction with County Road 7K007; south and west to its junction with Forest Service Road 45N22; south and west to its junction with Highway 97 and Grass Lake Summit; south along to its junction with Interstate 5 at the town of Weed; south to its junction with Highway 89; east and south along Highway 89 to main street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada state line; north along the California-Nevada state line to the junction of the California-Nevada-Oregon state lines west along the California-Oregon state line to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east seven miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border. Imperial County Special Management Area: The area bounded by a line beginning at Highway 86 and the Navy Test Base Road; south on Highway 86 to the town of Westmoreland; continue through the town of Westmoreland to Route S26; east on Route S26 to Highway 115; north on Highway 115 to Weist Rd.; north on Weist Rd. to Flowing Wells Rd.; northeast on Flowing Wells Rd. to the Coachella Canal; northwest on the Coachella Canal to Drop 18; a straight line from Drop 18 to Frink Rd.; south on Frink Rd. to Highway 111; north on Highway 111 to Niland Marina Rd.; southwest on Niland Marina Rd. to the old Imperial County boat ramp and the water line of the Salton Sea; from the water line of the Salton Sea, a straight line across the Salton Sea to the Salinity Control Research Facility and the Navy Test Base Road; southwest on the Navy Test Base Road to the point of beginning.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and the Colorado River Zones.

Del Norte and Humboldt Area: The Counties of Del Norte and Humboldt.

Sacramento Valley Special Management Area (East): That area bounded by a line beginning at the junction of the Gridley-Colusa Highway and the Cherokee Canal; west on the Gridley-Colusa Highway to Gould Road; west on Gould Road and due west 0.75 miles directly to Highway 45; south on Highway 45 to Highway 20; east on Highway 20 to West Butte Road; north on West Butte Road to Pass Road; west on Pass Road to West Butte Road; north on West Butte Road to North Butte Road; west on North Butte Road and due west 0.5 miles directly to the Cherokee Canal; north on the Cherokee Canal to the point of beginning.

Sacramento Valley Special Management Area (West): That area bounded by a line beginning at Willows south on I–5 to Hahn Road; easterly on Hahn Road and the Grimes-Arbuckle Road to Grimes; northerly on CA 45 to the junction with CA 162; northerly on CA 45/162 to Glenn; and westerly on CA 162 to the point of beginning in Willows.

Western Canada Goose Hunt Area: That portion of the above described Sacramento Valley Area lying east of a line formed by Butte Creek from the Gridley-Colusa Highway south to the Cherokee Canal; easterly along the Cherokee Canal and North Butte Road to West Butte Road; southerly on West Butte Road to Pass Road; easterly on Pass Road to West Butte Road; southerly on West Butte Road to CA 20; and westerly along CA 20 to the Sacramento River.

Colorado (Pacific Flyway Portion):

West Central Area: Archuleta, Delta, Dolores, Gunnison, LaPlata, Montezuma, Montrose, Ouray, San Juan, and San Miguel Counties and those portions of Hinsdale, Mineral, and Saguache Counties west of the Continental Divide.

State Area: The remainder of the Pacific-Flyway Portion of Colorado.

Idaho: Zone 1: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties.

Zone 2: The Counties of Ada; Adams; Boise; Canyon; those portions of Elmore north and east of I–84, and south and west of I–84, west of ID 51, except the Camas Creek drainage; Gem; Owyhee west of ID 51; Payette; Valley; and Washington.

Zone 3: The Counties of Blaine; Camas; Cassia; those portions of Elmore south of I–84 east of ID 51, and within the Camas Creek drainage; Gooding; Jerome; Lincoln; Minidoka; Owyhee east of ID 51; Power within the Minidoka National Wildlife Refuge; and Twin Falls.

Zone 4: The Counties of Bear Lake; Bingham within the Blackfoot Reservoir drainage; Bonneville, Butte; Caribou except the Fort Hall Indian Reservation; Clark; Custer; Franklin; Fremont; Jefferson; Lemhi; Madison; Oneida; Power west of ID 37 and ID 39 except the Minidoka National Wildlife Refuge; and Teton.

Zone 5: All lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of ID

37 and ID 39. In addition, goose frameworks are set by the following geographical areas:

Northern Unit: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties.

Southwestern Unit: That area west of the line formed by U.S. 93 north from the Nevada State line to Shoshone, northerly on ID 75 (formerly U.S. 93) to Challis, northerly on U.S. 93 to the Montana State line (except the Northern Unit and except Custer and Lemhi Counties).

Southeastern Unit: That area east of the line formed by U.S. 93 north from the Nevada State line to Shoshone, northerly on ID 75 (formerly U.S. 93) to Challis, northerly on U.S. 93 to the Montana State line, including all of Custer and Lemhi Counties.

Montana (Pacific Flyway Portion):

East of the Divide Zone: The Pacific Flyway portion of the State located east of the Continental Divide.

West of the Divide Zone: The remainder of the Pacific Flyway portion of Montana.

Nevada:

Lincoln Clark County Zone: All of Lincoln and Clark Counties.

Remainder-of-the-State Zone: The remainder of Nevada.

New Mexico (Pacific Flyway Portion): North Zone: The Pacific Flyway portion of New Mexico located north of I–40.

South Zone: The Pacific Flyway portion of New Mexico located south of I–40.

Oregon: Southwest Zone: Douglas, Coos, Curry, Josephine, and Jackson Counties.

Northwest Special Permit Zone: That portion of western Oregon west and north of a line running south from the Columbia River in Portland along I–5 to OR 22 at Salem; then east on OR 22 to the Stayton Cutoff; then south on the Stayton Cutoff to Stayton and due south to the Santiam River; then west along the north shore of the Santiam River to I–5; then south on I–5 to OR 126 at Eugene; then west on OR 126 to Greenhill Road; then south on Greenhill Road to Crow Road; then west on Crow Road to Territorial Hwy; then west on Territorial Hwy to OR 126; then west on OR 126 to OR 36; then north on OR 36 to Forest Road 5070 at Brickerville; then west and south on Forest Road 5070 to OR 126; then west on OR 126 to Milepost 19, north to the intersection of the Benton and Lincoln County line, north along the western boundary of Benton and Polk Counties to the southern boundary of Tillamook County, west along the Tillamook County boundary to the Pacific Coast.

Lower Columbia/N. Willamette Valley Management Area: Those portions of Clatsop, Columbia, Multnomah, and Washington Counties within the Northwest Special Permit Zone.

Northwest Zone: Those portions of Clackamas, Lane, Linn, Marion, Multnomah, and Washington Counties outside of the Northwest Special Permit Zone and all of Lincoln County.

Closed Zone: Those portions of Coos and Curry Counties south of Bandon and west of U.S. 101 and all of Tillamook and Lincoln Counties.

Eastern Zone: Hood River, Wasco, Sherman, Gilliam, Morrow, Umatilla, Deschutes, Jefferson, Crook, Wheeler, Grant, Baker, Union, and Wallowa Counties.

Harney, Klamath, Lake, and Malheur County Zone: All of Harney, Klamath, Lake, and Malheur Counties.

Utah: Washington County Zone: All of Washington County.

Remainder-of-the-State Zone: The remainder of Utah.

Washington: Area 1: Skagit, Island, and Snohomish Counties.

Area 2A (SW Quota Zone): Clark County, except portions south of the Washougal River; Cowlitz, and Wahkiakum Counties.

Area 2B (SW Quota Zone): Pacific and Grays Harbor Counties.

Area 3: All areas west of the Pacific Crest Trail and west of the Big White Salmon River that are not included in Areas 1, 2A, and 2B.

Area 4: Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla Counties.

Area 5: All areas east of the Pacific Crest Trail and east of the Big White Salmon River that are not included in Area 4.

Wyoming (Pacific Flyway Portion):

See State Regulations.

Bear River Area: That portion of Lincoln County described in State regulations.

Salt River Area: That portion of Lincoln County described in State regulations.

Eden-Farson Area: Those portions of Sweetwater and Sublette Counties described in State regulations.

Swans

Central Flyway

South Dakota: Aurora, Beadle, Brookings, Brown, Brule, Buffalo, Campbell, Clark, Codington, Davison, Deuel, Day, Edmunds, Faulk, Grant, Hamlin, Hand, Hanson, Hughes, Hyde, Jerauld, Kingsbury, Lake, Marshall, McCook, McPherson, Miner, Minnehaha, Moody, Potter, Roberts, Sanborn, Spink, Sully, and Walworth Counties.

Pacific Flyway

Montana (Pacific Flyway Portion):

Open Area: Cascade, Chouteau, Hill, Liberty, and Toole Counties and those portions of Pondera and Teton Counties lying east of U.S. 287–89.

Nevada: Open Area: Churchill, Lyon, and Pershing Counties.

Utah: Open Area: Those portions of Box Elder, Weber, Davis, Salt Lake, and Toole Counties lying west of I–15, north of I–80 and south of a line beginning from the Forest Street exit to the Bear River National Wildlife Refuge boundary, then north and west along the Bear River National Wildlife Refuge boundary to the farthest west boundary of the Refuge, then west along a line to Promontory Road, then north on Promontory Road to the intersection of SR 83, then north on SR 83 to I–84, then north and west on I–84 to State Hwy 30, then west on State Hwy 30 to the Nevada-Utah State line, then south on the Nevada-Utah State line to I–80.

[FR Doc. 04–21277 Filed 9–22–04; 8:45 am]

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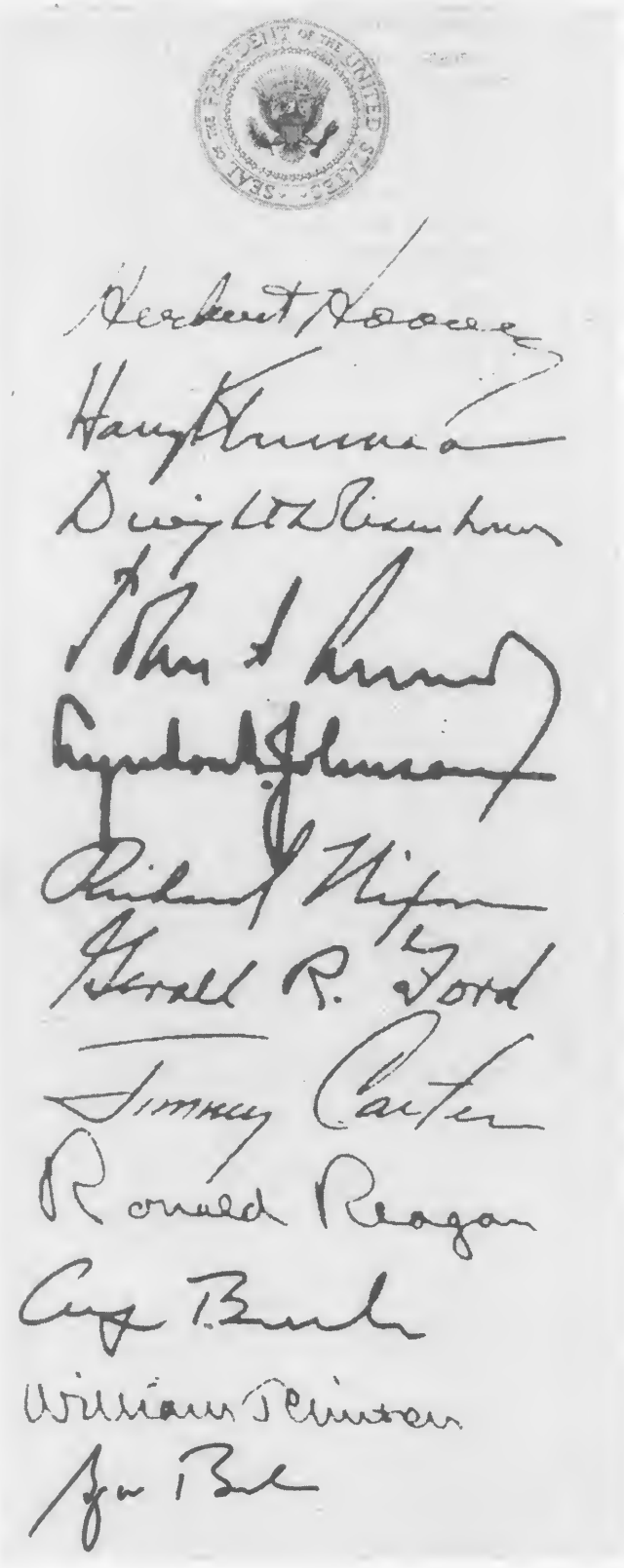

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