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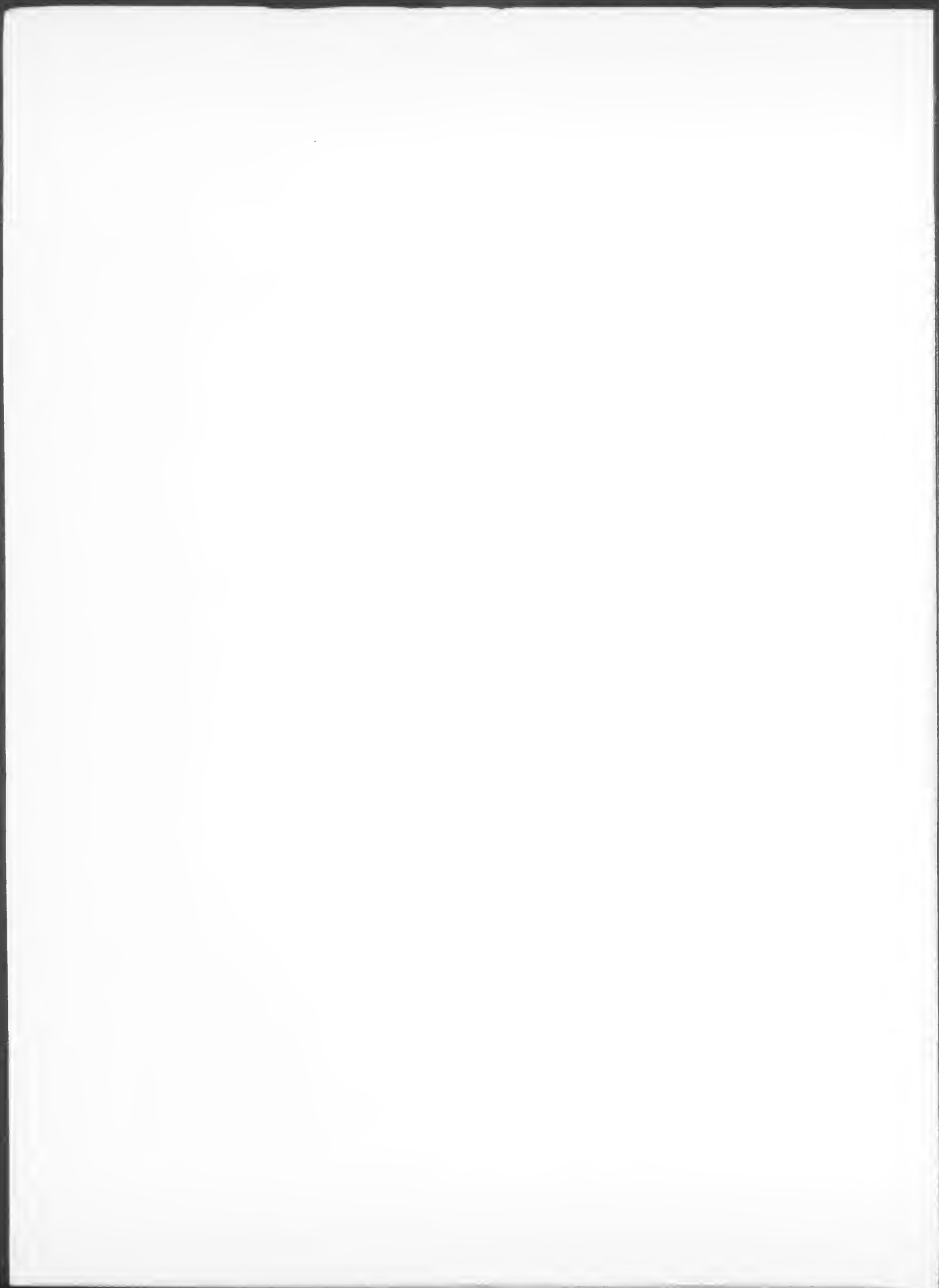
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# Contents

Federal Register

Vol. 69, No. 128

Tuesday, July 6, 2004

## Advisory Council on Historic Preservation

See Historic Preservation, Advisory Council

## Agricultural Marketing Service

### RULES

Almonds grown in—  
California, 40534–40537

## Agriculture Department

See Agricultural Marketing Service  
See Animal and Plant Health Inspection Service  
See Farm Service Agency  
See Forest Service  
See Grain Inspection, Packers and Stockyards  
Administration  
See Rural Housing Service

## Alcohol and Tobacco Tax and Trade Bureau

### NOTICES

Agency information collection activities; proposals,  
submissions, and approvals, 40719–40721

## Animal and Plant Health Inspection Service

### RULES

Plant-related quarantine, domestic:  
Japanese beetle, 40533–40534

### PROPOSED RULES

Interstate transportation of animals and animal products  
(quarantine):  
Brucellosis in cattle, bison, and swine—  
Fluorescence polarization assay; official test addition,  
40556

## Centers for Disease Control and Prevention

### NOTICES

Meetings:  
Advisory Committee to Director, 40639

## Chemical Safety and Hazard Investigation Board

### NOTICES

Meetings; Sunshine Act, 40599

## Citizenship and Immigration Services Bureau

### NOTICES

Temporary protected status program designations;  
terminations, extensions, etc.:  
Montserrat, 40642–40645

## Coast Guard

### RULES

Ports and waterways safety:  
Hilton Head Island, SC; safety zone, 40542–40544

## Commerce Department

See Economics and Statistics Administration  
See Foreign-Trade Zones Board  
See Industry and Security Bureau  
See International Trade Administration  
See National Oceanic and Atmospheric Administration

## Defense Department

See Uniformed Services University of the Health Sciences

## Drug Enforcement Administration

### NOTICES

Agency information collection activities; proposals,  
submissions, and approvals, 40652–40653  
*Applications, hearings, determinations, etc.:*  
Infinite Pills, 40653–40655  
Jones, Miles J., M.D., 40655–40656  
Trueblood, Simon J., M.D., 40656–40658

## Economics and Statistics Administration

### NOTICES

Senior Executive Service:  
Performance Review Board; membership, 40599–40600

## Employment and Training Administration

### NOTICES

Agency information collection activities; proposals,  
submissions, and approvals, 40661–40665  
Meetings:  
Apprenticeship Advisory Committee, 40665

## Energy Department

See Federal Energy Regulatory Commission

## Environmental Protection Agency

### PROPOSED RULES

Hazardous waste program authorizations:  
Connecticut, 40568–40584

### NOTICES

Reports and guidance documents; availability, etc.:  
Air Quality Criteria for Particulate Matter; comment  
request, 40632

## Executive Office of the President

See Trade Representative, Office of United States

## Farm Service Agency

### NOTICES

Agency information collection activities; proposals,  
submissions, and approvals, 40598–40599

## Federal Aviation Administration

### RULES

Airworthiness directives:  
Robinson Helicopter Co.; rescission, 40541–40542  
Schweizer Aircraft Corp., 40539–40541  
Airworthiness standards:  
Special conditions—  
Learjet Model 35, 35A, 36, 36A series airplanes, 40537–  
40538  
Class E airspace, 40542

### NOTICES

Advisory circulars; availability, etc.:  
Design assurance guidance for airborne electronic  
hardware, 40710–40711  
Air traffic operating and flight rules, etc.:  
High density airports; takeoff and landing slots, slot  
exemption lottery, and slot allocation procedures  
La Guardia Airport, NY and NJ, 40711–40713  
Exemption petitions; summary and disposition, 40713  
Reports and guidance documents; availability, etc.:  
Continued airworthiness; responsibilities, requirements,  
and content; instructions, 40713–40714

**Federal Bureau of Investigation****NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 40658-40659

**Federal Communications Commission****NOTICES**

Common carrier services:

Wireless telecommunication services—

Broadband PCS spectrum auction, 40632-40637

Meetings:

2007 World Radiocommunication Conference Advisory Committee, 40637-40638

Technological Advisory Council, 40638

Rulemaking proceedings; petitions filed, granted, denied, etc., 40638

**Federal Energy Regulatory Commission****NOTICES**

Meetings; Sunshine Act, 40627-40630

Reports and guidance documents; availability, etc.:

Electric Quarterly Reports; public utility filing requirements, etc., 40630-40632

**Federal Railroad Administration****NOTICES**

Exemption petitions, etc.

Canadian Pacific Railway, 40714

Union Pacific Railroad Co., 40715

**Federal Reserve System****NOTICES**

Banks and bank holding companies:

Formations, acquisitions, and mergers, 40638-40639

**Federal Transit Administration****NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 40715-40716

**Fish and Wildlife Service****NOTICES**

Environmental statements; notice of intent:

Alabama: Choctaw National Wildlife Refuge, 40645-40646

**Food and Drug Administration****PROPOSED RULES**

Administrative practice and procedure;

Institutional review boards; registration requirements, 40556-40562

**NOTICES**

Meetings:

Factor VIII Inhibitors; public workshop, 40639-40640

Reports and guidance documents; availability, etc.:

Over-the-counter drug products; safety and efficacy review, 40640-40641

**Foreign-Trade Zones Board****NOTICES**

Applications, hearings, determinations, etc.:

Alabama

Kvaerner Oilfield Products; undersea umbilicals manufacturing and warehousing facilities, 40600

Arizona, 40600

Massachusetts—

Acushnet Co.; sporting goods warehousing and manufacturing facilities, 40600-40601

**Forest Service****NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 40646-40647

Meetings:

Resource Advisory Committees—

Davy Crockett National Forest, 40591

Reports and guidance documents; availability, etc.:

National Environmental Policy Act; implementation—

Special use authorizations; documentation requirements, 40591-40597

National Forest System lands—

Water development facilities; applications and easements; correction, 40722

**General Services Administration****PROPOSED RULES**

Acquisition regulations:

Disputes and appeals, 40729-40731

**Grain Inspection, Packers and Stockyards Administration****NOTICES**

Stockyards; posting and deposting:

Mid-State Stockyards, LLP, AL, et al., 40597-40598

**Health and Human Services Department**

See Centers for Disease Control and Prevention

See Food and Drug Administration

See Substance Abuse and Mental Health Services

Administration

**PROPOSED RULES**

Protection of human subjects:

Institutional review boards; registration requirements, 40584-40590

**Historic Preservation, Advisory Council****RULES**

Historic properties protection, 40544-40555

**Homeland Security Department**

See Citizenship and Immigration Services Bureau

See Coast Guard

**Indian Affairs Bureau****NOTICES**

Tribal-State Compacts approval; Class III (casino) gambling;

Assiniboine and Sioux Tribes of Fort Peck Reservation, MT, 40646

**Industry and Security Bureau****NOTICES**

Meetings:

Information Systems Technical Advisory Committee, 40601

**Interior Department**

See Fish and Wildlife Service

See Indian Affairs Bureau

See Land Management Bureau

See Minerals Management Service

See National Park Service

**International Boundary and Water Commission, United States and Mexico****NOTICES**

Environmental statements; availability, etc.:

Sierra and Dona Ana Counties, NM, and El Paso County, TX: Rio Grande Canalization Project, 40665-40666

**International Trade Administration****NOTICES****Antidumping:**

- Chloropicrin from—
  - China, 40601–40602
- Folding metal tables and chairs from—
  - China, 40602–40607
- Fresh garlic from—
  - China, 40607–40611
- Greige polyester cotton printcloth from—
  - China, 40611–40612
- Non-frozen apple juice concentrate from—
  - China, 40612–40617
- Purified carboxymethylcellulose from—
  - Various countries, 40617–40621
- Cheese quota; foreign government subsidies; quarterly update, 40621–40622
- Grants and cooperative agreements; availability, etc.:
  - International Buyer Program; domestic trade shows support (FY 2006), 40622–40624
- Overseas trade missions:
  - 2004 trade missions—
    - Environmental Technologies trade mission to China and Hong Kong, 40624–40625

**Justice Department**

- See Drug Enforcement Administration
- See Federal Bureau of Investigation
- See Justice Programs Office

**Justice Programs Office****NOTICES**

- Agency information collection activities; proposals, submissions, and approvals, 40659

**Labor Department**

- See Employment and Training Administration
- See Veterans Employment and Training Service

**NOTICES**

- Agency information collection activities; proposals, submissions, and approvals, 40659–40661

**Land Management Bureau****NOTICES**

- Agency information collection activities; proposals, submissions, and approvals, 40646–40647
- Meetings:
  - Wild horse management; helicopters and motor vehicles use—
    - Oregon, 40647

**Mexico and United States, International Boundary and Water Commission**

- See International Boundary and Water Commission, United States and Mexico

**Minerals Management Service****NOTICES**

- Environmental statements; availability, etc.:
  - Ship shoal offshore Central Louisiana; sand resources removal, 40648

**National Aeronautics and Space Administration****NOTICES**

- Meetings:
  - Minority Business Resource Advisory Committee, 40666

**National Archives and Records Administration****NOTICES**

- Agency records schedules; availability, 40666–40667

**National Highway Traffic Safety Administration****NOTICES**

- Motor vehicle safety standards:
  - Exemption petitions, etc.—
    - Michelin North America, Inc, 40716
    - PACCAR, Inc., 40717

**National Oceanic and Atmospheric Administration****RULES**

- Fishery conservation and management:
  - Atlantic highly migratory species—
    - Pelagic longline fishery, 40733–40758

**NOTICES**

- Meetings:
  - Pacific Fishery Management Council, 40625–40626
  - South Atlantic Fishery Management Council, 40626
- Permits:
  - Endangered and threatened species, 40626–40627

**National Park Service****PROPOSED RULES****Special regulations:**

- Delaware Water Gap National Recreation Area, PA and NJ; U.S. Route 209 commercial vehicle fees, 40562–40568

**NOTICES**

- Agency information collection activities; proposals, submissions, and approvals, 40648–40650
- Meetings:
  - Chesapeake and Ohio Canal National Historical Park Advisory Commission, 40650
  - Denali National Park Subsistence Resource Commission, 40650–40651
  - Flight 93 National Memorial Advisory Commission, 40651
  - National Park System Advisory Board, 40651–40652
- National Register of Historic Places:
  - Pending nominations, 40652

**National Science Foundation****NOTICES**

- Antarctic Conservation Act of 1978; permit applications, etc., 40667

**Nuclear Regulatory Commission****NOTICES**

- Operating licenses, amendments; no significant hazards considerations; biweekly notices, 40668–40681
- Regulatory guides; issuance, availability, and withdrawal, 40681–40687
- Applications, hearings, determinations, etc.:
  - FirstEnergy Nuclear Operating Co., 40668

**Office of United States Trade Representative**

- See Trade Representative, Office of United States

**Personnel Management Office****NOTICES**

- Agency information collection activities; proposals, submissions, and approvals, 40687–40688

**Presidential Documents****ADMINISTRATIVE ORDERS**

Palestinian Authority: imposition and waiver of sanctions (Presidential Determination No. 2004-39 of June 25, 2004), 40759-40761

**Railroad Retirement Board****NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 40689

**Rural Housing Service****NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 40598-40599

**Securities and Exchange Commission****NOTICES**

Investment Company Act of 1940:

Exemption applications—

Wells Fargo Funds Trust et al., 40689-40690

Meetings; Sunshine Act, 40690

Self-regulatory organizations; proposed rule changes:

American Stock Exchange LLC, 40690-40695

Fixed Income Clearing Corp., 40695-40696

International Securities Exchange, Inc., 40696-40698

National Association of Securities Dealers, Inc., 40698-40700

New York Stock Exchange, Inc., 40700-40701

Pacific Exchange, Inc., 40701-40703

**Small Business Administration****NOTICES**

Disaster loan areas:

Louisiana, 40703

Interest rates; quarterly determinations, 40703-40704

**State Department****NOTICES**

Art objects; importation for exhibition:

Passion for Drawing: Pouissin to Cezanne; Works from the Prat Collection, 40704

**Substance Abuse and Mental Health Services Administration****NOTICES**

Federal agency urine drug testing; certified laboratories meeting minimum standards, list, 40641-40642

**Surface Transportation Board****NOTICES**

Railroad operation, acquisition, construction, etc.:

Wisconsin and Southern Railroad Co., 40717-40718

Railroad services abandonment:

Seminole Gulf Railway, L.P., 40718-40719

**Trade Representative, Office of United States****NOTICES**

Generalized System of Preferences:

2003 Annual Product Review, 2002 Annual Country Practices Review, and previously deferred product decisions; petitions disposition, 40704-40708

**Transportation Department**

See Federal Aviation Administration

See Federal Railroad Administration

See Federal Transit Administration

See National Highway Traffic Safety Administration

See Surface Transportation Board

**NOTICES**

Aviation proceedings:

Agreements filed; weekly receipts, 40708-40709

Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 40709

Senior Executive Service:

Performance Review Board; membership, 40709-40710

**Treasury Department**

See Alcohol and Tobacco Tax and Trade Bureau

**Uniformed Services University of the Health Sciences****NOTICES**

Meetings; Sunshine Act, 40627

**Veterans Affairs Department****NOTICES**

Meetings:

Education Advisory Committee, 40721

**Veterans Employment and Training Service****PROPOSED RULES**

Grants:

Services for veterans; state grants funding formula, 40723-40728

**Separate Parts In This Issue****Part II**

Labor Department, Veterans Employment and Training Service, 40723-40728

**Part III**

General Services Administration, 40729-40731

**Part IV**

Commerce Department, National Oceanic and Atmospheric Administration, 40733-40758

**Part V**

Presidential Documents 40759-40761

**Reader Aids**

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

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**CFR PARTS AFFECTED IN THIS ISSUE**

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

**3 CFR****Administrative Orders:****Presidential****Determinations:**

No. 2004-39 of June  
25, 2004 .....40761

**7 CFR**

301 .....40533  
981 .....40534

**9 CFR****Proposed Rules:**

78 .....40556

**14 CFR**

25 .....40537  
39 (2 documents) .....40539,  
40541  
71 .....40542

**20 CFR****Proposed Rules:**

1001 .....40724

**21 CFR****Proposed Rules:**

56 .....40556

**33 CFR**

165 .....40542

**36 CFR**

800 .....40544

**Proposed Rules:**

7 .....40562

**40 CFR****Proposed Rules:**

271 .....40568

**45 CFR****Proposed Rules:**

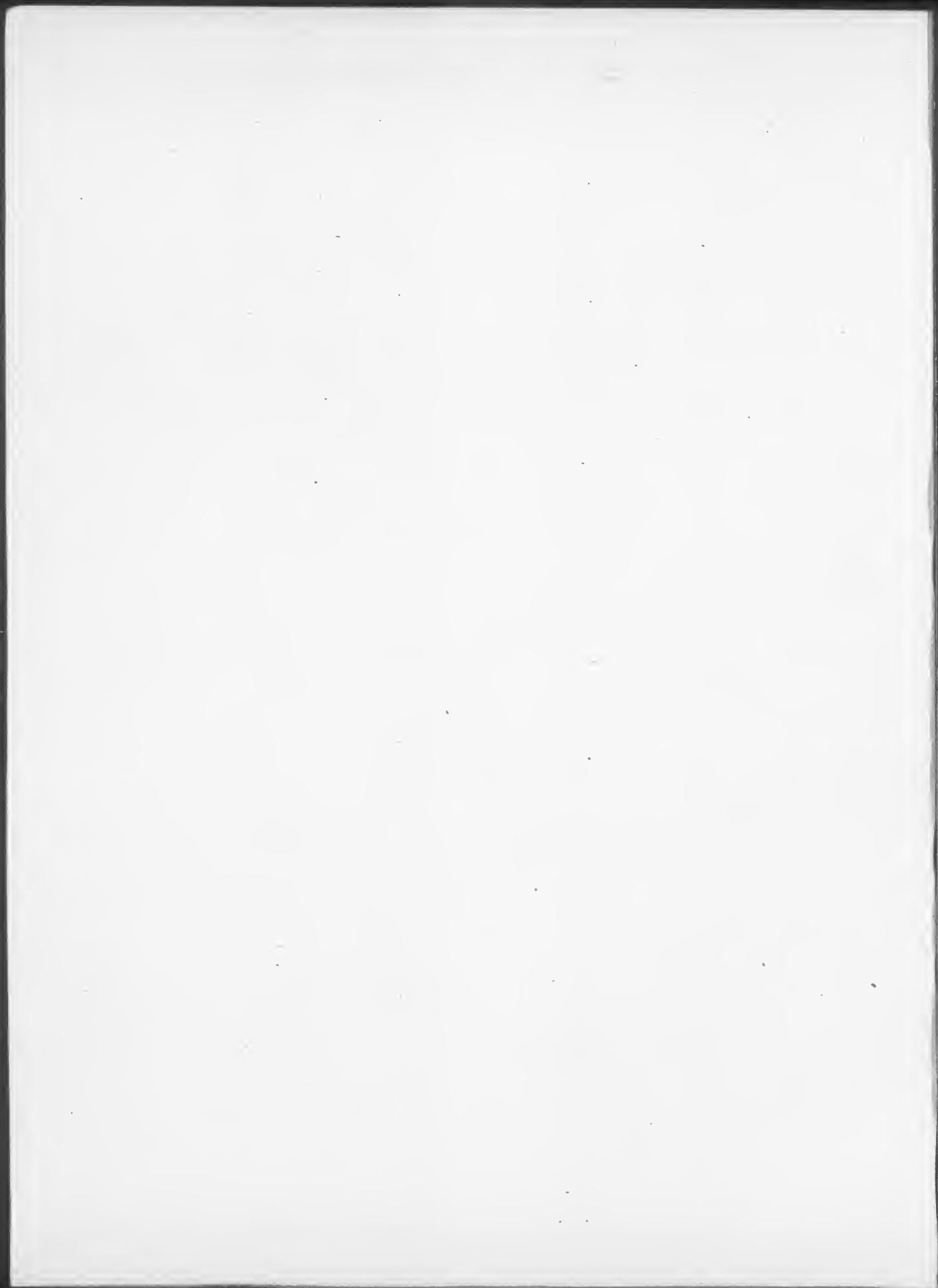
46 .....40584

**48 CFR****Proposed Rules:**

533 .....40730  
552 .....40730

**50 CFR**

223 .....40734  
635 .....40734



# Rules and Regulations

Federal Register

Vol. 69, No. 128

Tuesday, July 6, 2004

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

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 04-032-1]

#### Japanese Beetle; Domestic Quarantine and Regulations

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

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

**SUMMARY:** We are amending the Japanese beetle quarantine and regulations to add the State of Arkansas to the list of quarantined States. This action is necessary to prevent the artificial spread of Japanese beetle into noninfested areas of the United States.

**DATES:** This interim rule is effective July 6, 2004. We will consider all comments that we receive on or before September 7, 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. 04-032-1, 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. 04-032-1.

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**FOR FURTHER INFORMATION CONTACT:** Dr. S. Anwar Rizvi, Program Manager, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236; (301) 734-4313.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Japanese beetle (*Popillia japonica*) feeds on fruits, vegetables, and ornamental plants and is capable of causing damage to over 300 potential hosts. The Japanese beetle quarantine and regulations, contained in 7 CFR 301.48 through 301.48-8 (referred to below as the regulations), quarantine the States of Alabama, Connecticut, Delaware, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia and restrict the interstate movement of aircraft from regulated airports in these States in

order to prevent the artificial spread of the Japanese beetle to noninfested States where the Japanese beetle could become established (referred to below as protected States). The list of quarantined States, as well as the list of protected States, can be found in § 301.48.

The Japanese beetle is active during daylight hours only. Under § 301.48-2 of the regulations, an inspector of the Animal and Plant Health Inspection Service (APHIS) may designate any airport within a quarantined State as a regulated airport if he or she determines that adult populations of Japanese beetle exist during daylight hours at the airport to the degree that aircraft using the airport constitute a threat of artificially spreading the Japanese beetle and aircraft destined for any of the nine protected States (Arizona, California, Colorado, Idaho, Montana, Nevada, Oregon, Utah, and Washington) may be leaving the airport.

Also, under § 301.48-4 of the regulations, aircraft from regulated airports may move interstate to a protected State only if: (1) An inspector, upon visual inspection of the airport and/or the aircraft, determines that the aircraft does not present a threat of artificially spreading the Japanese beetle because adult beetle populations are not present; or (2) the aircraft is opened and loaded only while it is enclosed in a hangar that APHIS has determined to be free of and safeguarded against Japanese beetle; or (3) the aircraft is loaded during the hours of 8 p.m. to 7 a.m. (generally non-daylight hours) only or lands and departs during those hours and, in either situation, is kept completely closed while on the ground during the hours of 7 a.m. to 8 p.m.; or (4) if opened and loaded during daylight hours, the aircraft is inspected, treated, and safeguarded in accordance with the requirements described in § 301.48-4(d).

APHIS and State plant health officials constantly monitor the Japanese beetle population in the United States. Trapping surveys indicate that the State of Arkansas is now infested with the Japanese beetle. In addition, two new commercial air carriers have recently begun service from Little Rock, AR, to some of those protected Western States listed in § 301.48(b). In view of these developments, we have determined that the State of Arkansas should be listed as

a quarantined State prior to the start of the 2004 season of Japanese beetle activity, which begins in mid-June in many parts of the country. Therefore, in this interim rule we are amending the regulations in § 301.48(a) by adding Arkansas to the list of quarantined States.

#### Emergency Action

This rulemaking is necessary on an emergency basis to prevent the artificial spread of Japanese beetle to noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the *Federal Register*.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the *Federal Register*. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

#### Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

We are amending the Japanese beetle quarantine and regulations to add the State of Arkansas to the list of quarantined States. This action is necessary to prevent the artificial spread of Japanese beetle into noninfested areas of the United States.

In 2002, agricultural crop receipts for the nine Japanese beetle protected States (Arizona, California, Colorado, Idaho, Montana, Nevada, Oregon, Utah, and Washington) totaled \$32 billion. A majority of the agricultural producers in those States can be classified as small entities under the guidelines set by the Small Business Administration (SBA) of \$750,000 or less in annual receipts. Agricultural production is an important part of these nine protected States' economies. The benefits of protecting these States from Japanese beetle are worth the slight costs associated with inspections and/or occasional treatments within quarantined States as required by the regulations.

The groups affected by this action will be air carriers flying from regulated airports in Arkansas to protected States. The cost incurred by these entities is not expected to significantly change due to

the few flights that will ultimately require treatment. While it is impossible to know exactly how many flights will require inspection and/or treatment for Japanese beetle, the number is expected to be small.

The majority of air cargo is transported by large businesses. According to SBA size standards, an air carrier with more than 1,500 employees is considered to be large. The exact number or percentage of small air carriers who may be affected is not currently known, however the economic impacts will be limited since many entities are already required to treat cargo transported to those States currently listed as protected States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

#### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V)

#### Executive Order 12988

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

#### Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 7 CFR Part 301

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

■ Accordingly, 7 CFR part 301 is amended as follows:

#### PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

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

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat.

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

#### § 301.48 [Amended]

■ 2. In § 301.48, paragraph (a) is amended by adding the word “Arkansas,” after the word “Alabama,”.

Done in Washington, DC, this 30th day of June, 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–15214 Filed 7–2–04; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 981

[Docket No. FV04–981–4 IFR]

#### Almonds Grown in California; Revision of Quality Control Provisions

**AGENCY:** Agricultural Marketing Service, USDA.

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

**SUMMARY:** This rule revises the quality control provisions under the California almond marketing order (order). The order regulates the handling of almonds grown in California and is administered locally by the Almond Board of California (Board). Under the order, handlers receiving almonds from growers must have them inspected to determine the percentage of inedible almonds in each lot. Based on these inspections, handlers incur an inedible disposition obligation. This obligation is calculated by the Board for each variety of almonds, and handlers must satisfy the obligation by disposing of inedible almonds or almond material in outlets such as oil and animal feed. This rule changes the varietal classifications of almonds for which inedible obligations are calculated. This will allow the Board to determine handlers' inedible disposition obligations by varietal classifications consistent with handler reporting requirements and current industry harvesting and marketing practices.

**DATES:** Effective August 1, 2004; comments received by September 7, 2004 will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing

Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938, E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov), or Internet: <http://www.regulations.gov>. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:**

Martin Engeler, Assistant Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (559) 487-5901, Fax: (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938.

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

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

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

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the

order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule revises the quality control provisions under the order. Under the order, handlers receiving almonds from growers must have them inspected to determine the percentage of inedible almonds in each lot. Based on these inspections, handlers incur an inedible disposition obligation. This obligation is calculated by the Board for each variety of almonds, and handlers must satisfy the obligation by disposing of inedible almonds or almond material in outlets such as oil and animal feed. This rule changes the varietal classifications of almonds for which inedible obligations are calculated. This will allow the Board to determine handlers' inedible disposition obligations by varietal classifications consistent with handler reporting requirements and current industry harvesting and marketing practices. This action was unanimously recommended by the Board at a meeting on May 20, 2004.

Section 981.42 of the almond marketing order provides authority for quality control regulations, including a requirement that almonds must be inspected prior to processing (incoming inspection) to determine, by variety, the percentage of inedible kernels in each lot received. The percentage of inedible kernels are reported to individual handlers and the Board, by variety, as determined by the incoming inspection. The Board then calculates each handler's inedible disposition obligation by variety, and handlers are required to dispose of a quantity of almonds equal to their inedible weight obligation.

Section 981.442(a)(2) of the order's rules and regulations defines "variety" for the purpose of calculating handlers' inedible disposition obligations. Currently, "variety" is defined as that variety of almonds which constitutes at least 90 percent of the almonds in a lot. Further, if no variety constitutes at least 90 percent of the almonds in a lot, the lot is classified as "mixed". One such mixture is the combination of the Butte and Padre varieties of almonds, which

have very similar characteristics. It has become common practice within the industry to harvest the two varieties together and sell them under the marketing classification known as "California". In addition to harvesting and marketing these varieties together, handlers also present them for inspection and report them as "Butte- Padre", rather than "mixed", regardless of the percentages of each variety that comprise the lot. Mixtures of the Butte and Padre varieties are classified by the Board as "mixed" for purposes of calculating inedible disposition obligations if neither variety constitutes at least 90 percent of the lot.

To be consistent with the harvesting, reporting, and marketing of the Butte and Padre varieties, mixtures of these varieties should be classified as "Butte- Padre" for the purpose of determining handlers' inedible disposition obligations.

Currently, § 981.442(a)(2) also specifies that in cases where it is not known which variety constitutes at least 90 percent of a mixed lot, the lot should be classified as "unknown". In the past, very small "door lot" deliveries were accumulated by gathering almonds from isolated trees of unknown varieties. This practice is no longer common in the industry, and virtually all almond deliveries consist of known varieties of almonds. Thus, the use of "unknown" is no longer necessary or appropriate.

Harvesting, marketing, and reporting mixtures of Butte and Padre varieties of almonds together as one varietal type and reporting lots of unknown varieties of almonds as "mixed" are now common practices in the industry. In order for the Board to calculate handlers' inedible disposition obligations by variety and to be consistent with current industry practices, it is necessary to implement changes to the administrative rules and regulations. Thus, the Board recommended that the rules and regulations be revised.

Section 981.442(a)(2) of the quality control regulations regarding the classification of varietal types for the purpose of determining handlers' inedible disposition obligations is therefore revised to add "Butte- Padre" as the varietal classification for mixed lots of the Butte and Padre varieties of almonds, regardless of the percentage of each variety in the lot. Other mixed variety lots that do not contain at least 90 percent of one variety will continue to be classified as "mixed". Lots of almonds for which the variety or varieties are not specified will also be classified as "mixed". Accordingly, the

"unknown" varietal classification is eliminated.

#### Initial Regulatory Flexibility Analysis

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

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

There are approximately 6,000 producers of almonds in the production area and approximately 119 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000.

Data for the most recently completed crop year indicate that about 38 percent of the handlers shipped over \$5,000,000 worth of almonds and about 62 percent of the handlers shipped under \$5,000,000 worth of almonds. In addition, based on production and grower price data reported by the California Agricultural Statistics Service (CASS), and the total number of almond growers, the average annual grower revenue is estimated to be approximately \$199,000. Based on the foregoing, the majority of handlers and producers of almonds may be classified as small entities.

This rule revises the quality control provisions under the order. Under the order, handlers receiving almonds from growers must have them inspected to determine the percentage of inedible almonds in each lot. Based on these inspections, handlers incur an inedible disposition obligation. This obligation is calculated by the Board for each variety of almonds, and handlers must satisfy the obligation by disposing of inedible almonds or almond material in outlets such as oil and animal feed. This rule changes the varietal types of almonds for which inedible obligations are calculated. This will allow the Board to determine handlers' inedible disposition obligations by varietal types

that are consistent with current industry harvesting and marketing practices, and handler reporting requirements.

Specifically, this rule revises § 981.442(a)(2) of the regulations by adding "Butte-Padre" as the varietal classification for mixed lots of Butte and Padre almonds, regardless of the percentage of each variety in the lot. This rule also designates "mixed" as the varietal classification for lots of unidentified varieties of almonds. Finally, the "unknown" classification is removed. These revisions will permit the Board to calculate handlers' inedible disposition obligations consistent with current industry harvesting and marketing practices, and handler reporting requirements. This action was reviewed and unanimously recommended by the Food Quality and Safety Committee (FQSC) at its April 27, 2004, meeting, and by the Board at its meeting held on May 20, 2004.

These revisions are not expected to have a financial impact on handlers, including small businesses. The regulations are applied uniformly on all handlers, regardless of size. This action imposes no additional reporting or recordkeeping requirements on either small or large California almond handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

The meetings of the FQSC and the Board were both widely publicized throughout the California almond industry and all interested persons were invited to attend the meetings and participate in deliberations on all issues. Like all committee and Board meetings, those held on April 27, and May 20, 2004, were public meetings and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

This rule invites comments on a change to the quality control requirements under the California almond marketing order. Any comments

received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the *Federal Register* because: (1) The 2004-05 crop year begins on August 1, 2004, and quality control regulations apply to all almonds received during the entire crop year; (2) handlers are aware of this action which was unanimously recommended by the Board at a public meeting; and (3) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

#### List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

#### PART 981—ALMONDS GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 981 continues to read as follows:

**Authority:** 7 U.S.C. 601-674.

■ 2. Section 981.442 is amended by revising paragraph (a)(2) to read as follows:

#### § 981.442 Quality control.

(a) \* \* \*

(1) \* \* \*

(2) *Variety.* For the purpose of classifying receipts by variety to determine a handler's disposition obligation, "variety" shall mean that variety of almonds which constitutes at least 90 percent of the lot: *Provided*, That lots containing a combination of Butte and Padre varieties only, shall be classified as "Butte-Padre", regardless of the percentage of each variety in the lot. If no variety constitutes at least 90 percent of the almonds in a lot, the lot shall be classified as "mixed": *Provided further*, That if the variety or varieties of almonds in a lot are not identified, the lot shall be classified as "mixed",

regardless of the percentage of each variety in a lot.

\* \* \* \* \*

Dated: June 30, 2004.

**Kenneth C. Clayton,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 04-15278 Filed 7-2-04; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 25

[Docket No. NM282 Special Conditions No. 25-267-SC]

#### Special Conditions: Learjet Model 35, 35A, 36, and 36A Series Airplanes; High Intensity Radiated Fields (HIRF)

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

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for Learjet Model 35, 35A, 36, and 36A series airplanes modified by Flight Test Associates. These modified airplanes will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates installation of a Honeywell Model BA-250 altimeter indicator and a Model AM-250 barometric altimeter. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is June 3, 2004. Comments must be received on or before August 5, 2004.

**ADDRESSES:** Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM-113), Docket No. NM282, 1601 Lind Avenue SW., Renton, Washington 98055-4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM282.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steve Edgar, FAA, Standardization

Branch, ANM-113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (425) 227-2025; facsimile (425) 227-1149.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

The FAA has determined that notice and opportunity for prior public comment is impracticable because these procedures would significantly delay certification of the airplane and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, 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 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 7:30 a.m. and 4:00 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 based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, 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 December 19, 2003, Flight Test Associates, Incorporated, of Mojave, California, applied to the FAA, Los Angeles Aircraft Certification Office, for a supplemental type certificate (STC) to modify Learjet Model 35, 35A, 36, and 36A series airplanes. These models are currently approved under Type

Certificate No. A10CE. The proposed modification incorporates installation of the digital Honeywell Model BA-250 altimeter indicator and Model AM-250 barometric altimeter as primary altimeters. The information presented by this equipment is flight critical. The digital altimeters installed in these airplanes have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

##### Type Certification Basis

Under the provisions of 14 CFR 21.101, Flight Test Associates must show that the Learjet Model 35, 35A, 36, and 36A series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A10CE, 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. A10CE include 14 CFR part 25 as amended by Amendments 25-2, 25-4, 25-7, 25-10, and 25-18.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25, as amended) do not contain adequate or appropriate safety standards for the modified Learjet Model 35, 35A, 36, and 36A 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 Learjet Model 35, 35A, 36, and 36A series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should Flight Test Associates apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same or similar novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101.

### Novel or Unusual Design Features

As noted earlier, the Learjet Model 35, 35A, 36, and 36A series airplanes modified by Flight Test Associates will incorporate new dual primary altimeters that will perform critical functions. These systems may be vulnerable to HIRF external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, this system is considered to be a novel or unusual design feature.

### Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Learjet Model 35, 35A, 36, and 36A series airplanes modified by Flight Test Associates. These special conditions require that new primary altimeters that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

### High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, and the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance is shown with either HIRF protection special condition paragraph 1 or 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths identified in the following table for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz-100 kHz ...	50	50
100 kHz-500 kHz	50	50
500 kHz-2 MHz ....	50	50
2 MHz-30 MHz ....	100	100
30 MHz-70 MHz ...	50	50
70 MHz-100 MHz	50	50
100 MHz-200 MHz	100	100
200 MHz-400 MHz	100	100
400 MHz-700 MHz	700	50
700 MHz-1 GHz ...	700	100
1 GHz-2 GHz .....	2000	200
2GHz-4 GHz .....	3000	200
4 GHz-6 GHz .....	3000	200
6 GHz-8 GHz .....	1000	200
8 GHz-12 GHz ....	3000	300
12 GHz-18 GHz ...	2000	200
18 GHz-40 GHz ...	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

### Applicability

As discussed above, these special conditions are applicable to Learjet Model 35, 35A, 36, and 36A series airplanes modified by Flight Test Associates. Should Flight Test Associates apply at a later date for an STC to modify any other model included on Type Certificate No. A10CE to incorporate the same or similar novel or unusual design feature, these special conditions would apply to that model as well as under the provisions of 14 CFR 21.101.

### Conclusion

This action affects only certain novel or unusual design features on the Learjet Model 35, 35A, 36, and 36A series airplanes modified by Flight Test Associates. It is not a rule of general applicability and affects only the applicant who applied to the FAA for

approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

### List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and record keeping requirements.

■ The authority citation for these special conditions is as follows:

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

### The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Learjet Model 35, 35A, 36, and 36A series airplanes modified by Flight Test Associates:

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF)*. Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies:

*Critical Functions*: Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on June 3, 2004.

**Franklin Tiangsing,**

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.  
[FR Doc. 04-15037 Filed 7-2-04; 8:45 am]

BILLING CODE 4910-13-P



## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 2002-SW-25-AD; Amendment 39-13709; AD 2003-13-15 R1]

RIN 2120-AA64

**Airworthiness Directives; Schweizer Aircraft Corporation Model 269A, 269A-1, 269B, 269C, and TH-55A Helicopters**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment revises an existing airworthiness directive (AD), for the specified Schweizer Aircraft Corporation (Schweizer) model helicopters, that currently requires inspecting the lugs on certain aft cluster fittings and each aluminum end fitting on certain tailboom struts. Modifying or replacing each strut assembly within a specified time period and serializing certain strut assemblies are also required. Additionally, a one-time inspection and repair, if necessary, of certain additional cluster fittings, and replacement and modification of certain cluster fittings within 150 hours time-in-service (TIS) or 6 months, whichever occurs first, is required. This amendment requires the same actions as the existing AD, but revises the Applicability section of the AD. This amendment is prompted by the discovery of an error in the Applicability section of the existing AD. The actions specified by this AD are intended to prevent failure of a tailboom support strut or a cluster fitting, which could cause rotation of a tailboom into the main rotor blades, and subsequent loss of control of the helicopter.

**DATES:** Effective August 10, 2004.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of August 12, 2003 (68 FR 40478, July 8, 2003).

**ADDRESSES:** The service information referenced in this AD may be obtained from Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/>

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ibr\_locations.html.*

**FOR FURTHER INFORMATION CONTACT:**

George Duckett, Aviation Safety Engineer, FAA, New York Aircraft Certification Office, Airframe and Propulsion Branch, 10 Fifth Street, 3rd Floor, Valley Stream, New York, telephone (516) 256-7525, fax (516) 568-2716.

**SUPPLEMENTARY INFORMATION:** A proposal to amend 14 CFR part 39 by revising AD 2003-13-15, Amendment 39-13217 (68 FR 40478, July 8, 2003), for the specified Schweizer helicopters, was published in the *Federal Register* on February 19, 2004 (69 FR 7710). The action proposed to require certified persons to:

- Within 10 hours TIS and thereafter at intervals not to exceed 50 hours TIS, dye-penetrant inspect the lugs and replace any cracked cluster fitting;
- Within 150 hours TIS or 6 months, whichever occurs first, replace or modify, using kit, part number (P/N) SA-269K-106-1, each cluster fitting, P/N 269A2234 and P/N 269A2235;
- For strut assemblies, P/N 269A2015 or P/N 269A2015-5, at intervals not to exceed 50 hours TIS, visually inspect the strut aluminum end fittings for deformation or damage, dye-penetrant inspect the strut aluminum end fittings for a crack, and replace deformed, damaged, or cracked parts. Within 500 hours TIS or one year, whichever occurs first, modify or replace certain part-numbered strut assemblies;
- Within 100 hours TIS, for Model 269C helicopters, serialize each strut assembly, P/N 269A2015-5 and 269A2015-11;
- Within 25 hours TIS or 60 days, whichever occurs first, inspect and repair cluster fittings, P/N 269A2234-3 and P/N 269A2235-3; and
- Before further flight, replace any cluster fitting that is cracked or has a surface defect beyond rework limits.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 1,000 helicopters of U.S. registry will be affected by the AD. It will take approximately 2.5 work hours for each dye-penetrant inspection, 12 work hours to replace one cluster fitting, 4 work hours to modify or replace the strut assembly, 0.25 work hours to serialize

the strut assembly, and 16 work hours to modify a cluster fitting. The average labor rate is \$65 per work hour. Required parts will cost approximately \$5 for each fitting inspection, \$1,635 to replace a cluster fitting, \$1,500 to modify or replace the strut assembly, and \$1,688 for each cluster fitting modification kit (2 cluster fittings). Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$2,369,248 (assuming 2,000 cluster fittings are inspected, 50 cluster fittings are replaced, 6 strut assemblies are modified or replaced, 6 strut assemblies are serialized, and 1,010 cluster fittings are modified).

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

For the reasons discussed above, I certify that this action (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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

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

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

**Adoption of the Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

■ 2. Section 39.13 is amended by removing Amendment 39-13217 (68 FR 40478, July 8, 2003), and by adding a new airworthiness directive (AD),

Amendment 39-13709, to read as follows:

2003-13-15 R1 Schweizer Aircraft Corporation: Amendment 39-13709. Docket No. 2002-SW-25-AD. Revises

AD 2003-13-15, Amendment 39-13217, Docket No. 2002-SW-25-AD.

**Applicability:** Model 269A, 269A-1, 269B, 269C, and TH-55A helicopters, certificated in any category, with a tailboom support strut

(strut) assembly, part number (P/N) 269A2015 or 269A2015-5; or with a center frame aft cluster fitting, P/N 269A2234 or 269A2235, and an aft cluster fitting listed in the following table:

Helicopter model number	Helicopter serial number	With aft cluster fitting, P/N
Model 269C .....	0570 through 1165 .....	269A2234-3.
Model 269C .....	0500 through 1165 .....	269A2235-3.
Model 269A, A-1, B, or C, or TH-55A .....	All .....	269A2234-3 or 269A2235-3.

Exception: For the Model 269A, A-1, B, or C or TH-55A helicopters with cluster fittings, P/N 269A2234-3 or P/N 269A2235-3, installed, if there is *written* documentation in the aircraft or manufacturer's records that shows the cluster fitting was originally sold by the manufacturer *after* June 1, 1988, the requirements of this AD are not applicable.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent failure of a tailboom support strut or lug on a cluster fitting, which could cause rotation of a tailboom into the main rotor blades, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 10 hours time-in-service (TIS), and thereafter at intervals not to exceed 50

hours TIS, for helicopters with cluster fittings, P/N 269A2234 or P/N 269A2235:

(1) Using paint remover, remove paint from the lugs on each cluster fitting. Wash with water and dry. The tailboom support strut must be removed prior to the paint stripping.

(2) Dye-penetrant inspect the lugs on each cluster fitting. See the following Figure 1:

BILLING CODE 4910-13-P

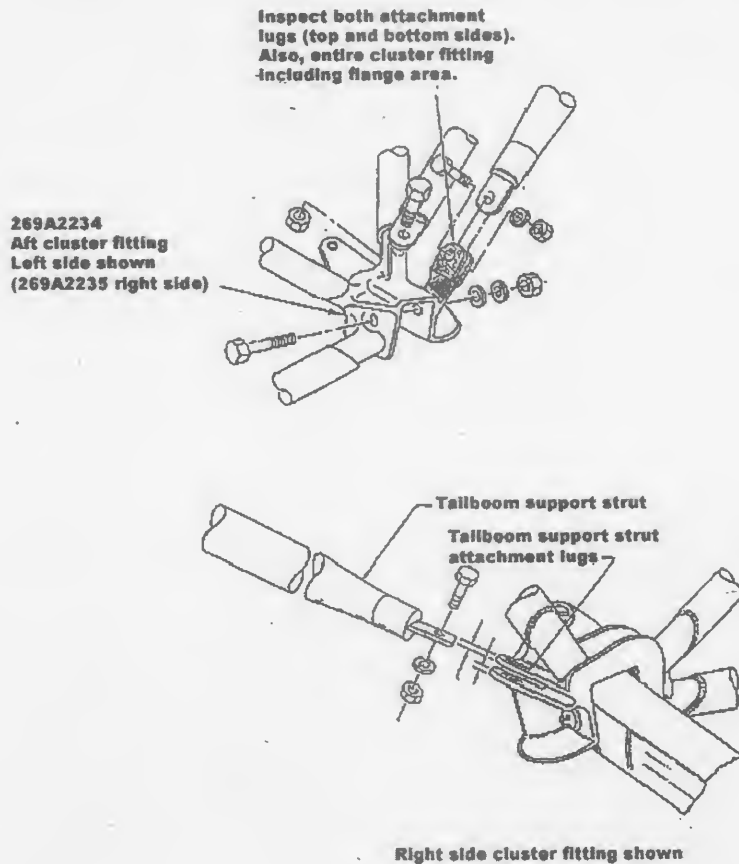


Figure 1

(3) If a crack is found, before further flight, replace the cracked cluster fitting with an airworthy cluster fitting.

(b) Cluster fittings, P/N 269A2234 and P/N 269A2235, that have NOT been modified with Kit P/N SA-269K-106-1, are NOT eligible replacement parts.

(c) Within 150 hours TIS or 6 months, whichever occurs first, replace each cluster fitting, P/N 269A2234 and P/N 269A2235, with an airworthy cluster fitting or modify each cluster fitting, P/N 269A2234 and P/N 269A2235, with Kit, P/N SA-269K-106-1. Installing the kit is terminating action for the 50-hour TIS repetitive dye-penetrant inspection for these cluster fittings. Broken or cracked cluster fittings are not eligible for the kit modification.

(d) For helicopters with strut assemblies, P/N 269A2015 or 269A2015-5, accomplish the following:

(1) At intervals not to exceed 50 hours TIS:

(i) Remove the strut assemblies, P/N 269A2015 or P/N 269A2015-5.

(ii) Visually inspect the strut aluminum end fittings for deformation or damage and dye-penetrant inspect the strut aluminum end fittings for a crack in accordance with Step II of Schweizer Service Information Notice No. N-109.2, dated September 1, 1976 (SIN N-109.2).

(iii) If deformation, damage, or a crack is found, before further flight, modify the strut assemblies by replacing the aluminum end fittings with stainless steel end fittings, P/N 269A2017-3 and -5, and attach bolts in accordance with Step III of SIN N-109.2; or replace each strut assembly P/N 269A2015 with P/N 269A2015-9, and replace each strut assembly P/N 269A2015-5 with P/N 269A2015-11.

(2) Within 500 hours TIS or one year, whichever occurs first, modify or replace the strut assemblies in accordance with paragraph (d)(1)(iii) of this AD.

(e) For the Model 269C helicopters, within 100 hours TIS, serialize each strut assembly, P/N 269A2015-5 and P/N 269A2015-11, in accordance with Schweizer Service Information Notice No. N-108, dated May 21, 1973.

(f) Within 25 hours TIS or 60 days, whichever occurs first, for cluster fittings, P/N 269A2234-3 and P/N 269A2235-3, perform a one-time inspection and repair, if required, in accordance with Procedures, Part II of Schweizer Service Bulletin No. B-277, dated January 25, 2002.

(g) Before further flight, replace any cluster fitting that is cracked or has surface defects beyond rework limits with an airworthy cluster fitting.

(h) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, New York Aircraft Certification Office (NYACO), Engine and Propeller Directorate, FAA, for information about previously approved alternative methods of compliance.

(i) The inspections, modifications or replacements, and serializing shall be done in accordance with Schweizer Service Information Notice No. N-109.2, dated September 1, 1976; Schweizer Service Information Notice No. N-108, dated May 21,

1973; and Schweizer Service Bulletin No. B-277, dated January 25, 2002, as applicable.

The incorporation by reference of those documents was approved previously by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of August 12, 2003 (68 FR 40478, July 8, 2003). Copies may be obtained from Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

(j) This amendment becomes effective on August 10, 2004.

Issued in Fort Worth, Texas, on June 24, 2004.

Kim Smith,

Acting Manager, Rotorcraft Directorate,  
Aircraft Certification Service.

[FR Doc. 04-15128 Filed 7-2-04; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 95-SW-30-AD, Amendment 39-13704, AD 95-26-05 R1]

RIN 2120-AA64

#### Airworthiness Directives; Robinson Helicopter Company Model R44 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; rescission.

**SUMMARY:** This amendment rescinds an existing Airworthiness Directive (AD) for Robinson Helicopter Company (Robinson) Model R44 helicopters, which currently requires revisions to the R44 Rotorcraft Flight Manual (RFM). The RFM revisions limit operations in high winds and turbulence. The RFM revisions also provide information about main rotor stall and mast bumping with recommendations for avoiding these situations and additional emergency procedures for use in certain conditions. This amendment is prompted by the FAA's determination that the limitations and the procedures required by that AD are no longer necessary to correct an unsafe condition. The actions specified by this AD rescind all the requirements of AD 95-26-05, Amendment 39-9463, Docket 95-SW-30-AD.

**DATES:** Effective July 6, 2004.

**FOR FURTHER INFORMATION CONTACT:** Gordon Acker, FAA, Los Angeles Aircraft Certification Office, Flight Test Branch, 3960 Paramount Blvd., Lakewood, California 90712-4137, telephone (562) 627-5374, fax (562) 627-5210.

**SUPPLEMENTARY INFORMATION:** A proposal to amend 14 CFR part 39 by rescinding AD 95-26-05, Amendment 39-9463, Docket 95-SW-30-AD (60 FR 66488, December 22, 1995), for the Robinson Model R44 helicopters was published in the *Federal Register* on March 26, 2004 (69 FR 15743). That action proposed to rescind the limitations and procedures required by AD 95-26-05.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 515 helicopters of U.S. registry are affected by AD 95-26-05, and the required actions take about 1/2 work hour per helicopter to do at an average labor rate of \$65 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$16,738. However, adopting this rescission eliminates those costs.

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

For the reasons discussed above, I certify that this action (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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy may be obtained from the Rules Docket at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

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

Air transportation, Aircraft, Aviation safety, Safety

**Adoption of the Amendment**

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

■ 2. Section 39.13 is amended by removing Amendment 39-9463 (60 FR 66488, December 22, 1995).

**95-26-05 R1 Robinson Helicopter Company:** Amendment 39-13704, Docket No. 95-SW-30-AD. Rescinds AD 95-26-05, Amendment 39-9463.

*Applicability:* Model R44 helicopters, certificated in any category.

This rescission is effective July 6, 2004.

Issued in Fort Worth, Texas, on June 24, 2004.

Kim Smith,

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 04-15129 Filed 7-2-04; 8:45 am]

BILLING CODE 4910-13-P

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA-2004-17427; Airspace Docket No. 04-ACE-27]

**Modification of Class E Airspace; Oshkosh, NE**

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

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** This document confirms the effective date of the direct final rule which revises Class E airspace at Oshkosh, NE.

**DATES:** *Effective Date:* 0901 UTC, August 5, 2004.

**FOR FURTHER INFORMATION CONTACT:** Brenda Mumper, Air Traffic Division, Airspace Branch, ACE-520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329-2524.

**SUPPLEMENTARY INFORMATION:** The FAA published this direct final rule with a

request for comments in the **Federal Register** on May 11, 2004 (69 FR 26029) and subsequently published corrections to the direct final rule on May 25, 2004 (69 FR 29653) and June 18, 2004 (69 FR 34054). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on August 5, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on June 21, 2004.

Paul J. Sheridan,

*Acting Manager, Air Traffic Division, Central Region.*

[FR Doc. 04-15249 Filed 7-2-04; 8:45 am]

BILLING CODE 4910-13-M

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165**

[COTP Savannah-04-066]

RIN 1625-AA00

**Safety Zone; Shelter Cove, Hilton Head Island, SC**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone extending a radius of 1,000 feet around the fireworks barge located in Shelter Cove, Hilton Head Island, SC. This regulation is necessary to protect life and property on the navigable waters of Broad Creek due to possible dangers associated with fireworks. No vessel may enter the safety zone without the permission of the Captain of the Port Savannah.

**DATES:** This rule is effective from 8 p.m. June 15, 2004, until 10 p.m. August 24, 2004.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket [COTP Savannah-04-066] and are available for inspection or copying at Coast Guard Marine Safety Office Savannah, 100 W. Oglethorpe Ave., Savannah, GA 31401

between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Junior Grade Anthony J. Quirino, Coast Guard Marine Safety Office Savannah, 912-652-4353 Ext 235.

**SUPPLEMENTARY INFORMATION:****Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this rule. Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM, which would incorporate a comment period before a final rule could be issued, would be contrary to public safety interests since immediate action is needed to minimize potential danger to the public.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

**Background and Purpose**

The temporary safety zone will be in effect and enforced in an area extending a radius of 1,000 feet around the barge located in Shelter Cove, Hilton Head Island, SC (32°10'55" N, 080°44' W). The temporary safety zone will be enforced from 8 p.m. through 10 p.m. each Tuesday beginning on June 8, 2004 through August 24, 2004, and from 8 p.m. to 10 p.m. July 4, 2004. Marine traffic will not be permitted to enter the safety zone without the permission of the Captain of the Port Savannah. Any concerned traffic can contact the representative of the Captain of the Port on board U.S. Coast Guard Auxiliary vessel, which will be on scene throughout the closure. Traffic needing permission to pass through this safety zone can contact the representative for the COTP on VHF-FM channel 16 or via phone at (912) 652-4181.

**Regulatory Evaluation**

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS) because marine traffic should be able to safely transit around the safety zone and may be allowed to enter the

zone with the permission of the COTP or his representative.

#### Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because small entities and marine traffic should be able to safely transit around the safety zone and may be allowed to enter the zone with the permission of the COTP.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pubic Law 104-121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

#### Collection of Information

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

#### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of

compliance on them. We have analyzed this rule under that Order and have determined that this rule does not have implications for federalism.

#### Unfunded Mandates Reform Act

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

#### Taking of Private Property

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

#### Civil Justice Reform

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

#### Protection of Children

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

#### Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are not required for this rule.

#### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments,

because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### Energy Effects

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

#### List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T07-108 to read as follows:

#### § 165.T07-108 Shelter Cove, Hilton Head, SC.

(a) *Location:* The Coast Guard is establishing a temporary safety zone extending a radius of 1,000 feet around the fireworks barge located in Shelter Cove, Hilton Head Island, SC (32°10'55" N, 080°(44' W).

(b) *Regulations:* In accordance with the general regulations in § 165.23 of this part, anchoring, mooring or transiting in this zone is prohibited, except as provided for herein, or unless authorized by the Coast Guard Captain of the Port Savannah, GA or his representative. Any concerned traffic can contact the representative of the Captain of the Port on board U.S. Coast Guard Auxiliary vessel, which will be on scene throughout the closure. Traffic

needing permission to pass through this safety zone can contact the representative for the COTP on VHF-FM channel 16 or via phone at (912) 652-4181.

(c) *Enforcement*: This rule will be enforced from 8 p.m. until 10 p.m. each Tuesday from June 15, 2004, through August 24, 2004, and from 8 p.m. to 10 p.m. July 4, 2004.

Dated: June 11, 2004.

**D.R. Penberthy,**

*Commander, U. S. Coast Guard, Acting Captain of the Port Savannah.*

[FR Doc. 04-15247 Filed 7-2-04; 8:45 am]

BILLING CODE 4910-15-U

## ADVISORY COUNCIL ON HISTORIC PRESERVATION

### 36 CFR Part 800

RIIN 3010-AA06

#### Protection of Historic Properties

**AGENCY:** Advisory Council on Historic Preservation.

**ACTION:** Final rule.

**SUMMARY:** The Advisory Council on Historic Preservation (ACHP) has adopted amendments to the regulations setting forth how Federal agencies take into account the effects of their undertakings on historic properties and afford the ACHP a reasonable opportunity to comment, pursuant to Section 106 of the National Historic Preservation Act (NHPA). Most of the amendments respond to court decisions which held that the ACHP could not require a Federal agency to change its determinations regarding whether its undertakings affected or adversely affected historic properties, and that Section 106 does not apply to undertakings that are merely subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency. Other amendments clarify an issue regarding the time period for objections to "No Adverse Effect" findings and establish that the ACHP can propose an exemption to the Section 106 process on its own initiative, rather than needing a Federal agency to make such a proposal.

**DATES:** These amendments are effective August 5, 2004.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about the amendments, please call the Office of Federal Agency Programs at 202-606-8503, or e-mail us at [achp@achp.gov](mailto:achp@achp.gov). When calling or sending an e-mail, please state your name, affiliation and nature of your question, so your call or

e-mail can then be routed to the correct staff person.

**SUPPLEMENTARY INFORMATION:** The information that follows has been divided into five sections. The first one provides background information introducing the agency and summarizing the history of the rulemaking process. The second section highlights the amendments incorporated into the final rule. The third section describes, by section and topic, the ACHP's response to public comments on this rulemaking. The fourth section provides the impact analysis section, which addresses various legal requirements, including the Regulatory Flexibility Act, the Paperwork Reduction Act, the National Environmental Policy Act, the Unfunded Mandates Act, the Congressional Review Act and various relevant Executive Orders. Finally, the fifth section includes the text of the actual, final amendments.

#### I. Background

Section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f, requires Federal agencies to take into account the effects of their undertakings on properties included, or eligible for inclusion, in the National Register of Historic Places ("National Register") and to afford the Advisory Council on Historic Preservation ("ACHP") a reasonable opportunity to comment on such undertakings. The regulations implementing Section 106 are codified at 36 CFR part 800 (2001) ("Section 106 regulations").

On September 18, 2001, the Federal District Court for the District of Columbia ("district court") upheld the Section 106 regulations against several challenges. Nevertheless, the district court invalidated portions of two subsections of the Section 106 regulations insofar as they allowed the ACHP to reverse a Federal agency's findings of "No Historic Properties Affected" (previous Sec. 800.4(d)(2)) and "No Adverse Effects" (previous Sec. 800.5(c)(3)). See *National Mining Ass'n v. Slater*, 167 F. Supp. 2d 265 (D.D.C. 2001)(NMA v. Slater); and *Id.* (D.D.C. Oct. 18, 2001)(order clarifying extent of original order regarding Section 800.4(d)(2) of the Section 106 regulations).

Prior to the district court decision, an objection by the ACHP or the State Historic Preservation Officer / Tribal Historic Preservation Officer ("SHPO/THPO") to a "No Historic Properties Affected" finding required the Federal agency to proceed to the next step in the process, where it would assess whether

the effects were adverse. An ACHP objection to a "No Adverse Effect" finding required the Federal agency to proceed to the next step in the process, where it would attempt to resolve the adverse effects.

On appeal by the National Mining Association, the D.C. Circuit Court of Appeals ("D.C. Circuit") ruled that Section 106 does not apply to undertakings that are merely subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency, and remanded the case to the district court. *National Mining Ass'n v. Fowler*, 324 F.3d 752 (D.C. Cir. 2003)(NMA v. Fowler). On September 4, 2003, the district court issued an order declaring sections 800.3(a) and 800.16(y) invalid to the extent that they applied Section 106 to the mentioned undertakings, and remanding the matter to the ACHP.

On September 25, 2003, through a notice of proposed rulemaking (NPRM)(68 FR 55354-55358), the ACHP proposed amendments to the mentioned subsections of the Section 106 regulations so that they would comport with the mentioned court rulings, while still being consistent with the purpose of helping Federal agencies avoid proceeding with a project under an erroneous determination that the project would not affect or adversely affect historic properties, and still triggering Section 106 compliance responsibilities for Federal agencies when they approve or fund State-delegated programs. A related, proposed amendment would clarify that even if a SHPO/THPO concur in a "No Adverse Effect" finding, the ACHP and any consulting party still have until the end of the 30 day review period to file an objection. Such objections would require the Federal agency to either resolve the objection or submit the dispute to the ACHP for its non-binding opinion. Finally, the ACHP also took the opportunity in that notice to submit an amendment to clarify that the ACHP could propose an exemption to the Section 106 process on its own initiative, rather than needing a Federal agency to make such a proposal.

After considering the public comments, during its business meeting on May 4, 2004, the ACHP unanimously adopted the final amendments to the Section 106 regulations that appear at the end of this notice of final rule.

## II. Highlights of Amendments

### *ACHP Review of "No Historic Properties Affected" and "No Adverse Effect" Findings*

As stated above, the district court held that the asserted power of the ACHP to reverse Federal agency findings of "No Historic Properties Affected" and "No Adverse Effect" exceeded the ACHP's legal authority under the NHPA. Accordingly, the final amendments make it clear that ACHP opinions on these effect findings are advisory and do not require Federal agencies to reverse their findings.

The final amendments still require a Federal agency that makes an effect finding and receives a timely objection to submit it to the ACHP for a specified review period. Within that period, the ACHP will then be able to give its opinion on the matter to the agency official and, if it believes the issues warrant it, to the head of the agency. The agency official, or the head of the agency, as appropriate, would take into account the opinion and provide the ACHP with a summary of the final decision that contains the rationale for the decision and evidence of consideration of the ACHP's opinion. However, the Federal agency would not be required to abide by the ACHP's opinion on the matter.

The amendments also change the time period for the ACHP to issue its opinion regarding "No Adverse Effect" findings, by allowing the ACHP extend it 15 days. This change is deemed necessary since, among other things, the ACHP opinions may now be addressed to the head of the agency, and would therefore more likely be ultimately formulated by ACHP members, as opposed to such tasks being mostly delegated to the staff. Such formulation of opinions by ACHP members is expected to require more time considering that these ACHP members are Special Government Employees who reside in different areas of the country and whose primary employment lies outside the ACHP.

In response to public comments, as detailed in the third section of this preamble, the ACHP made several changes to the originally proposed amendments:

(1) When the ACHP decides to send its opinion regarding effect findings to the head of an agency, that decision must be guided by the criteria of appendix A of the Section 106 regulations;

(2) If the ACHP decides to object on its own initiative to an agency finding of effect within the initial 30-day review period open to SHPO/THPOs and consulting parties, the ACHP must

present its opinion to the agency at that time, rather than merely objecting and triggering the separate ACHP review period for objection referrals;

(3) The head of an agency that has received an ACHP opinion on an effect finding may delegate the responsibility of preparing the response to that opinion to the Senior Policy Official of his/her agency;

(4) When requesting the ACHP to review effect findings, Federal agencies must notify all consulting parties about the referral and make the request information available to the public;

(5) Regarding findings of "no adverse effect," the default period for ACHP review is 15 days. However, the ACHP may extend that time an additional 15 days so long as it notifies the Federal agency prior to the end of the initial 15 day period;

(6) The amendments now clarify that, when an agency and SHPO/THPO disagree regarding a finding of "no historic properties affected," the Federal agency has the option of either resolving the disagreement or submitting the matter for ACHP review; and

(7) The ACHP will retain a record of agency responses to ACHP opinions on findings of effect, and make such information available to the public.

### *Clarification of the 30-Day Review Period for No Adverse Effect Findings*

As stated in the NPRM, questions had arisen under the Section 106 regulations as to whether a Federal agency could proceed with its undertaking immediately after the SHPO/THPO concurred in a finding of "No Adverse Effect." The Section 106 regulations specify a 30-day review period, during which the SHPO/THPO, the ACHP and other consulting parties can lodge an objection. The result of such an objection is that the Federal agency must submit the finding to the ACHP for review. If the SHPO/THPO concurs, for example, on the fifth day of the 30 day period, the language prior to these final amendments may have given some the erroneous impression that this would cut off the right of other parties to object thereafter within the 30 day period (e.g., on the 15th or 28th day).

The final amendment provides clearer language, consistent with the original intent expressed in the preamble to the previous iteration of the Section 106 regulations ("the SHPO/THPO and any consulting party wishing to disagree to the [no adverse effect] finding must do so within the 30 day review period," 65 FR 77720 (December 12, 2000) (emphasis added)) and in subsequent ACHP guidance on the regulations ("Each consulting party has the right to

disagree with the [no adverse effect] finding within that 30-day review period;" [www.achp.gov/106q&a.html#800.5](http://www.achp.gov/106q&a.html#800.5)). All consulting parties have the full 30 day review period to object to a no adverse effect finding regardless of SHPO/THPO concurrence earlier in that period.

As explained below, a few public comments objected to this amendment. However, the ACHP decided to leave the language regarding this issue as it was proposed in the NPRM.

### *Authorization of the ACHP to Initiate Section 106 Exemptions*

Under the Section 106 regulations prior to these final amendments, in order for the ACHP to begin its process of considering an exemption, the ACHP needed to wait for a Federal agency to propose such an exemption. Under the final amendments, the ACHP will be able to initiate the process for an exemption on its own.

As stated in the NPRM, the ACHP believes it is in a unique position, as overseer of the Section 106 process, to find situations that call for a Section 106 exemption and to propose such exemptions on its own. There may also be certain types of activities or types of resources that are involved in the undertakings of several different Federal agencies that would be good candidates for exemptions when looking at the undertakings of all of these agencies, but that may not be a high enough priority for any single one of those agencies to prompt it to ask for an exemption or to ask for it in a timely fashion. The ACHP will now be able to step into those situations and propose such exemptions on its own, and then follow the already established process and standards for such exemptions.

As detailed in the third section of this notice, there were several comments on this part of the amendments. However, as explained below, the ACHP decided to not make any changes to this part of the proposed amendments.

### *ACHP Review of Objections Within the Process for Agency Use of the NEPA Process for Section 106 Purposes*

A public comment correctly pointed out that the proposed amendments failed to adjust the process regarding NEPA/106 reviews (under section 800.8(c)) in accordance with the *NMA v. Slater* decision. If left unchanged, that process could have been interpreted as allowing the ACHP to overturn agency findings of effect.

Accordingly, the final amendments change that process to comport with the *NMA v. Slater* decision, in a manner consistent with the final amendments

regarding the review of effects under the regular Section 106 process at sections 800.4(d) and 800.5(c).

*Applicability of Section 106 to Undertakings That Are Merely Subject to State or Local Regulation Administered Pursuant To a Delegation or Approval by a Federal Agency*

As explained above and in the NPRM, the D.C. Circuit held that Section 106 does not apply to undertakings that are merely subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency. Accordingly, the final amendment removes those types of undertakings from the definition of the term "undertaking" on section 800.16(y).

Formerly, an individual project would trigger Section 106 due to its regulation by a State or local agency (through such actions as permitting) pursuant to federally-delegated programs such as those under the Surface Mining Control and Reclamation Act, 30 U.S.C. 1201 *et seq.* Under the final amendment, such State or local regulation will not, by itself, trigger Section 106 for those projects.

Nevertheless, it is the opinion of the ACHP that the Federal agency approval and/or funding of such State-delegated programs does require Section 106 compliance by the Federal agency, as such programs are "undertakings" receiving Federal approval and/or Federal funding. Accordingly, Federal agencies need to comply with their Section 106 responsibilities regarding such programs before an approval and/or funding decision on them. Agencies that are approaching a renewal or periodic assessment of such programs may want to do this at such time.

Due to the inherent difficulties in prospectively foreseeing the effects of such programs on historic properties at the time of the program approval and/or funding, the ACHP believes that Section 106 compliance in those situations should be undertaken pursuant to a program alternative per 36 CFR 800.14. For example, that section of the regulations provides that "Programmatic Agreements" may be used when " \* \* \* effects on historic properties cannot be fully determined prior to approval of an undertaking; [or] \* \* \* when nonfederal parties are delegated major decisionmaking responsibilities \* \* \*" 36 CFR 800.14(b)(1). The ACHP stands ready to pursue such alternatives with the relevant Federal agencies.

While there were various comments on this part of the amendments and the explanatory material of the NPRM, the

ACHP decided not to change the amendments regarding this issue. See the discussion of those comments, below.

### III. Response to Public Comments

Following is a summary of the public comments received in response to the NPRM, along with the ACHP's response. The public comments are printed in bold typeface, while the ACHP response follows immediately in normal typeface. They are organized according to the relevant section of the proposed rule or their general topic.

#### *NMA v. Slater and Saylor Park Case*

Several public comments asked the ACHP to mention a case out of a District Court in Ohio. In that case, *Saylor Park Village Council v. U.S. Army Corps of Engineers*, 2002 WL 32191511 (S.D. Ohio Dec. 30, 2002); 2003 WL 22423202 (S.D. Ohio Jan. 17, 2003) (Saylor Park), the judge specifically disagreed with the *NMA v. Slater* decision regarding the ACHP's authority to overturn agency effect findings. These public comments also argued that the Saylor Park decision relieved the ACHP from amending the Section 106 regulations.

The Saylor Park case involved a Corps of Engineers (Corps) Clean Water Act permit needed for the construction of a barge loading facility. A group of residents who lived near the proposed facility sued the Corps alleging that it had issued the permit in violation of Section 106. While the Corps determined that the undertaking would not have an effect on historic properties, the SHPO and others disagreed and argued that the Corps should continue the Section 106 process. The Corps upheld its determination of no effect and, based on the *NMA v. Slater* decision, decided its Section 106 responsibilities were concluded. It then issued the permit and this lawsuit followed.

The Saylor Park court expressly disagreed with the *NMA v. Slater* holding that section 800.4(d)(2) of the Section 106 regulations was substantive and therefore beyond the scope of the ACHP's authority. As explained above, that section required an agency to move to the next step of the Section 106 process if, among other things, the ACHP and/or SHPO/THPO disagreed with its finding that no historic properties would be affected by the undertaking. The court in Saylor Park held that this provision of the regulations was not substantive because, rather than restraining the agency's ability to act, it merely added a layer of consultation (" \* \* \* no matter the process, the agency never loses final

authority to make the substantive determination \* \* \*").

The ACHP presented a similar argument to the *NMA v. Slater* judge. The ACHP continues to believe that neither this provision nor the similar one regarding "no adverse effects" (nor any other provisions of the regulations for that matter) were substantive. None of these provisions imposed an outcome on a Federal agency as to how it would decide whether or not to approve an undertaking. They merely provided a process that assured that the Federal agency took into account the effects of the undertaking on historic properties. They did not impose in any way whatsoever how such consideration would affect the final decision of the Federal agency on the undertaking. They did not provide anyone with a veto power over an undertaking. See 65 FR 77698, 77715 (Dec. 12, 2000).

While the ACHP still disagrees with the *NMA v. Slater* partial invalidation of sections 800.4(d)(2) and 800.5(c)(3), it nevertheless believes it must proceed with the amendments in this rulemaking. The *NMA v. Slater* court (the D.C. District Court) has direct jurisdiction over the ACHP and has issued specific orders (1) partially invalidating the provisions that are the main subject of these amendments and (2) remanding these matters to the ACHP for action consistent with its decisions. Moreover, as opposed to the situation in the Saylor Park cases, the ACHP was a party before the court in the *NMA* cases. The ACHP is not confronted with conflicting orders from different courts. Under these circumstances, the ACHP did not believe it had the option of ignoring the *NMA v. Slater* and *NMA v. Fowler* decisions and orders, despite the ACHP's disagreement with them. It therefore has proceeded with this rulemaking, which now has culminated with the amendments described herein.

#### *Sections 800.4(d) and 800.5(c)—Review of "No Historic Properties Affected" and "No Adverse Effect" Findings*

Make the stipulation regarding "no historic properties affected" consistent with that regarding "no adverse effect" objections, and direct an agency and SHPO/THPO to continue to consult when there is disagreement with an agency's determination, as opposed to requiring automatic referral to the ACHP. It was not the purpose of the ACHP to foreclose the opportunity of Federal agencies and SHPO/THPOs to attempt to work out their differences regarding this finding. Therefore, the amendments now explicitly state that, upon disagreement, Federal agencies



"shall either consult with the objecting party to resolve the disagreement, or forward the finding and supporting documentation to the Council" for review. See Section 800.4(d)(1)(ii).

If the option is invoked by the ACHP to require decisions from agency heads in other than very rare instances, the work of Federal agencies could be seriously impeded (particularly those agencies with multi-member agency heads like the FCC). Even if used sparingly, this would delay the deployment of needed service to the public, and could also delay FCC consideration of other important issues of telecommunications policy having no historic preservation implications. If the ACHP concludes that these provisions are necessary and within its statutory authority, we urge the ACHP to invoke the proposed rules sparingly with a view toward requiring a response from agency heads only in cases presenting the most significant questions of law or policy or having such magnitude as to potentially cause the destruction of, or other very significant impact on, historic properties. The ACHP believes it has the legal authority to issue comments on agency effect findings to the heads of agencies. Among other things, the statutory language of Section 106 specifies that "[t]he head of any such Federal agency shall afford the Advisory Council on Historic Preservation \* \* \* a reasonable opportunity to comment with regard to such undertaking." 16 U.S.C. 470f (emphasis added). A more than reasonable interpretation of that statutory language would indicate that the ACHP could provide its opinion on the effects of an undertaking to the head of an agency. Now that such ACHP's opinions on effects are advisory, this could be the ACHP's last reasonable opportunity to comment on the undertaking within the Section 106 process. Nevertheless, in response to this and other similar comments, the ACHP has changed the proposed amendments so that the head of an agency can delegate the duty of responding to the ACHP's opinions on effects to the agency's Senior Policy Official. The Senior Policy Official, as now defined in the Section 106 regulations, is the senior policy level official designated by the head of the agency pursuant to Section 3(e) of Executive Order 13287. In addition, the final amendments provide that ACHP decisions to issue opinions to heads of agencies must be guided by the criteria of appendix A to the regulations.

In consultations where the ACHP has entered the process, there appears to be no good reason to allow the ACHP to

object and appeal to itself. Doing so merely adds unnecessary expense and delay to an already overly burdensome process. \* \* \* If the ACHP desires to object to the finding, it should do so and communicate its comments to the agency within the original 30-day review period. The ACHP has changed the proposed amendments in response to this and other similar comments. The amendments regarding effect findings, as originally proposed, could allow the ACHP to object twice to Federal agency findings of effect: once during the initial 30-day period for parties to review the finding, and a second time once the agency finalized its finding and, upon objection, needed to refer the matter to the ACHP for an advisory opinion within a separate review period. This could have allowed the ACHP to object in the initial period and then object again, thereby giving the ACHP two independent opportunities to review and object to the finding. This was not intended. The amendments were edited so that if the ACHP provides a written objection to the agency within the initial 30-day review period, the agency does not need to refer the same matter to the ACHP for the "second" review. However, the ACHP written objection in the initial 30-day period would be subject to the same conditions that would have applied for the "second" referral (e.g., ACHP discretion to send the opinion to the head of the agency; and requirement that a response come from the agency head or the Senior Policy Official if the matter is sent to the head of the agency).

The ACHP is not required to respond to frivolous or unfounded objections, or in fact to objections of any kind, but as written in these amendments, the full 30-day delay from the filing of such objections is automatic and unavoidable. In order to limit unnecessary objections and minimize wasteful delay, objections that trigger a 30-day review ought to be limited to written objections that assert and substantiate a substantial likelihood of significant adverse effect, consisting of damage or destruction to a highly important historic property. Another proposed idea is to add a process for agencies or applicants to dismiss insufficiently supported objections. The ACHP disagrees. While the ACHP may (and does) disagree with certain SHPO/THPO objections from time to time, it does not believe such objections are frivolous or unfounded. Moreover, with regard to objections to "no adverse effect" findings, the ACHP has changed the proposed amendments so that the default time period for ACHP response

is 15 days. An objection that is frivolous or unfounded would, at worst, only cause a 15 day delay in the process. The documentation that agencies are already required to provide the ACHP would adequately show the seriousness (or lack thereof) of objections. Particularly with regard to the idea of a motion to dismiss process, the ACHP also does not believe that adding such an additional layer of process would achieve much in terms of saving time or providing for predictability. As the comment itself points out, time (the comment suggests ten days) would be needed for the ACHP to consider and dispose of such motions to dismiss, not to mention the time for the agency or applicant to draft and provide the ACHP with the motion itself. In addition, this additional layer of process would provide a further area of potential, time-consuming litigation for those who want to challenge an ACHP's decision to dismiss their objection. Moreover, inserting this motion to dismiss process into the regulations would further clutter what many industry commenting parties deem to be an overly complicated process. Finally, the comment provides no basis for limiting the analysis to "significant" adverse effects or "highly important" historic properties. As explained in the preambles to previous iterations of the Section 106 regulations and case law, the ACHP believes it has properly defined the "adverse effects" that should be considered in the Section 106 process, and properly defined the scope of "historic properties" to be considered in the process. See *NMA v. Slater*.

The proposal exceeds the standards explained in the *NMA v. Slater* case, in that it imposes a further procedural requirement, after the agency has made a determination of effect, which additional requirement is obviously designed to put pressure on the agency to reconsider or reverse its decision. The ACHP disagrees. The amendments do not exceed the standards explained in the *NMA v. Slater* case. The court partially invalidated sections 800.4(d)(2) and 800.5(c)(3) insofar as they forced an agency to proceed to the next step of the process when the ACHP objected to such agency's effect finding, because the court viewed this as the ACHP effectively reversing the agency's substantive effect findings. The amendments make it clear that the ACHP's opinions on effect findings are not binding on the agency and that only the agency can reverse its own findings. If the agency disagrees with the ACHP's opinion as to whether there is an effect or an adverse effect, the agency

responds to the ACHP opinion and is done with the Section 106 process.

The ACHP should be required to keep and report statistics, as a part of its annual report, on the number of times that federal agencies have bypassed the Section 106 process by maintaining initial findings of no effect and no adverse effect despite SHPO/THPO and ACHP objections. This and similar comments reflected the opinion that certain Federal agencies, knowing that the ACHP could no longer "overtake" their findings of effect, would take advantage of the situation and be more willing to make questionable findings of "no historic properties affected" or "no adverse effects." The ACHP has changed the proposed amendments so that they now include a requirement for the ACHP to keep track of how agencies respond to ACHP opinions regarding effects, and make a report of such data available to the public. This will help the ACHP in overseeing the Section 106 process. The ACHP intends to use this information in order to, among other things, bring any recurring problems to the heads of the relevant agencies and suggest ways in which they can improve the effectiveness, coordination, and consistency of their policies and programs with those of the NHPA. See 16 U.S.C. 470j(a)(6). The ACHP decided that, in order to present a fuller and more accurate picture, the information to be collected must include not only the occasions where an agency proceeds in disagreement with the ACHP, but also those occasions where an agency changes its finding in accordance with the ACHP advice. The ACHP will also keep track of the instances where the ACHP decides to not respond to an agency referral of an objection. Finally, while the ACHP will maintain discretion as to how it makes this information available to the public, its intent is to be flexible in using mechanisms such as its web-site or other means. The ACHP will not require members of the public to file Freedom of Information Act requests in order to get that information.

While there is great value in a process that would allow time for the ACHP to comment to the head of a federal agency where the issue warrants, many of the review requests that the ACHP will receive will not warrant such attention. In the interest of streamlining the compliance process, a 15-day review period for "no adverse effect" determinations is adequate for most of these requests, and an amendment could provide for a 30-day review period in certain situations. Specific criteria, such as those contained in Appendix A of the current regulations,

are needed to provide a threshold between standard staff review and full ACHP involvement. The ACHP received this and other similar comments. In response, the ACHP decided to change the amendments so that when it receives a referral for review of a "no adverse effect" objection, the default time period for such review is 15 days. If the ACHP deems that it needs more time, it can extend the review period an additional 15 days so long as it notifies the agency. This allows simple or weak objections to be dispatched sooner, while also allowing the ACHP staff and/or membership to better manage their workload so that they can dedicate the necessary time to properly review and respond to objections that present more significant and complex issues. The ACHP does not believe that the 15 additional days, when actually invoked by the ACHP, would seriously affect project planning and could be accommodated by agencies in their establishment of the project review and approval schedule. Finally, in response to this and similar comments, the ACHP changed the amendments so that an ACHP decision to send its opinion to the head of an agency must be guided by appendix A of the regulations.

At the very least, agencies should be required to copy SHPOs on the documentation submitted to the ACHP when an objection is referred to the ACHP. Absent this, the SHPOs will have no assurance that their position has been accurately represented to the ACHP or that the documentation provided by the agency is the same as that submitted to the SHPO for review—or, for that matter, that the project has been forwarded to the ACHP. In response to this and other similar comments, the ACHP changed the proposed amendments so that agencies are now required to notify consulting parties (which includes SHPO/THPOs) that a referral has been made to the ACHP and to make the information packet sent to the ACHP available to the public. It is the understanding of the ACHP that many agencies already proceed in this way anyhow.

Provide for Tribes and THPOs to request additional time for review, rather than allowing the federal agency to wait out an absolute cut-off time of thirty (30) days. The ACHP believes that the amendments strike an appropriate balance between the need for an adequate time period for review, and the need for projects decisions to be made in a timely manner and within a predictable time frame. However, the ACHP strongly encourages Federal agencies to facilitate effective tribal

involvement by being receptive to tribal requests for additional time for review.

Strike "assume concurrence with the agency's finding" and replace with "proceed in accordance with the agency official's original finding." No reason for the agency to assume anything about the ACHP's position due to its silence. The ACHP agrees that the terminology regarding "assuming concurrence" may not necessarily reflect the position of the entity that fails to respond within the regulatory time frame. Accordingly, that terminology has been removed. Nevertheless, the legal and procedural effect of a failure to respond within the provided time frame remains exactly the same as before (e.g., "the agency official's responsibilities under section 106 are fulfilled" if neither the ACHP nor the SHPO/THPO object to a no historic properties affected finding within the 30-day review period).

Concerned about the requirement that the agency provide "evidence" that the agency considered the ACHP's opinion. We understand the need of the agency to provide a responsive reply to the ACHP, however the Department finds this requirement confusing, overly burdensome, and unjustified. The ACHP clarifies that this requirement for providing "evidence" simply means that the agency's written response must explain the agency's rationale for either following or not following the ACHP opinion so that the document reflects the fact that the agency actually considered the ACHP opinion.

Require the agency to prepare additional documentation for the ACHP's review, beyond the existing requirements of 36 CFR 800.11(d)-(e). This should specifically include responses from the agency to any objections raised by a consulting party or the SHPO/THPO, for both "no historic properties affected" and "no adverse effect" findings. Several comments raised this issue. However, it has been the ACHP's experience that the current documentation requirements at the cited provision of the regulations are sufficient for the ACHP to carry out an informed and adequate review. Moreover, it is the ACHP's experience that in most, if not all, cases of objection referrals to the ACHP, the Federal agencies explain why they believe the objection is incorrect. This explanation necessarily responds to the objection itself.

If the SHPO/THPO or a consulting party disagrees with the agency's determination regarding effects, require the finding to be certified by the Federal Preservation Officer, and/or another agency official who is a historic preservation professional, meeting the

Secretary of the Interior's Professional Qualifications Standards, 62 FR 33707 (June 20, 1997), prior to sending the finding to the ACHP for review. The ACHP declined to follow the recommendation in this comment. Many Federal agencies have historic preservation professionals in their staff who review and/or develop agency findings in the Section 106 process. In addition, other professionals at the SHPO/THPO offices, and sometimes the ACHP, also review the findings in the course of the normal process. Accordingly, the ACHP did not believe that the delay that could be created by such an additional layer of process would be justified.

Actual comments should be required from the ACHP to help rule on effect disagreements. The ACHP simply does not have the staff resources that would be needed to respond to every objection referred to it regardless of merit.

#### *Clarification of the 30-Day Review Period for No Adverse Effect Findings*

Federal agencies should not have to wait until the end of the 30-day period if the agency obtains the agreement of all the consulting parties within that period. This concept was rejected since there was a concern that it could motivate agencies to allow fewer consulting parties into the process in order to increase the chances of having a shorter review period. The ACHP also wanted to provide those who may have been denied consulting party status or who may not have found out about the undertaking until late, a better opportunity to bring their concerns to the ACHP.

Conferring authority to trigger ACHP review on every consulting party would be counterproductive and inefficient since the mere assertion of a disagreement, regardless of its merit, could result in the elevation of the dispute to the ACHP. This would create delays. The proposed amendments do not change this aspect of the process. Assessing the merit (or lack thereof) of disagreements would insert uncertainty in the process. Once the ACHP has received a referral of a disagreement, it could dispose of those which it deems to have no merit with little delay.

#### *Section 800.14(c)—Exemptions*

Suggest that the ACHP provide a specific mechanism that ensures notification of and input from the affected agency. The ACHP will notify and consult with those agencies affected by any exemption proposed by it.

Authorizing the ACHP to exempt "certain" arbitrary projects from Section 106 weakens the Act. The process for

exemptions retains the high standard that has to be met by any program or category of undertakings seeking an exemption. Their potential effects upon historic properties must be "foreseeable and likely to be minimal or not adverse" and the exemption must be consistent with the purposes of the NHPA. See 16 U.S.C. 470v and 36 CFR 800.14(c)(1).

Since the members of the ACHP are presidential appointees, it would be disingenuous to contend that political partisanship would have no effect on these exemptions. There also seems to be a conflict of interest in the ACHP proposing an exemption, and then deciding on it. "Partisanship" plays no role in these decisions. As stated above, exemptions must meet high, non-partisan standards in order to be adopted. See 16 U.S.C. 470v and 36 CFR 800.14(c)(1). Moreover, even without the amendments, Federal agencies other than the ACHP could propose exemptions. Those Federal agencies are led by presidential appointees. Finally, under the ACHP's operating procedures, ACHP Federal agency members are not permitted to vote on matters in which their agency has a direct interest not common to the other members.

The exemptions process should be amended to include a procedure for SHPOs/THPOs or other consulting parties to request a determination from ACHP that a specific undertaking that would normally be exempt should be reviewed. The ACHP believes this is unnecessary. The exemptions themselves, as adopted by the ACHP, can contain such a process. Moreover, the exemptions can be drafted so that they place situations that could present adverse effects beyond their scope. Finally, the regulations allow the ACHP to revoke exemptions. Section 800.14(c)(7). Those who believe an exemption should be revoked can ask the ACHP to do so under the cited section.

If the ACHP is authorized to propose and approve exemptions on its own initiative, where will we turn with our objections to these exemptions? The consultation process regarding exemptions has not changed. Those who object to the exemptions can present such objections to the ACHP. Much like the rulemaking process, the fact that the ACHP has submitted a proposal does not necessarily mean that the ACHP will adopt the proposal without changes or adopt the proposal in the first place. The ACHP will consider objections to exemptions it proposes the same way it will consider those regarding exemptions other agencies propose.

The ACHP fails to make a persuasive case as to why it needs additional

authority to search out and adopt exemptions from Section 106. There is no claim that the current regulation has caused any particular problems, or has been found inadequate in some way. If a potential Section 106 exemption is "not \* \* \* a high enough priority for any single \* \* \* agency to prompt it to ask for an exemption or to ask for it in a timely fashion," it is not clear why it should be a priority for the ACHP. As opposed to most of the other agencies of the Federal government, the ACHP has a mission focused on historic preservation matters and assisting other agencies regarding such matters. Other agencies have missions that are focused on other matters. It is not surprising, therefore, that their priorities are not focused on historic preservation issues. This does not mean, however, that such issues are unimportant or not deserving of the ACHP's attention. If a program or category of undertakings meet the standards for an exemption, such exemptions should be considered by the ACHP whether or not the relevant agency can focus its energies on the issue. Also, due to its size and flatter management structure, the ACHP can address these issues more promptly. Furthermore, the ACHP believes this amendment appropriately and responsibly promotes the goal of environmental streamlining. Finally, as stated in the NPRM, the ACHP is in a unique position to identify cross-cutting exemptions that could benefit several agencies.

The ACHP should be required to keep and report statistics, as a part of its annual report, on the number and name of project exemptions that it has initiated. The ACHP does not see a reason for such reporting considering the fact that exemptions must be published in the *Federal Register* before they go into effect. See Section 800.14(c)(8).

This is an unreasonably indefinite provision that short-circuits protection of historic properties encouraged by current regulations requiring Federal agencies to propose exemptions individually rather than in broad classes. The proposed amendments will inevitably result in failures to appreciate unique characteristics of individual properties subsumed in exempted categories or affected by an unacceptably undefined "certain types of activities," and therefore, a significant erosion of preservation standards. The amendments do not alter the scope of possible exemptions (e.g., program or category of agency undertakings). They also do not change the high standards that exemptions must meet. See 16 U.S.C. 470v and 36

CFR 800.14(c)(1). Finally, they do not change the consultative process through which proposed exemptions are considered.

The rule does not allot a specific time period for the THPOs/SHPOs to comment on the proposed exemptions. THPOs/SHPOs should be given the same period of time to comment on proposed exemptions as the ACHP. The THPOs/SHPOs review and comment period should occur prior to the ACHP review and comment period so that the ACHP may take into account the input of the THPOs/SHPOs in their decision-making. The exemptions process does not specify a time period for THPO/SHPOs to comment because different exemptions, due to their varying complexity and impact, may call for widely different comment periods. The process points to section 800.14(f), which fleshes out the details of consulting with tribes and specifies that the agency official and the ACHP must take tribal views into account in reaching a final decision.

*ACHP Review of Objections Within the Process for Agency Use of the NEPA Process for Section 106 Purposes*

36 CFR 800.8(c)(3) states that the "Council shall notify the Agency Official either that it agrees with the objection, in which case the Agency Official shall enter into consultation in accordance with 800.6(b)(2) ...". This appears to contradict the court decision that the asserted power of the ACHP to reverse Federal agency determinations of effect exceeded the ACHP's legal authority under the Act. This was an oversight. The ACHP agreed that the referred section of the regulations needed to be edited to better comport with the *NMA v. Slater* decision and therefore added an amendment to incorporate into that section changes similar to those incorporated by the amendments to the review process for effect findings at sections 800.4(d) and 800.5(c).

*Section 800.16(y)—State Permits Under Delegated Programs*

It is difficult for us to understand the basis for the proposed rule change given that the rule's definition of "undertaking" was taken verbatim from the 1992 revisions to the NHPA. With regard to licensing, the appellant in the *NMA v. Fowler* case argued that Section 106, by its own terms, only applied to "Federal . . . agenc[ies] having authority to license any undertaking," 16 U.S.C. 470f. Accordingly, it argued that no matter how broadly Congress defined the term undertaking, Section 106 only deals with the subset of

undertakings that actually receive a license from a Federal agency, as opposed to a State agency. The appellants, and the court, saw Section 106 itself as placing a limit on the "undertakings" subject to its provision. The court also believed that the case of *Sheridan Kalorama Historical Association v. Christopher*, 49 F.3d 750 (D.C. Cir. 1995), barred it from a different interpretation. In that opinion, the court held that "however broadly the Congress or the [ACHP] define 'undertaking,' Section 106 applies only to: (1) 'any Federal agency having \* \* \* jurisdiction over a proposed Federal or federally assisted undertaking'; and (2) 'any Federal \* \* \* agency having authority to license any undertaking.'" Although the ACHP disagrees with the *NMA v. Fowler* interpretation of the NHPA, the ACHP is bound by the court's decision.

The ACHP should disclose contrary legal interpretations. This comment referred to the case of *Indiana Coal Council v. Lujan*, 774 F. Supp. 1385 (D.D.C. 1991), vacated in part and appeal dismissed, Nos. 91-5397, 91-5405, 91-5406, 1993 U.S. App. LEXIS 14561, 1993 WL 184022 (D.C. Cir. Apr. 26, 1993), appeal dismissed, No. 91-5398 (D.C. Cir. Dec. 2, 1993). In that case, the court held that permits issued by State agencies pursuant to a delegated authority from the Office of Surface Mining were undertakings requiring compliance with Section 106. Soon after that decision was issued, Congress amended the NHPA definition of "undertaking" to specifically include "those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency." 16 U.S.C. 470w(7). Some, including the ACHP, argue that Congress did this to codify the ruling in the *Indiana Coal Council* case. See 138 Cong. Rec. S17681 (Oct. 8, 1992). In fact, the *Indiana Coal Council*, the National Coal Association, and the American Mining Congress asked the D.C. Circuit to dismiss their appeal of the *Indiana Coal Council* case based on the 1992 amendment to the NHPA definition of "undertaking." As a result, the appeal was dismissed and the decision vacated in part by the D.C. Circuit because the 1992 amendments made the case moot.

A new section should be added to the regulations that specifically addresses "State and Local Delegated Programs." The ACHP should provide Federal agencies and the public with clear and unambiguous language concerning these programs and their level of consideration, consistent with the Federal Court ruling, under Section 106 of the Act. As stated in the NPRM, the

ACHP believes that Federal agency approval of, amendments or revisions to, and funding of delegated programs trigger Section 106 review. The ACHP does not believe a new section in the regulations would be required for such programs because it believes the already existing processes in those regulations can be used to adequately cover such Federal agency approvals and/or funding. Specifically, the delegated programs could be covered by Programmatic Agreements under section 800.14(b) of the regulations. The ACHP looks forward to working with the Department of the Interior, the Environmental Protection Agency, and other agencies in developing such agreements.

The proposed changes to the regulation itself at 36 CFR 800.16(y) are appropriate and consistent with the D.C. Circuit's opinion in *NMA v. Fowler*. However, the Preamble discussion of the rule is inappropriate (decision on whether there is an undertaking is up to the agency), improperly characterizes the nature of the Federal government's role in annual funding of State programs (while initial approval may be an undertaking, it is a leap to say each renewal, assessment or funding event will trigger Section 106), and is inconsistent with the ACHP's official position set forth in its brief before the court (regarding the agency having the final word on whether it has an undertaking). The discussion is not inappropriate since, while procedurally the agency makes the determination as to whether it has an undertaking, the ACHP has the right (and the expertise) to provide its opinion on that issue. Furthermore, the Office of Surface Mining (OSM) has long acknowledged that its approval, amendment, and at least the initial funding of State-delegated programs triggers Section 106 review. See *Indiana Coal Council*, 774 F.Supp. at 1400 (this portion of the opinion was not vacated by the D.C. Circuit). The ACHP looks forward to working with the affected agencies, historic preservation officers, industries, and other stakeholders in reaching an agreement for handling these programs under Section 106.

Objects to the suggestion that "For existing programs, this [compliance with section 106] could occur during renewal or periodic assessment of such programs." There will be no way to know that the delegation includes adequate and enforceable provisions until after the "renewal or periodic assessment" occurs at some uncertain date years in the future. Waiting on renewal or periodic reviews in such instances means that untold damage to

the Nation's heritage will occur in the intervening years. Improper delegations must immediately be rescinded until such time as the agency official has properly complied with section 106 and 36 CFR Part 800. While the ACHP desires to move quickly and reach adequate agreements on these programs, the ACHP does not have the authority to rescind other agencies' approvals of programs. The idea of pursuing an agreement at the moment of renewal or reassessment (to cover a delegated program as a whole) was mostly a practical recommendation, so that agencies that are nearing such stages would take advantage of such occasions (when they may be preparing to undergo some form of review process anyhow) to work on and resolve this issue.

Concerned with the ACHP's "opinion" that Federal agency approval and/or funding of such delegated programs does require Section 106 compliance by the Federal agency, as such programs are "undertakings" receiving Federal approval and/or Federal funding. This appears as an attempt to accomplish through the back door what the ACHP has been barred by the courts from doing through the front door. The ACHP is not aware of any court opinion barring its interpretation of such Federal approval and funding decisions as being undertakings subject to Section 106. The D.C. Circuit specifically mentioned this interpretation, without ruling on it, when it quoted the appellant's brief: "For example, although the NMA concedes that '[t]he Federal government's approval of a State's overall SMCRA permitting program may arguably be an action subject to Section 106, because the federal government contributes funds to the general administration of state permitting programs and approves those programs,' it contends that individual state mining permits do not fall within that section since 'the Federal government does not retain the authority to approve or reject any one mining project application.'" In any event, OSM has long acknowledged, and the U.S. District Court for the District of Columbia has ruled, that OSM approval, amendment, and at least the initial funding of delegated programs triggers Section 106 review. See *Indiana Coal Council*, 774 F.Supp. at 1400 (this portion of the opinion was not vacated by the D.C. Circuit).

Section 106 reviews should definitely be required for individual permits issued by state agencies under delegation by federal agencies. Our cities and counties receive large amounts of money wherein they are allowed to issue permits under

delegation by federal agencies (e.g., HUD programs). The ACHP wants to clarify that under certain Housing and Urban Development (HUD) programs, such as the Community Development Block Grant (CDBG) program, Federal statute specifically provides that States or local agencies act on behalf of HUD in meeting HUD's Section 106 responsibilities. Those HUD grant programs are not affected by the issue of delegated programs being addressed in these amendments, which pertain only to regulatory and permitting programs.

#### *Rulemaking Process*

Urges ACHP to engage in consultation with preservation stakeholders when developing a revised draft of the regulations, rather than drafting them behind closed doors, as was done with the current proposal. The ACHP engaged in the consultation required by the Administrative Procedure Act for rulemaking. It published the proposed amendments on the *Federal Register* and provided the public with 30 days in which to provide comments. In response to requests, this period was thereafter extended an additional 30 days. As reflected in this preamble, the ACHP seriously considered all public comments and, in response to those comments, edited the proposed amendments in several ways. Moreover, the ACHP membership, composed by representatives of various stakeholders in the process (including Federal agencies, the National Trust for Historic Preservation, the National Conference of State Historic Preservation Officers, citizen members, a Native Hawaiian organization representative and expert members), fully vetted the proposed amendments and changes to them. In the end, as explained above, the ACHP had to amend the regulations and respond in a timely manner to the court's order. Moreover, it is important to note that this rulemaking involved a fairly limited scope of issues.

#### *Miscellaneous Issues*

Several public comments addressed issues beyond the limited scope of this rulemaking. Again, this rulemaking was intended to respond primarily to the issues raised by the *NMA v. Slater* and *NMA v. Fowler* decisions regarding the authority of the ACHP to overturn agency effect determinations and the issue of delegated programs. The ACHP decided to respond to the following comments, even though they were not particularly germane to the present rulemaking. The ACHP may consider some of those issues in future rulemakings.

If the dispute is over eligibility for inclusion on the National Register, the Keeper should be included in the process. Several members of the public made this comment. However, it is unclear what was meant since the Section 106 regulations already provide for referral to the Keeper when an agency and SHPO/THPO disagree regarding the eligibility of a property for listing on the National Register of Historic Places. 36 CFR 800.4(c)(2). To the extent that the comment advocates that such referral be made when consulting parties other than the SHPO/THPO dispute a determination regarding a property's eligibility, the ACHP disagrees. The practice of agency and SHPO/THPO eligibility determinations has been long established in practice and in law (see 36 CFR 63.3), and there is no indication of such an arrangement having presented problems in the Section 106 process.

The ACHP rules contain no significance or materiality limitations, such as those contained in the National Environmental Policy Act that limit most of that statute's key provisions only to actions that might significantly affect the environment. In contrast, the ACHP Section 106 rules seek to require agencies to examine all effects of any intensity, whether or not the effects are significant. Where there is an alteration of a historic property, any diminishment of any aspect of its historic integrity, however measured and however great or small, can support a finding of adverse effect. While the NEPA statute itself contains the limiting factors of "major" Federal actions and "significant" effects, the NHPA does not. Regardless, the Section 106 regulations allow agencies to weed out at the very start of the process those undertakings that generically would not affect historic properties (Section 800.3(a)), and provides a shortened process for those undertakings that would not affect historic properties within their area of potential effects (Section 800.4(d)).

Opponents of the Section 4(f) review process claimed its protections were unnecessary because Section 106 was in place. Now the opponents of responsible procedure aim to significantly weaken Section 106. Section 4(f) could still be eliminated when the Transportation Act comes before Congress in January. If Section 4(f) is removed and Section 106 severely weakened, there will be no meaningful protection for significant historic resources. Several members of the public repeated this comment verbatim. The ACHP does not believe the amendments in this rulemaking "significantly weaken" the Section 106

process. Moreover, as of the date of this notice, Congress has not taken action on the legislation mentioned in these comments. Various versions of the bill are under consideration by the Congress. Due to the uncertainty of the actual legislation that may or may not be passed by Congress, the ACHP can only speculate on the eventual relationship between Section 106 and Section 4(f). Once Congress and the President have acted on the legislation, the ACHP will be able to assess the situation and determine whether any future regulatory action is needed.

Restrict the ability of agencies to exclude consulting parties in order to silence objections: This could be accomplished, for example, by allowing the SHPO/THPO or the ACHP to invite a consulting party to participate in the Section 106 review if the federal agency has rejected the party's request. Several members of the public endorsed this concept. In light of the limited scope of this rulemaking and the fact that this issue was not identified in the NPRM, the ACHP does not believe it is appropriate to address this issue in the final rulemaking. The ACHP also notes that the current provision was the subject of extensive comment and negotiation in the previous rulemaking and any alteration of it would require thorough public airing.

Very concerned with the ACHP's rules extending the protections of Section 106 to properties only "potentially eligible" for the National Register of Historic Places. Only those properties actually listed on the National Register or formally determined eligible for such listing by the Keeper should be within the scope of Section 106. This very same issue was raised in the *NMA v. Slater* case. That court sided with the ACHP's interpretation of the NHPA that the properties within the scope of Section 106 include those that meet the criteria for listing on the National Register, even though they have not been formally determined eligible by the Keeper and that the process for identifying them in the Section 106 regulations is appropriate. As the ACHP stated in a previous preamble to the Section 106 regulations (which the court specifically cited approvingly in its decision): "Well-established Department of the Interior regulations regarding formal determinations of eligibility specifically acknowledge the appropriateness of section 106 consideration of properties that Federal agencies and SHPOs determine meet the National Register criteria. See 36 CFR 63.3. \* \* \* Not only does the statute allow this interpretation, but it is the only

interpretation that reflects (1) the reality that not every single acre of land in this country has been surveyed for historic properties, and (2) the NHPA's intent to consider all properties of historic significance. It has been estimated that of the approximately 700 million acres under the jurisdiction or control of Federal agencies, more than 85 percent of these lands have not yet been investigated for historic properties. Even in investigated areas, more than half of identified properties have not been evaluated against the criteria of the National Register of Historic Places. These estimates represent only a part of the historic properties in the United States since the section 106 process affects properties both on Federal and non-Federal land. Finally, the fact that a property has never been considered by the Keeper neither diminishes its importance nor signifies that it lacks the characteristics that would qualify it for the National Register." 65 FR 77705.

#### IV. Impact Analysis

##### *The Regulatory Flexibility Act*

The ACHP certifies that the amendments will not have a significant economic impact on a substantial number of small entities. The amendments in their proposed version only impose mandatory responsibilities on Federal agencies. As set forth in Section 106 of the NHPA, the duties to take into account the effect of an undertaking on historic resources and to afford the ACHP a reasonable opportunity to comment on that undertaking are Federal agency duties. Indirect effects on small entities, if any, created in the course of a Federal agency's compliance with Section 106 of the NHPA, must be considered and evaluated by that Federal agency.

##### *The Paperwork Reduction Act*

The amendments do not impose reporting or record-keeping requirements or the collection of information as defined in the Paperwork Reduction Act.

##### *The National Environmental Policy Act*

It is the determination of the ACHP that this action is not a major Federal action significantly affecting the environment. Regarding the National Environmental Policy Act (NEPA) documents for the rule that is being amended, as a whole, please refer to our Notice of Availability of Environmental Assessment and Finding of No Significant Impact at 65 FR 76983 (December 8, 2000). A supplemental Environmental Assessment and Finding of No Significant Impact are not deemed

necessary because (1) these amendments do not present substantial changes in the rule that are relevant to environmental concerns; (2) most of the amendments are a direct result of a court order; and (3) there are no significant new circumstances or information relevant to environmental concerns and bearing on the rule or its impacts.

##### *Executive Orders 12866 and 12875*

The ACHP is exempt from compliance with Executive Order 12866 pursuant to implementing guidance issued by the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs in a memorandum dated October 12, 1993. The ACHP also is exempt from the documentation requirements of Executive Order 12875 pursuant to implementing guidance issued by the same OMB office in a memorandum dated January 11, 1994.

##### *The Unfunded Mandates Reform Act*

The amendments do not impose annual costs of \$100 million or more, will not significantly or uniquely affect small governments, and are not a significant Federal intergovernmental mandate. The ACHP thus has no obligations under sections 202, 203, 204 and 205 of the Unfunded Mandates Reform Act.

##### *Executive Order 12898*

The amendments do not cause adverse human health or environmental effects, but, instead, seek to avoid adverse effects on historic properties throughout the United States. The participation and consultation process established by the Section 106 process seeks to ensure public participation—including by minority and low-income populations and communities—by those whose cultural heritage, or whose interest in historic properties, may be affected by proposed Federal undertakings. The Section 106 process is a means of access for minority and low-income populations to participate in Federal decisions or actions that may affect such resources as historically significant neighborhoods, buildings, and traditional cultural properties. The ACHP considers environmental justice issues in reviewing analysis of alternatives and mitigation options, particularly when Section 106 compliance is coordinated with NEPA compliance.

##### **Submission to Congress and the Comptroller General**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement

Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The Council will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective August 5, 2004.

#### V. Text of Amendments

##### List of Subjects in 36 CFR Part 800

Administrative practice and procedure, Historic preservation, Indians, Inter-governmental relations, Surface mining.

■ For the reasons stated in the preamble, the Advisory Council on Historic Preservation amends 36 CFR part 800 as set forth below:

#### PART 800—PROTECTION OF HISTORIC PROPERTIES

■ 1. The authority citation for part 800 continues to read as follows:

Authority: 16 U.S.C. 470s.

■ 2. Amend § 800.4 by revising paragraph (d) to read as follows:

##### § 800.4 Identification of historic properties.

\* \* \* \* \*

(d) *Results of identification and evaluation.*

(1) *No historic properties affected.* If the agency official finds that either there are no historic properties present or there are historic properties present but the undertaking will have no effect upon them as defined in § 800.16(i), the agency official shall provide documentation of this finding, as set forth in § 800.11(d), to the SHPO/THPO. The agency official shall notify all consulting parties, including Indian tribes and Native Hawaiian organizations, and make the documentation available for public inspection prior to approving the undertaking.

(i) If the SHPO/THPO, or the Council if it has entered the section 106 process, does not object within 30 days of receipt of an adequately documented finding, the agency official's responsibilities under section 106 are fulfilled.

(ii) If the SHPO/THPO objects within 30 days of receipt of an adequately documented finding, the agency official shall either consult with the objecting party to resolve the disagreement, or

forward the finding and supporting documentation to the Council and request that the Council review the finding pursuant to paragraphs (d)(1)(iv)(A) through (d)(1)(iv)(C) of this section: When an agency official forwards such requests for review to the Council, the agency official shall concurrently notify all consulting parties that such a request has been made and make the request documentation available to the public.

(iii) During the SHPO/THPO 30 day review period, the Council may object to the finding and provide its opinion regarding the finding to the agency official and, if the Council determines the issue warrants it, the head of the agency. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part. The agency shall then proceed according to paragraphs (d)(1)(iv)(B) and (d)(1)(iv)(C) of this section.

(iv) (A) Upon receipt of the request under paragraph (d)(1)(ii) of this section, the Council will have 30 days in which to review the finding and provide the agency official and, if the Council determines the issue warrants it, the head of the agency with the Council's opinion regarding the finding. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part. If the Council does not respond within 30 days of receipt of the request, the agency official's responsibilities under section 106 are fulfilled.

(B) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall take into account the Council's opinion before the agency reaches a final decision on the finding.

(C) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall then prepare a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's opinion, and provide it to the Council, the SHPO/THPO, and the consulting parties. The head of the agency may delegate his or her duties under this paragraph to the agency's senior policy official. If the agency official's initial finding will be revised, the agency official shall proceed in accordance with the revised finding. If the final decision of the agency is to affirm the initial agency finding of no historic properties affected, once the summary of the decision has been sent to the Council, the SHPO/THPO, and the consulting parties, the agency

official's responsibilities under section 106 are fulfilled.

(D) The Council shall retain a record of agency responses to Council opinions on their findings of no historic properties affected. The Council shall make this information available to the public.

(2) *Historic properties affected.* If the agency official finds that there are historic properties which may be affected by the undertaking, the agency official shall notify all consulting parties, including Indian tribes or Native Hawaiian organizations, invite their views on the effects and assess adverse effects, if any, in accordance with § 800.5.

■ 3. Amend § 800.5 by revising paragraphs (c)(1), (2) and (3) to read as follows:

##### § 800.5 Assessment of adverse effects.

\* \* \* \* \*

(c) \* \* \*

(1) *Agreement with, or no objection to, finding.* Unless the Council is reviewing the finding pursuant to paragraph (c)(3) of this section, the agency official may proceed after the close of the 30 day review period if the SHPO/THPO has agreed with the finding or has not provided a response, and no consulting party has objected. The agency official shall then carry out the undertaking in accordance with paragraph (d)(1) of this section.

(2) *Disagreement with finding.*  
(i) If within the 30 day review period the SHPO/THPO or any consulting party notifies the agency official in writing that it disagrees with the finding and specifies the reasons for the disagreement in the notification, the agency official shall either consult with the party to resolve the disagreement, or request the Council to review the finding pursuant to paragraphs (c)(3)(i) and (c)(3)(ii) of this section. The agency official shall include with such request the documentation specified in § 800.11(e). The agency official shall also concurrently notify all consulting parties that such a submission has been made and make the submission documentation available to the public.

(ii) If within the 30 day review period the Council provides the agency official and, if the Council determines the issue warrants it, the head of the agency, with a written opinion objecting to the finding, the agency shall then proceed according to paragraph (c)(3)(ii) of this section. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part.

(iii) The agency official should seek the concurrence of any Indian tribe or

Native Hawaiian organization that has made known to the agency official that it attaches religious and cultural significance to a historic property subject to the finding. If such Indian tribe or Native Hawaiian organization disagrees with the finding, it may within the 30 day review period specify the reasons for disagreeing with the finding and request the Council to review and object to the finding pursuant to paragraph (c)(2)(ii) of this section.

(3) *Council review of findings.*

(i) When a finding is submitted to the Council pursuant to paragraph (c)(2)(i) of this section, the Council shall review the finding and provide the agency official and, if the Council determines the issue warrants it, the head of the agency with its opinion as to whether the adverse effect criteria have been correctly applied. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part. The Council will provide its opinion within 15 days of receiving the documented finding from the agency official. The Council at its discretion may extend that time period for 15 days, in which case it shall notify the agency of such extension prior to the end of the initial 15 day period. If the Council does not respond within the applicable time period, the agency official's responsibilities under section 106 are fulfilled.

(ii) (A) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall take into account the Council's opinion in reaching a final decision on the finding.

(B) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall prepare a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's opinion, and provide it to the Council, the SHPO/THPO, and the consulting parties. The head of the agency may delegate his or her duties under this paragraph to the agency's senior policy official. If the agency official's initial finding will be revised, the agency official shall proceed in accordance with the revised finding. If the final decision of the agency is to affirm the initial finding of no adverse effect, once the summary of the decision has been sent to the Council, the SHPO/THPO, and the consulting parties, the agency official's responsibilities under section 106 are fulfilled.

(C) The Council shall retain a record of agency responses to Council opinions on their findings of no adverse effects.

The Council shall make this information available to the public.

\* \* \* \* \*

■ 4. Amend § 800.8 by revising paragraph (c)(3) to read as follows:

**§ 800.8 Coordination with the National Environmental Policy Act.**

\* \* \* \* \*

(c) \* \* \*

(3) *Resolution of objections.* Within 30 days of the agency official's referral of an objection under paragraph (c)(2)(ii) of this section, the Council shall review the objection and notify the agency as to its opinion on the objection.

(i) If the Council agrees with the objection:

(A) The Council shall provide the agency official and, if the Council determines the issue warrants it, the head of the agency with the Council's opinion regarding the objection. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part. The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall take into account the Council's opinion in reaching a final decision on the issue of the objection.

(B) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall prepare a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's opinion, and provide it to the Council. The head of the agency may delegate his or her duties under this paragraph to the agency's senior Policy Official. If the agency official's initial decision regarding the matter that is the subject of the objection will be revised, the agency official shall proceed in accordance with the revised decision. If the final decision of the agency is to affirm the initial agency decision, once the summary of the final decision has been sent to the Council, the agency official shall continue its compliance with this section.

(ii) If the Council disagrees with the objection, the Council shall so notify the agency official, in which case the agency official shall continue its compliance with this section.

(iii) If the Council fails to respond to the objection within the 30 day period, the agency official shall continue its compliance with this section.

\* \* \* \* \*

■ 5. Amend § 800.14 by revising paragraph (c) to read as follows:

**§ 800.14 Federal agency program alternatives.**

\* \* \* \* \*

(c) Exempted categories.

(1) *Criteria for establishing.* The Council or an agency official may propose a program or category of undertakings that may be exempted from review under the provisions of subpart B of this part, if the program or category meets the following criteria:

(i) The actions within the program or category would otherwise qualify as "undertakings" as defined in § 800.16;

(ii) The potential effects of the undertakings within the program or category upon historic properties are foreseeable and likely to be minimal or not adverse; and

(iii) Exemption of the program or category is consistent with the purposes of the act.

(2) *Public participation.* The proponent of the exemption shall arrange for public participation appropriate to the subject matter and the scope of the exemption and in accordance with the standards in subpart A of this part. The proponent of the exemption shall consider the nature of the exemption and its likely effects on historic properties and take steps to involve individuals, organizations and entities likely to be interested.

(3) *Consultation with SHPOs/THPOs.*

The proponent of the exemption shall notify and consider the views of the SHPOs/THPOs on the exemption.

(4) *Consultation with Indian tribes and Native Hawaiian organizations.* If the exempted program or category of undertakings has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) *Council review of proposed exemptions.* The Council shall review an exemption proposal that is supported by documentation describing the program or category for which the exemption is sought, demonstrating that the criteria of paragraph (c)(1) of this section have been met, describing the methods used to seek the views of the public, and summarizing any views submitted by the SHPO/THPOs, the public, and any others consulted.

Unless it requests further information, the Council shall approve or reject the proposed exemption within 30 days of receipt, and thereafter notify the relevant agency official and SHPO/THPOs of the decision. The decision shall be based on the consistency of the exemption with the purposes of the act, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of



historic properties in accordance with section 214 of the act.

(6) *Legal consequences.* Any undertaking that falls within an approved exempted program or category shall require no further review pursuant to subpart B of this part, unless the agency official or the Council determines that there are circumstances under which the normally excluded undertaking should be reviewed under subpart B of this part.

(7) *Termination.* The Council may terminate an exemption at the request of the agency official or when the Council determines that the exemption no longer meets the criteria of paragraph (c)(1) of

this section. The Council shall notify the agency official 30 days before termination becomes effective.

(8) *Notice.* The proponent of the exemption shall publish notice of any approved exemption in the **Federal Register**.

\* \* \* \* \*

■ 6. Amend § 800.16 by revising paragraph (y) and adding paragraph (z) to read as follows:

**§ 800.16 Definitions.**

\* \* \* \* \*

(Y) *Undertaking* means a project, activity, or program funded in whole or

in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval.

(z) *Senior policy official* means the senior policy level official designated by the head of the agency pursuant to section 3(e) of Executive Order 13287.

Dated: June 30, 2004.

**John M. Fowler,**  
*Executive Director.*

[FR Doc. 04-15218 Filed 7-2-04; 8:45 am]

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# Proposed Rules

Federal Register

Vol. 69, No. 128

Tuesday, July 6, 2004

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 78

[Docket No. 02-070-2]

#### Official Brucellosis Tests

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** We are reopening the comment period for our proposed rule that would amend the brucellosis legislation by adding the fluorescence polarization assay to the list of official tests for determining the brucellosis disease status of test-eligible cattle, bison, and swine. This action will allow interested persons additional time to prepare and submit comments.

**DATES:** We will consider all comments that we receive on or before July 21, 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. 02-070-1, 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. 02-070-1.

- **E-mail:** Address your comment to [regulations@aphis.usda.gov](mailto: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. 02-070-1" on the subject line.

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

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov> and follow

the instructions for locating this docket and submitting comments.

**Reading Room:** You may read any comments that we receive on Docket No. 02-070-1 in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

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

**FOR FURTHER INFORMATION CONTACT:** Dr. Arnold Gertonson, National Center for Animal Health Programs, VS, APHIS, 2150 Centre Avenue, Bldg. B, MSC 3E20, Fort Collins, CO 80526-8117; (970) 494-7963.

**SUPPLEMENTARY INFORMATION:** On May 6, 2004, we published in the **Federal Register** (69 FR 25338-25340, Docket No. 02-070-1) a proposal to amend the brucellosis regulations in 9 CFR part 78 to add the fluorescence polarization assay to the list of official tests for determining the brucellosis disease status of test-eligible cattle, bison, and swine.

Comments on the proposed rule were required to be received on or before June 21, 2004. We are reopening the comment period on Docket No. 02-070-1 for an additional 30 days, ending July 21, 2004. This action will allow interested persons additional time to prepare and submit comments. We will also consider all comments received between June 22, 2004 (the day after the close of the original comment period) and the date of this notice.

**Authority:** 7 U.S.C. 8301-8317; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 29th day of June 2004.

**W. Ron DeHaven,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 04-15213 Filed 7-2-04; 8:45 am]

**BILLING CODE 3410-34-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 56

[Docket No. 2004N-0242]

#### Institutional Review Boards; Registration Requirements

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing to require institutional review boards (IRBs) to register at a site maintained by the Department of Health and Human Services (HHS). The registration information would include contact information, the number of active protocols involving FDA-regulated products reviewed in the previous calendar year, and a description of the types of FDA-regulated products involved in the protocols reviewed. The proposed IRB registration requirements would make it easier for FDA to inspect IRBs and to convey information to IRBs.

**DATES:** Submit written or electronic comments on this proposed rule by October 4, 2004. Submit written comments on the information collection provisions by August 5, 2004. See section III of this document for the proposed effective date of any final rule based on this document.

**ADDRESSES:** You may submit comments, identified by Docket No. 2004N-0242, by any of the following methods:

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

- **Agency Web site:** <http://www.fda.gov/dockets/ecomments>. Follow the instructions for submitting comments on the agency Web site.

- **E-mail:** [fdadockets@oc.fda.gov](mailto:fdadockets@oc.fda.gov). Include Docket No. 2004N-0242 in the subject line of your e-mail message.

- **FAX:** 301-827-6870.

- **Mail/Hand delivery/Courier** [For paper, disk, or CD-ROM submissions]: Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**Instructions:** All submissions received must include the agency name and Docket No. 2004N-0242 for this rulemaking. All comments received will

be posted without change to <http://www.fda.gov/dockets/ecomments>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see section IX of this document.

**Docket:** For access to the docket to read background documents or comments received, go to <http://www.fda.gov/dockets/ecomments> and/or the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. You may submit comments on the information collection provisions to the Office of Management and Budget (OMB) by the following method:

- FAX: 202-395-6974. OMB is still experiencing significant delay in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA.

**FOR FURTHER INFORMATION CONTACT:** Philip L. Chao, Office of Policy and Planning (HF-23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-0587.

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

IRBs are boards, committees, or groups formally designated by an institution to review, to approve the initiation of, and to conduct periodic review of, biomedical research involving human subjects. (See § 56.102(g) (21 CFR 56.102(g)).) An IRB's primary purpose during such reviews is to assure the protection of the rights and welfare of human subjects (§ 56.102(g)). FDA's general regulations pertaining to IRBs are in part 56 (21 CFR part 56). (While section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(g)) refers to "institutional review committees" rather than IRBs, FDA considers institutional review committees to be IRBs and to be subject to the IRB regulations.)

Even though IRBs play an important role in the conduct of clinical investigations regulated by FDA, FDA has never compiled a comprehensive list of IRBs involved in reviewing clinical investigations regulated by FDA. Existing FDA regulations have required some, but not all, clinical investigators or sponsors of clinical investigations to provide IRB names and addresses to FDA, and the requirements differ slightly. For example, for human

drug products, the sponsor must disclose the name and address of "each reviewing" IRB. (See 21 CFR 312.23(a)(6)(iii)(b).) For medical devices, the sponsor must disclose the names and addresses of IRBs that have "been asked or will be asked" to review the investigation (see 21 CFR 812.20(b)(6)) (emphasis added). For other types of clinical investigations regulated by FDA (such as food additive studies involving human subjects), the regulations do not expressly require the sponsor or the clinical investigator to disclose or keep records showing an IRB's name and address, and they make no distinction between "reviewing IRBs" and IRBs that have been asked or will be asked to review a study.

In 1998, HHS's Office of Inspector General (OIG) issued several reports on IRBs. OIG sought to identify the challenges facing IRBs and to make recommendations on improving Federal oversight of IRBs. One recommendation was that all IRBs should register with the Federal Government on a regular basis as part of an effort to develop more streamlined, coordinated, and probing means of assessing IRB performance and to enhance the Federal Government's ability to identify and respond to emerging problems before they result in "serious transgressions" (Ref. 1, pp. 20 and 21).

After reviewing the OIG's recommendation, FDA has concluded that IRB registration would serve several important goals. IRB registration would:

- Enable FDA to identify more precisely those IRBs reviewing clinical investigations regulated by FDA. At present, much of FDA's knowledge about the identities and numbers of IRBs reviewing clinical investigations regulated by FDA is based on information from persons conducting or sponsoring clinical investigations rather than from IRBs themselves. This information may be obsolete (because there may be no obligation to update the information) or incomplete (because the requirements to report the names and addresses of IRBs are not uniform across all FDA-regulated products);
- Enable FDA to send educational information and other information to IRBs. Because FDA lacks an accurate list of IRBs, FDA's outreach and educational efforts are not as efficient as they might be. Changes in IRB addresses result in returned mail, and newly-formed IRBs may not appear on FDA's mailing lists; and
- Help FDA identify IRBs for inspection, because the agency would have a more accurate list of IRBs.

FDA, in conjunction with HHS' Office for Human Research Protection (OHRP),

is developing an Internet site for IRB registration purposes. The goal is to create a simple, electronic registration system that all IRBs, regardless of whether they review clinical investigations regulated by FDA or research conducted or supported by HHS, can use. (FDA discusses the Internet site in greater detail later in this document.)

Elsewhere in this issue of the **Federal Register**, OHRP has published a proposed rule to require IRB registration of IRBs that review research that is conducted or supported by HHS and that are designated under an assurance of compliance with HHS human subjects protection regulations. FDA and OHRP proposed rules would create a single HHS IRB registration system. Information regarding public disclosure of IRB registration information, the Freedom of Information Act (FOIA), and the Privacy Act of 1974 may be found in the OHRP proposed rule. However, insofar as IRB registration information required by FDA's proposed rule is concerned, the name of the institution operating the IRB, as well as the IRB's name, will be publicly accessible. All other IRB registration information that would be required by FDA under this proposal would be subject to public disclosure under FOIA and FDA's public information regulations at 21 CFR part 20.

##### II. Description of the Proposed Rule

The proposed rule would amend the IRB regulations at part 56 to require IRB registration. The proposed rule would also delete an obsolete cross-reference to a nonexistent FDA regulation.

###### A. IRB Registration (Proposed § 56.106)

###### 1. Who Must Register? (Proposed § 56.106(a))

The proposal would create a new § 56.106, entitled "Registration" to require IRBs to register at a site maintained by HHS. In brief, proposed § 56.106(a) would require registration of:

- Each IRB in the United States that reviews clinical investigations regulated by FDA under section 505(i) or 520(g) of the act (21 U.S.C. 355(i)). A research permit under section 505(i) of the act is usually known as an investigational new drug application (IND), and a research permit under section 520(g) of the act is usually known as an investigational device exemption (IDE); and
- Each IRB in the United States that reviews clinical investigations that support applications for research or marketing permits for FDA-regulated products.

FDA requests comment on whether there are circumstances in which foreign IRBs should be required or invited to register.

Proposed § 56.106(a) would also specify that an individual authorized to act on the IRB's behalf must submit the registration information. The individual may be an IRB member or any other person authorized by the IRB to submit the registration information.

FDA considered requiring sponsors or clinical investigators to submit IRB registration, but rejected such an approach because it created the potential for multiple IRB registrations for the same IRB. For example, if two sponsors used a particular IRB and the proposed rule would require sponsors to submit IRB registration information, the result would be two registrations for the same IRB. Thus, it would be more practical and efficient to require the IRBs themselves to register.

## 2. What Information Must an IRB Provide When Registering? (Proposed § 56.106(b))

Proposed § 56.106(b) would describe the information to be submitted as part of the registration process. In brief, the proposal would require IRBs to provide:

- The name and mailing address of the institution operating the IRB and the name, mailing address, phone number, fax number, and e-mail address of the senior officer of that institution who is responsible for overseeing activities performed by the IRB. The senior officer must not be an IRB member, IRB staff, or a sponsor or investigator participating in an investigation under review by that IRB. This information would enable FDA to identify the institution with which the IRB is affiliated. Information on the institution would also enable FDA to determine, if there are problems with an IRB, whether similar problems exist at other IRBs affiliated with that institution. Information on the senior officer of the institution would enable FDA to contact that person directly if significant issues or problems arose that involved or could involve the institution;

- The IRB's name, the IRB chairperson's name, the name of the contact person for the IRB (if different from the IRB chairperson), and the mailing addresses and street addresses (if different from the mailing address), phone numbers, fax numbers, and e-mail addresses for the IRB chairperson and contact person (if different from the IRB chairperson). This information would enable FDA to contact an IRB contact person on routine issues and to contact an IRB chairperson quickly, if necessary, on important issues and to

send electronic mail to the IRB chairperson and contact person;

- The number of active protocols involving FDA-regulated products reviewed (both initial reviews and continuing reviews). In this case, "active protocol" would mean any protocol for which an IRB conducted an initial review or a continuing review during the preceding calendar year. The proposal would not require an IRB to report a specific number of protocols; instead, IRBs would indicate the range of the numbers of protocols they had reviewed in the preceding calendar year: The proposal would consider a "small" number of protocols to be 1 to 25 protocols; "medium" would be 26 to 499, and "large" would be 500 protocols or more. This information would enable FDA to determine how active an IRB is and to assign its inspection resources based on an IRB's activity level;

- A description of the types of FDA-regulated products, such as human drugs, biological products (which include, but are not limited to, vaccines, blood, blood products, and tissues), medical devices, food additives, and/or color additives involved in the protocols that the IRB reviews. This information would allow FDA to send appropriate information (such as information pertaining to the product or a class of products, new regulatory requirements, or new guidance documents) to the IRB and to assign appropriate personnel to conduct IRB inspections; and

- An indication as to whether the IRB is accredited and, if it is accredited, the date of its last accreditation and the name of the accrediting body or organization. FDA recognizes that IRB accreditation is a developing concept, so information on IRB accreditation will help FDA evaluate the extent and value of IRB accreditation and help identify the accrediting bodies or organizations. FDA specifically solicits public comment related to the perceived value of collecting information on the accreditation status of IRBs.

Due to statutory and regulatory differences between FDA and OHRP, the Internet registration site may request more information from IRBs reviewing research conducted or supported by HHS than those reviewing clinical investigations regulated by FDA that are not conducted or supported by HHS. For example, OHRP may request information concerning the IRB chairperson's status (e.g., physician-scientist, other scientist, or nonscientist) and educational degrees and also ask for a list of IRB members and alternates. In those instances where the Internet registration site would seek more information than FDA would require

under this proposal, the site would clarify that IRBs regulated solely by FDA may, but are not required to, provide the additional information.

## 3. When Must an IRB Register? (Proposed § 56.106(c))

Proposed § 56.106(c) would require IRBs to register once and to renew their registrations every 3 years. The proposal would require initial IRB registration within 30 days before the date when the IRB intends to review clinical investigations regulated by FDA. To show how this would work, assume that a newly formed IRB has been asked to review a protocol for a clinical investigation regulated by FDA under section 505(i) of the act. The IRB would then be subject to FDA's IRB regulations (§ 56.101(a)), and the IRB, under proposed § 56.106(c), would submit its initial registration 30 days before the date the IRB intends to review the protocol. (If the IRB declined to review the protocol, the IRB would not necessarily be subject to FDA regulation and would not have to register under this proposal.) Requiring IRBs to renew their registrations periodically would help ensure that FDA's list of IRBs remains current. (See section III of this document regarding the rule's implementation for IRBs already reviewing clinical investigations when FDA issues a final rule.)

Under the proposal, IRB registration would become effective when HHS posts that information on its Web site. FDA also recognizes that some IRBs may have voluntarily registered under the OHRP system, and OHRP will continue to recognize such registrations.

## 4. Where Can an IRB Register? (Proposed § 56.106(d))

Proposed § 56.106(d) would direct IRBs to register at a specific Internet address (which FDA will provide when it issues any final rule) or, if an IRB lacks the ability to register electronically, to send its registration information to a specific mail address (which FDA will provide in a final rule). Although electronic registration may be easier and faster than written registration, FDA cannot determine how widespread Internet access is among IRBs. Thus, the agency will allow for written registration as an alternative to electronic registration, but invites comment on whether it should discontinue written IRB registration procedures after some time period has elapsed.

#### 5. How Does an IRB Revise Its Registration Information? (Proposed § 56.106(e))

Under proposed § 56.106(e), if an IRB's contact registration information changes, the IRB must revise its registration information within 90 days of the change. All information involving changes other than changes in an IRB contact or an IRB chairperson only need to be updated at the time of the 3-year renewal under proposed § 56.106(c). For example, if an IRB selects a new chairperson, the IRB would, under proposed § 56.106(e), revise its registration information within 90 days of the new chairperson's selection. If an IRB reviews new types of FDA-regulated products, the IRB, under proposed § 56.106(e), would revise its registration information to reflect this change within 30 days.

Proposed § 56.106(e) would also consider an IRB's decision to disband or stop reviewing clinical investigations regulated by FDA to be a change that must be reported. Requiring IRBs to report when they have disbanded or stopped reviewing clinical investigations regulated by FDA will enable FDA to stop sending educational information to the IRB and also forego inspecting the IRB.

Revised registration information would be submitted electronically at the Internet address (which FDA will identify by the time it issues a final rule). If an IRB lacks Internet access, it would submit any revised registration information, in writing, to a specific mail address (which FDA will identify by the time it issues a final rule).

#### 6. What Happens if an IRB Does Not Register?

As stated earlier, requiring IRBs to register will help FDA send educational information to IRBs and identify IRBs for inspection. If sponsors of clinical investigations or marketing applications and investigators could use unregistered IRBs, those IRBs would not have had the benefit of receiving educational materials from FDA and would not have been identified on an FDA IRB registration list for future inspection. Therefore, to the extent that any existing FDA regulation requires a sponsor or investigator to comply with part 56 or to use an IRB that complies with part 56, FDA will consider sponsors and investigators using an unregistered IRB to be in conflict with their regulatory obligations. For example, the IND regulations in § 312.66 (21 CFR § 312.66), require an investigator to use an IRB that complies with part 56. If the investigator uses an unregistered IRB,

FDA would consider the sponsor or investigator to be in violation of its obligations under § 312.66. (See also § 312.53(c)(1)(vii) (IND sponsor must obtain a commitment by the investigator that an IRB that complies with part 56 will be responsible for the initial and continuing review and approval of the clinical investigation); 21 CFR 361.1(d)(5) (investigators studying radioactive drugs must obtain review and approval by an IRB that complies with part 56); § 812.42 (21 CFR 812.42) (sponsor shall not begin a device investigation until an IRB and FDA have approved the application or supplemental application relating to the investigation); § 812.60 (IRB reviewing and approving device investigations must comply with part 56 in all respects)). An IRB that refuses to register may be subject to administrative action for noncompliance (see, e.g., §§ 56.120, 56.121, and 56.124). FDA believes that the proposed registration requirement is both simple and straightforward and beneficial to IRBs, so the agency does not expect that many IRBs will refuse or fail to register.

FDA considered other options to require sponsors and investigators to use only registered IRBs. For example, one option would be to refuse to consider information from an application for a research permit for a clinical investigation that is reviewed or is to be reviewed by an unregistered IRB. This would have given sponsors and investigators a strong incentive to use only registered IRBs and would have been similar to § 56.121(d) (which describes FDA's actions if a clinical investigation is reviewed by a disqualified IRB). However, the agency did not consider an IRB's failure to reregister to be comparable to an IRB's status as disqualified, so FDA did not include such a provision in the proposed rule. FDA invites comments on how it could best ensure that all sponsors and investigators involved in clinical investigations using human subjects use only registered IRBs to review and approve those clinical investigations. The agency is particularly interested in the following issues:

- What sanctions or administrative mechanisms, if any, should be or might be used against sponsors and investigators who use unregistered IRBs? For example, should FDA amend the IND regulations to authorize the agency to place a study on clinical hold if a sponsor or investigator uses an unregistered IRB?
- Are additional changes to FDA regulations necessary? For example, would FDA have to revise or create

requirements for sponsors and investigators? If so, which provisions would FDA have to revise? What new regulations would be needed?

- Are there other ways to ensure the use of registered IRBs?

#### B. Nonsubstantive, Technical Amendment to Part 56

The proposal would also make a nonsubstantive amendment to part 56. The proposal would revise the definition of "An Application for an Investigational Device Exemption" at § 56.102(b)(12) to eliminate the reference to part 813 (21 CFR part 813). This change is necessary because FDA removed the regulations at part 813 (which pertained to intraocular lenses) in 1997 (see 62 FR 4164, January 29, 1997).

### III. Implementation

FDA intends to make any final rule based on this proposal effective within 60 days after the final rule is published in the **Federal Register**. Because the registration requirement would be new, the agency would then give all IRBs an additional 60 days to submit their initial registrations. For example, if FDA published the final rule in the **Federal Register** on January 1, 2005, the final rule would become effective on March 1, 2005 (60 days after the final rule's publication date), and IRBs would have another 60 days, to April 30, 2005, to submit their initial registration information. After this initial deadline, all subsequent registrations would adhere to the timeframes in proposed § 56.106(c).

FDA invites comment as to whether this tentative implementation schedule should be revised. Because IRB registration will eventually occur primarily through the Internet, the actual effective date of any final rule may change should any software or hardware problems arise that affect FDA's ability to obtain IRB registration information electronically.

### IV. Legal Authority

In general, the act authorizes FDA to issue regulations pertaining to investigational uses of FDA-regulated products (see, e.g., section 409(j) of the act (21 U.S.C. 348(j)) (investigations involving food additives); section 505(i) of the act (investigations involving human drugs); section 520(g) of the act (investigations involving devices); and 721(f) of the act (21 U.S.C. 379e(f)) (investigations involving color additives)). Two provisions specifically refer to the use of IRBs as part of the investigational process (see sections 505(i) and 520(g) of the act (section

520(g) of the act refers to "institutional review committees" rather than IRBs, but the terms are synonymous).

The act also requires the submission of a petition or application to FDA (see, e.g., sections 409(b) of the act (food additive petitions); section 505(b) of the act (new drug applications); section 505(j) of the act (abbreviated new drug applications); section 515(c) of the act (21 U.S.C. 360e(c)) (premarket approval applications for devices); and section 721(b) of the act (color additive petitions)) before marketing begins.

To implement these provisions of the act, section 701(a) of the act (21 U.S.C. 371(a)) gives FDA the authority to issue regulations for the efficient enforcement of the act. By requiring IRB registration, the proposed rule would, if finalized, aid in the efficient enforcement of the act's provisions regarding the investigational use of various FDA-regulated products (because then FDA would be able to conduct IRB inspections more efficiently). IRB registration would also help enforce those provisions regarding marketing applications (because marketing applications usually depend on clinical investigations involving human subjects, and IRBs are supposed to provide protections for the rights and welfare of such human subjects). Moreover, by requiring IRBs to register, the proposed rule would enable FDA to contact IRBs more quickly and efficiently on various issues, such as adverse reactions that may be attributed to a particular product, new regulatory requirements or policies, or problems associated with a particular protocol or clinical investigator. FDA's authority to regulate IRBs was discussed in more detail in the preambles to the initial proposed rule and the final rule establishing part 56 (43 FR 35186 at 35197, August 8, 1978 and 46 FR 8958 at 8959 and 8960, January 27, 1981). For the reasons discussed in the earlier preambles and previously on this document FDA concludes that it has sufficient legal authority to issue the proposed rule.

#### V. Economic Impact Analysis

FDA has examined the impacts of the proposed 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). Under the Regulatory Flexibility Act, if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 (adjusted annually for inflation) in any one year."

The proposed rule is consistent with the principles set forth in Executive Order 12866 and these two statutes. As explained below, the proposed rule is not an economically significant regulatory action as defined in Executive Order 12866 and does not require a Regulatory Flexibility Analysis. The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for the proposed rule because the proposed rule is not expected to result in any 1-year expenditure that would exceed \$100 million adjusted for inflation. The current inflation-adjusted statutory threshold is approximately \$110 million.

The proposed rule would require IRBs to register with FDA. The information sought through the registration process would be minimal, consisting largely of names and addresses for a contact person, the institution operating the IRB (if an institution exists), the senior officer of the institution who is responsible for overseeing the activities performed by the IRB, the IRB, and the IRB chairperson. The registration would also indicate whether the IRB reviews a "small," "medium," or "large" number of FDA-regulated protocols and the types of FDA-regulated products involved. IRBs would also indicate whether they are accredited and identify the accrediting body or organization. FDA estimates that initial IRB registration may require 1 hour to complete. If the average wage rate is \$40 per hour, this means that each IRB would spend \$40 for an initial registration (\$40 per hour x 1 hour per initial registration).

FDA estimates that reregistration would require less time, especially if the IRB verifies existing information. If reregistration requires 30 minutes, then the cost of reregistration to each IRB

would be approximately \$20 (\$40 per hour x 0.5 hours per reregistration).

Revising an IRB's registration information would probably involve costs similar to reregistration costs. If the revision requires 30 minutes, then the cost of revising an IRB's registration information would be approximately \$20 per IRB.

Given the minimal registration information that would be required and the low costs associated with registration, this proposed rule is not a significant regulatory action, and FDA certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. Therefore, the proposal is not a significant regulatory action under Executive Order 12866 and does not require a Regulatory Flexibility Act analysis.

Additionally, assuming that an estimated 5,000 IRBs would register, the proposed rule, if finalized, would result in a 1-year expenditure of \$200,000 (5,000 IRBs x \$40 registration wage costs per IRB). Because the total expenditure under the rule will not result in a 1-year expenditure of \$100 million or more, FDA is not required to perform a cost-benefit analysis under the Unfunded Mandates Reform Act.

#### VI. Environmental Impact

FDA has determined under 21 CFR 25.30(h) 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.

#### VII. Paperwork Reduction Act of 1995

This proposed rule contains information collection requirements that are subject to review by OMB under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501-3520). The title, description, and respondent description of the information collection provisions are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on these topics: (1) Whether the collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the

methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the

use of automated collection techniques, when appropriate, and other forms of information technology.

**Title:** Institutional Review Boards: Registration Requirements.

**Description:** The proposed rule would require IRBs to register with FDA.

**Description of Respondents:** Businesses and individuals.

The estimated burden associated with the information collection requirements of this proposed rule is 8,750 hours.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN<sup>1</sup>

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
56.106(c) (initial registration)	5,000	1	5,000	1	5,000
56.106(c) (reregistration)	2,500	1	2,500	0.5	1,250
56.106(e)	5,000	1	5,000	0.5	2,500
Total					8,750

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA's estimates are based on the following considerations. According to a 1998 OIG report, there are 3,000 to 5,000 IRBs in the United States, and most are associated with hospitals and academic centers (Ref. 1, p. 3). While not all IRBs are involved in clinical investigations regulated by FDA, the agency, for purposes of the PRA, will use 5,000 as the maximum number of IRBs subject to the proposed rule. Additionally, because the proposed rule would require basic information about an IRB (such as names and addresses) and because registration would, in most cases, be done electronically, FDA will assume that registration will take only 1 hour per IRB. Thus, the total burden hours would be 5,000 hours (5,000 IRBs x 1 hour per IRB).

Reregistration and revisions to existing registration information should require less time than initial registration. FDA will assume that reregistration and revisions will take only 30 minutes per IRB. FDA will also assume, based on OHRP's experience with its IRB registration program, that 50 percent of IRBs (2,500) will reregister and that all (5,000) will revise their registration information. Therefore, the total burden hours for reregistration will be 1,250 hours (2,500 IRBs x 0.5 hours per IRB), and the total burden hours for revisions will be 2,500 hours (5,000 IRBs x 0.5 hours per IRB).

In compliance with the PRA (44 U.S.C. 3507(d)), the agency has submitted the information collection requirements of this rule to OMB for review. Interested persons are requested to send comments regarding information collection by August 5, 2004, to the Office of Information and Regulatory Affairs, OMB. Submit written comments on the information collection provisions by August 5, 2004. See section III of this document for the effective date of any final rule based on this document.

### VIII. Federalism

FDA has analyzed this proposed 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 order and, consequently, a federalism summary impact statement is not required.

### IX. Request for Comments

Interested persons may submit to the Division of Dockets Management (see ADDRESSES) written or electronic comments regarding this proposal. Submit written comments to OMB (see the ADDRESSES in section VII of this document) on the information collection provisions. Two paper copies of any comments are to be submitted, 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.

### X. Reference

The following reference has been placed on display in the Division of Dockets Management (see ADDRESSES) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. OIG, HHS, "Institutional Review Boards: A Time for Reform," June 1998.

### List of Subjects in 21 CFR Part 56

Human research subjects, Reporting and recordkeeping requirements, Safety.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 56 be amended as follows:

### PART 56—INSTITUTIONAL REVIEW BOARDS

1. The authority citation for 21 CFR part 56 continues to read as follows:

**Authority:** 21 U.S.C. 321, 343, 346, 346a, 348, 350a, 350b, 351, 352, 353, 355, 360, 360c–360f, 360h–360j, 371, 379e, 381; 42 U.S.C. 216, 241, 262, 263b–263n.

#### § 56.102 [Amended]

2. Section 56.102 is amended in paragraph (b)(12) by removing the phrase "parts 812 and 813" and by adding in its place the phrase "part 812."

3. Section 56.106 is added to subpart A to read as follows:

#### § 56.106 Registration.

(a) *Who must register?* Each IRB in the United States that reviews clinical investigations regulated by FDA under section 505(i) or 520(g) of the act and each IRB in the United States that reviews clinical investigations that are intended to support applications for research or marketing permits for FDA-regulated products must register at a site maintained by the Department of Health and Human Services (HHS). (A research permit under section 505(i) of the act is usually known as an investigational new drug application (IND), while a research permit under section 520(g) of the act is usually known as an investigational device exemption (IDE).) An individual authorized to act on the IRB's behalf must submit the registration information.

(b) *What information must an IRB register?* Each IRB must provide the following information:

(1) The name and mailing address of the institution operating the IRB and the name, mailing address, phone number, facsimile number, and electronic mail address of the senior officer of that institution who is responsible for overseeing activities performed by the IRB;

(2) The IRB's name, the names of each IRB chair person and each contact person (if one exists) for the IRB, and the IRB's mailing address, street address (if different from the mailing address), phone number, facsimile number, and electronic mail address;

(3) The number of active protocols (small, medium, or large) involving FDA-regulated products reviewed (both initial reviews and continuing reviews). For purposes of this regulation, an "active protocol" is any protocol for which an IRB conducted an initial or continuing review during the preceding calendar year. A "small" number of protocols is 1 to 25 protocols; "medium" is 26 to 499 protocols, and "large" is 500 protocols or more;

(4) A description of the types of FDA-regulated products (such as biological products, color additives, food additives, human drugs, or medical devices) involved in the protocols that the IRB reviews; and

(5) An indication whether the IRB is accredited and, if so, the date of the last accreditation and the name of the accrediting body or organization.

(c) *When must an IRB register?* Each IRB must submit an initial registration within 30 days before the date when the IRB intends to review clinical investigations regulated by FDA. Each IRB must renew its registration every 3 years. IRB registration becomes effective when HHS posts that information on its Web site.

(d) *Where can an IRB register?* Each IRB may register electronically through [Web site address to be added in the final rule]. If an IRB lacks the ability to register electronically, it must send its registration information, in writing, to [mailing address to be added in the final rule].

(e) *How does an IRB revise its registration information?* If an IRB's contact or chair person information changes, the IRB must revise its registration information by submitting any changes in that information within 90 days of the change. An IRB's decision to disband or to discontinue reviewing clinical investigations regulated by FDA is a change that must be reported within 30 days of the change. All other information changes may be reported

when the IRB renews its registration. The revised information must be sent either electronically or in writing in accordance with paragraph (d) of this section.

Dated: June 23, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04-15131 Filed 7-2-04; 8:45 am]

BILLING CODE 4160-01-S

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### 36 CFR Part 7

RIN 1024-AD14

#### Delaware Water Gap National Recreation Area, Pennsylvania and New Jersey; U.S. Route 209 Commercial Vehicle Fees

AGENCY: National Park Service, Interior.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The National Park Service (NPS) proposes to change the fee schedule for those commercial vehicles permitted to travel U.S. Route 209 through Delaware Water Gap National Recreation Area. This paragraph sets a fee schedule by number of axles. It also lists the exceptions to commercial fee requirements. Congress authorized collection of the fees to establish a sustainable program to manage commercial traffic. In recent years, the cost of fee collection has been significantly greater than annual revenue. The intent of the proposed rule is to increase fees to a level that will allow the program to be completely supported by commercial entities using the route.

**DATES:** Comments must be submitted on or before August 5, 2004.

**ADDRESSES:** Address all comments concerning this proposed rule to the Chief Ranger's Office, Delaware Water Gap National Recreation Area, River Road, Bushkill, PA 18324.

You may submit comments by sending electronic mail (E-mail) to: [DEWA\\_Public\\_Comment@nps.gov](mailto:DEWA_Public_Comment@nps.gov).

**FOR FURTHER INFORMATION CONTACT:** Chief Ranger Philip Selleck, at 570-588-2414.

#### SUPPLEMENTARY INFORMATION:

##### Commercial Use Background

On March 14, 1983, the Commonwealth of Pennsylvania transferred ownership of approximately 21 miles of U.S. Route 209 within the boundaries of Delaware Water Gap

National Recreation Area to the National Park Service. This portion of road was a heavily traveled commercial vehicle route between Interstates 80 and 84, primarily because it is shorter and flatter and more direct than the alternate routes, and therefore was preferred by the commercial vehicle operators. Since § 5.6 of Title 36 Code of Federal Regulations (36 CFR 5.6), prohibits the use of roads within National park areas by commercial through traffic, the National Park Service announced that U.S. Route 209 would be closed to commercial vehicles on April 25, 1983. Due to negative comments from the trucking industry concerning the announced closure, the NPS Director, on April 23, 1983, announced a 180-day delay in the implementation of the closure.

On July 30, 1983, Congress enacted Public Law 98-63, closing U.S. Route 209 to commercial vehicle use, with certain exceptions, and directed the National Park Service to establish a commercial operation fee for certain commercial vehicles excepted from the closure. In order to implement the statute, Delaware Water Gap National Recreation Area began operation of two commercial vehicle check stations, one each near the North and South entrances to the recreation area on U.S. Route 209. The check stations were operated 24 hours a day.

Public Law 98-63, as amended by Public Law 98-151 and Public Law 99-88, closed U.S. Route 209 to all commercial vehicles except:

(1) Those vehicles operated by businesses based within the recreation area;

(2) Those vehicles operated by businesses which as of July 30, 1983, operated a commercial vehicular facility in Monroe, Pike, or Northampton Counties, PA, and the vehicle operation originates or terminates at such facility;

(3) Those vehicles operated in order to provide services to businesses and persons located in or contiguous to the boundaries of the recreation area, that area determined to be composed of Lehman, Delaware, Milford, Dingman, Stroud, Westfall, Smithfield, Middle Smithfield and Upper Mount Bethel townships in Pennsylvania;

(4) Up to 125 northbound, and 125 southbound, commercial vehicles serving businesses and persons in Orange, Ulster, Rockland and Sullivan Counties, New York.

The exceptions to the closure of U.S. Route 209 were to remain in effect unless further action was taken by Congress.

Under the Omnibus Parks and Public Lands Management Act of 1996, Public



Law 100-333, enacted on November 12, 1996, U.S. Route 209 will be closed to commercial vehicle traffic on September 30, 2005. Commercial vehicles connected with the operation of the recreation area, or serving "businesses within or in the vicinity of the recreation area" will be permitted to use the highway. The Act directs the Secretary of the Interior to define the term "businesses within or in the vicinity of the recreation area".

#### Commercial Vehicle Fee Background

Public Law 98-63, as amended by Public Law 99-88, directed the Secretary of the Interior to establish a fee for the use of U.S. Route 209 by

commercial vehicles. The law directed the National Park Service to set aside all fees in a special account, the funds to be available for the management, operation, construction, and maintenance of U.S. Route 209 within the boundary of the recreation area. The fee schedule was not to exceed \$7 per trip. Those commercial vehicles serving businesses within, or contiguous to the boundaries of, the recreation area were exempted from the fee.

In accordance with Public Law 98-63, the National Park Service published in the *Federal Register* (48 FR 46779, October 14, 1983), a fee schedule based on the number of axles of lightweight and heavy commercial vehicles. The

fees ranged from \$0.50 for two axle cars, vans or pickups, to \$5.00 for a five or more axle vehicle. The full 1983 fee schedule can be found in Table 1.

On August 23, 1985, the National Park Service revised the fee schedule, publishing a final rule in the *Federal Register* (50 FR 34128), revising the fee schedule. The rule was based on the revised estimates of costs for management, operation, construction and maintenance of U.S. Route 209. The raised fees ranged from \$1.00 for two axle cars, vans or pickups, to \$7.00 for a five or more axle vehicle. The full 1985 fee schedule can be found in Table 1.

TABLE 1.—1983 AND 1985 FEE SCHEDULES

	1983	1985
Two axle car, van or pickup .....	\$0.50	\$1.00
Two axle—four wheel vehicle with trailer .....	1.00	2.00
Two axle—six wheel vehicle .....	2.00	3.00
Three axle vehicle .....	3.00	4.00
Four axle vehicle .....	4.00	5.00
Five or more axle vehicle .....	5.00	7.00

#### Public Law 98-63 Authority

Authority to collect fees for those commercial vehicles permitted to use U.S. Route 209 terminated on July 30, 1993. The NPS stopped collecting fees on that date, but was required to continue to enforce the statutory closure and exceptions to the commercial use of the highway. The commercial vehicle check stations were operated as before July 30, 1993, but no fees were collected.

On November 12, 1996, Congress enacted Public Law 100-333, which reinstated the National Park Service's authority to collect commercial vehicle fees on U.S. Route 209. Public Law 100-

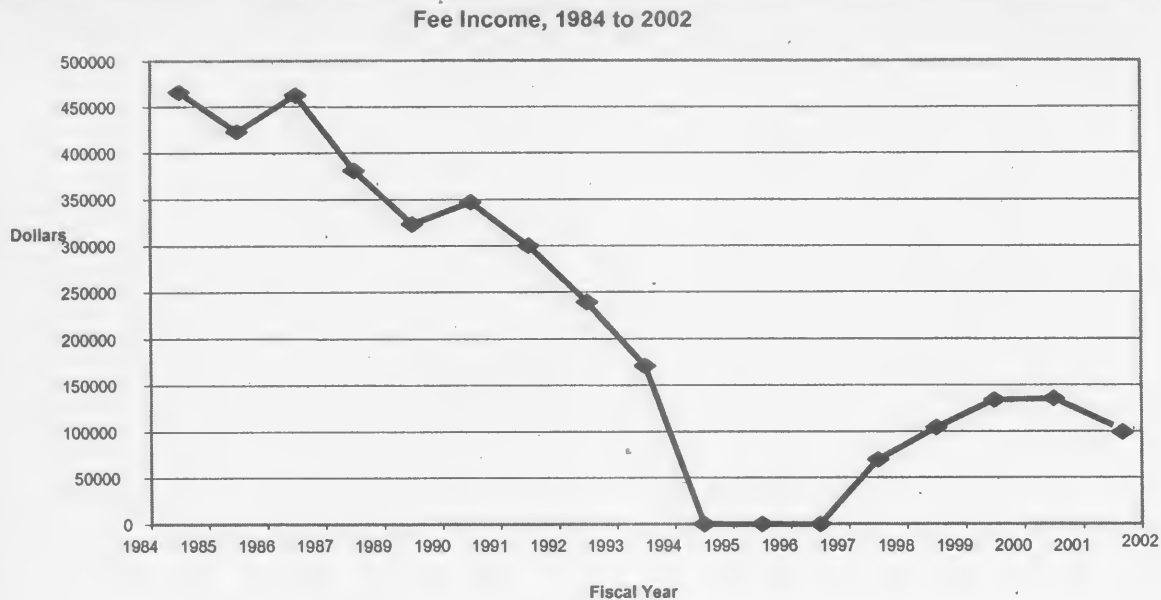
333 specified that fees could not exceed \$25 per trip. The NPS resumed the collection of fees, using the 1985 fee schedule, on November 26, 1996.

#### Proposal To Increase Fees

Congress specified that the fees collected from commercial vehicles excepted from the closure of U.S. Route 209 be made available, "without further appropriation, for the management, operation, construction, and maintenance of highway 209 within the boundaries of the recreation area". Congress intended the income from the commercial vehicle fee program to equal or exceed the cost of operating the program, and to fund the program

without further appropriation or use of other operating funds.

Initially, fee collection revenues from U.S. Route 209 provided enough revenue to operate the commercial use program, purchase equipment related to the operation of U.S. Route 209, and do some maintenance. The amount of revenue generated has decreased over time as several large commercial vehicle facilities closed their local terminals, and stopped traveling on U.S. Route 209. Fluctuations in the local economy have also had an effect. A comparison of revenue generated through the fee operation from fiscal years 1984 to 2002 is illustrated in Figure 1.

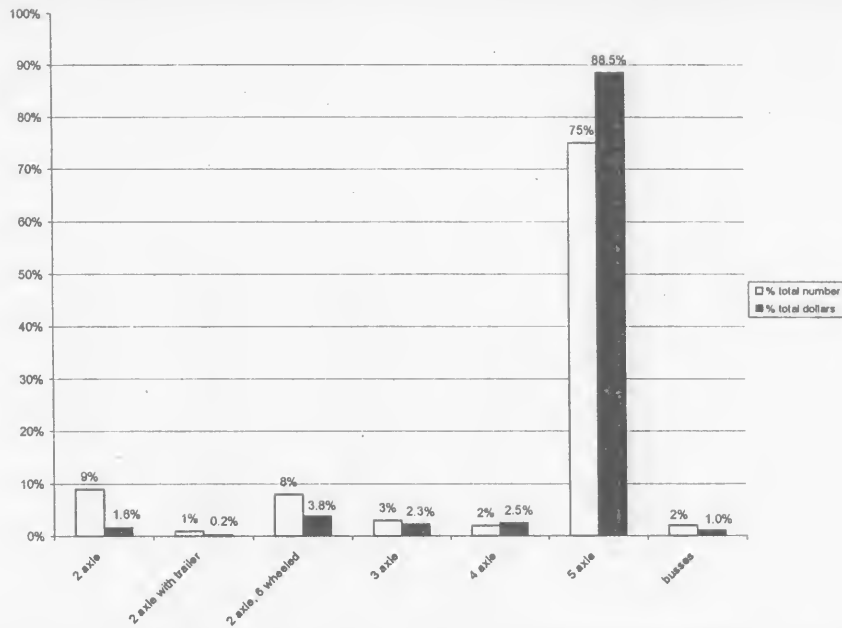


**Fig. 1. Fee collection revenue, FY 1984 to FY 2001. (No fees collected, 7/30/93 to 11/26/96.)**

Large 5-axle tractor-trailers have been the most important permitted commercial vehicles to use U.S. Route 209, both in total number of commercial vehicles, and in fees generated. Trucks

paying the maximum fee of \$7.00 for a five-axle vehicle account for approximately 75 percent of the total number of fee-paying vehicles, and nearly 90 percent of the total revenue

received. A comparison of the percent of total fee vehicles, by number of vehicles and revenue collected, for each class of vehicle may be found in Figure 2.



**Fig. 2. Percent of total fee vehicles by class of vehicle, FY 2000, number and dollars collected.**

In recent years the cost of operating the commercial operation program has largely exceeded the income generated by fees. The trends of fee revenue

remaining relatively steady and increasing expenses is expected to continue. The operating deficit is made up with funds appropriated for normal

park operations (ONPS funds). A year by year comparison of income and expenditures may be found in Figure 3.

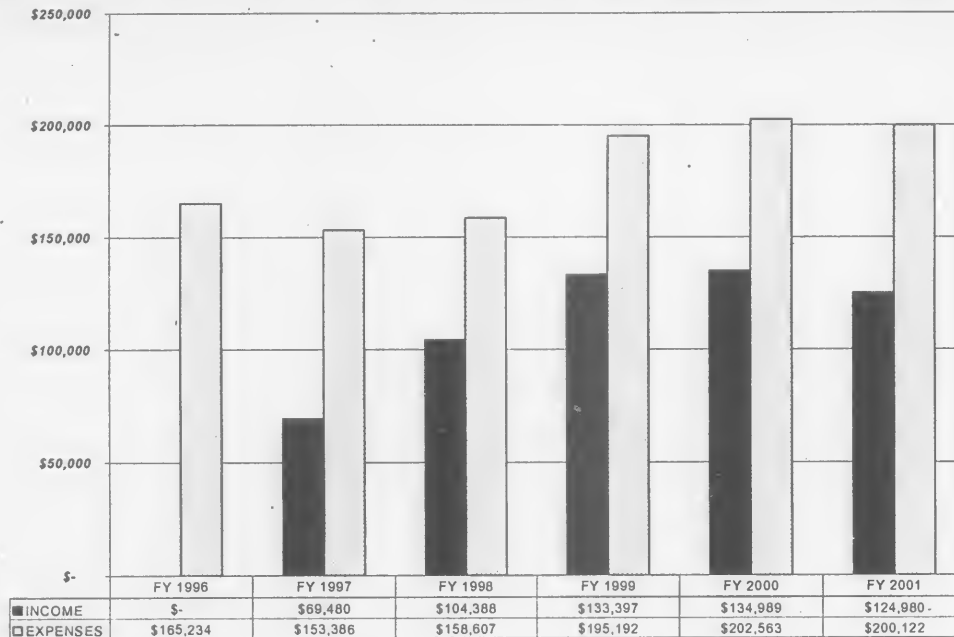


Fig. 3. Income vs. expenses, fiscal years 1996 through 2001.

*Justification for the Fee Schedule*

When the current commercial vehicle policy on U.S. Route 209 was begun in 1983, closing the highway and charging a fee for permitted uses were very controversial issues. Under the circumstances, promulgating special regulations implementing the closure and fees was an appropriate action. The revenue generated was much greater than the cost of operating the fee program at that time, and there was a carry-over balance that was available for other uses related to the operation and maintenance of U.S. Route 209. As documented above, in recent years the cost of managing commercial operations has been more than the revenue collected. The collection of fees for commercial vehicle use of U.S. Route 209 is authorized by federal statute, and Congress's intent is that the commercial vehicle fees collected fund the commercial traffic management program. The National Park Service thus intends for the revenue collected to approximately equal or exceed the cost of collection, and to fund the commercial traffic management program with the collected revenue. There is no plan to set fees at a level that would provide funds for maintenance of the highway or any other use. The proposed fee schedule is provided in Table 2.

TABLE 2.—PROPOSED NEW FEE SCHEDULE

Vehicle description	Fee
2 axle cars, vans, trucks .....	\$3
2 axle vehicles with trailer .....	5
2 axle, 6 wheeled vehicles .....	8
3 axle vehicles .....	10
4 axle vehicles .....	13
5 axle vehicles .....	18

*Effect of a Fee Increase on the Trucking Industry*

Prior to the partial closure of U.S. Route 209 to commercial vehicles in 1983, more than 2,000 tractor-trailers per day traveled through the recreation area. That number has been reduced to fewer than 200 per day in 2001, including fee-paying and fee-exempt trucks. The 5-axle, fee-paying tractor-trailers using U.S. Route 209 use the highway because it is the most convenient route between their points of origin and destination. A majority of these trucks are making trips between points within one hundred miles north or south of the recreation area. Generally, these trucks are either based in Monroe or Northampton Counties, PA, or are serving businesses in the four-county New York area. Relatively few trucks originating more than a hundred miles from Delaware Water

Gap National Recreation Area use the highway, even if they would be permitted to use the highway based on their destination. The trucks using U.S. Route 209 do so because it is the most convenient, and economically feasible, alternative.

There are two potential alternate routes available to the majority of trucks currently using U.S. Route 209. The first is to bypass the highway through the recreation area by traveling between Interstates 80 and 84 via Route 402. This route is not usable to the majority of trucks because there is a weight limit of 20,000 lbs.; an average weight for a loaded tractor-trailer is 80,000 lbs. The second alternative is to use Interstate 380 between Routes 80 and 84. This route adds approximately 46 miles to each one-way trip. Using a 2003 estimate of \$1.45 per mile for shipping freight via tractor trailers, travel via Interstate 380 adds an additional \$66. Other alternatives, such as using Route 94 or Interstate 287, are unlikely to be chosen because of traffic congestion, additional miles, and tolls. Therefore, NPS expects the large 5-axle, fee-paying traffic to remain relatively constant.

NPS has identified the six most common companies using U.S. Route 209 on a fee basis. These six companies paid approximately 45 percent of all the

5-axle fees paid in fiscal year 2001. NPS received approximately \$46,277 from these companies in calendar year 2001, out of a total of \$103,838 paid by all 5-axle vehicles in fiscal year 2001. This compares a calendar year to a fiscal

year, so therefore these are estimates, but they should be approximately correct because the traffic from these six companies is relatively constant. These companies will be the most affected by a fee increase. Increasing the fees by

155% will proportionally increase the cost of using U.S. Route 209 to these companies. Table 3 summarizes the total number of paid trips by these companies and the revenue received from them in calendar year 2001.

TABLE 3.—TOTAL 5-AXLE FEE TRIPS AND REVENUE RECEIVED CALENDAR YEAR 2001

	Dicks Concrete Co.	East Penn Trucking Co.	Rollin Johnson Inc.	Moyer Packing Co. (MOPAC)	Roadway Express Inc.	F.T. Silfies, Inc.
Total number of 5 axle fees trips .....	1,941	274	1,607	678	859	1,252
Total fees paid (\$) .....	13,587	1,918	11,249	4,746	6,013	8,764

#### Effect of Proposed Fee Increase on NPS

NPS anticipates fee revenue will increase by about 155% when the proposed rule becomes final and the fee schedule is increased. Revenue from commercial vehicles decreased over the years of the program, but NPS does not have enough years of data since the resumption of fee collection in 1996 to predict future collections. A small percentage of commercial vehicles may elect to use an alternate route, rather than using U.S. Route 209. However, the larger 5-axle trucks are still expected to

use the highway, as \$18 per trip will still be less expensive than driving the additional miles on alternate routes. If those assumptions are correct, the revenue collected will be affected mostly by economic conditions.

The NPS estimates the fee revenue will be \$270,300 in the first fiscal year following implementation of the revised fee schedule. NPS believes the fee increase will be implemented on or shortly before the beginning of fiscal year 2005 on October 1, 2004. NPS anticipates spending an average

additional 3.3% per year to operate the commercial vehicle fee program, based on increases in personnel costs. Figure 4 illustrates expected revenue collected, expenses, and carryover until the end of fiscal year 2005. This projection is based on the current hours of operation which targets about 90% of the commercial traffic. If the fee collection operation were extended beyond the end of fiscal year 2005, and revenue remained constant, the operation would be operating at a deficit during fiscal year 2007.

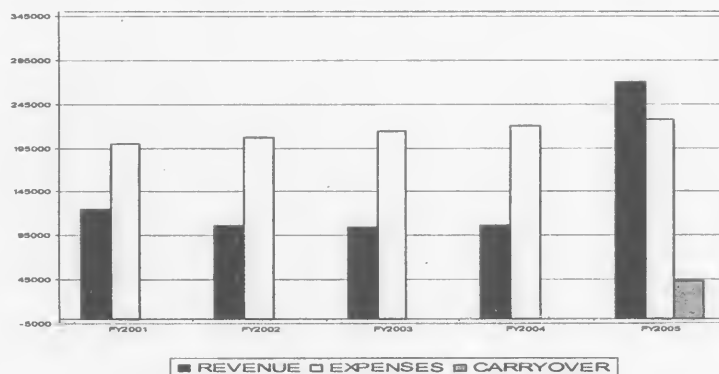


Figure 4. Revenue, expenses and carryover, FY01-05.

#### Compliance With Other Laws

##### Regulatory Planning and Review (Executive Order 12866)

This document is not significant rule and has not been reviewed by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

The NPS has prepared an Initial Cost-Benefit analysis to support this statement. That analysis can be viewed at [www.nps.gov/dewa](http://www.nps.gov/dewa).

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Actions taken under this rule will not interfere with other agencies or local government plans, policies, or controls. This is an agency-specific rule.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights

or obligations of their recipients. This rule will have no effects on entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other forms of monetary supplements are involved.

(4) This rule does not raise novel policy issues.

##### Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on a Regulatory Flexibility threshold analysis performed by NPS economists in October 2003. That document can be viewed at [www.nps.gov/dewa](http://www.nps.gov/dewa).

#### *Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- a. Does not have an annual effect on the economy of \$100 million or more.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

#### *Unfunded Mandates Reform Act*

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector.

This rule is an agency-specific rule and imposes no other requirements on other agencies, governments, or the private sector.

#### *Takings (Executive Order 12630)*

In accordance with Executive Order 12630, the rule does not have significant taking implications. A taking implication assessment is not required. No takings of personal property will occur as a result of this rule.

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

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

This proposed rule only affects use of NPS-administered lands and waters. It has no outside effects on other areas.

#### *Civil Justice Reform (Executive Order 12988)*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

#### *Paperwork Reduction Act*

This regulation does not require an information collection from 10 or more

parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83-1 is not required.

#### *National Environmental Policy Act*

A Final Environmental Impact Statement for the management of U.S. Route 209 was issued in September 1983. The Department has determined that further compliance under this Act is not required for any of these proposed actions.

#### *Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, "Government to Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2:

We have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects.

#### *Clarity of Rule*

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to read if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "\$" and a numbered heading; for example § 7.71 Delaware Water Gap National Recreation Area.) (5) Is the description of the rule in the SUPPLEMENTARY INFORMATION section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240.

#### *Drafting Information*

The principle contributors to this proposed rulemaking are Joel Schwartz, Fee Collection Program Manager, and Brian McDonnell, Park Ranger, and Philip A. Selleck, Chief Ranger, Delaware Water Gap NRA.

#### List of Subjects in 36 CFR Part 7

District of Columbia, National parks, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the National Park Service proposes to amend 36 CFR Part 7 as follows:

#### **PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM**

1. The authority citation for Part 7 continues to read as follows:

**Authority:** 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under DC Code 8-137 (1981) and DC Code 40-721 (1981).

2. Section 7.71 is amended by revising paragraphs (e)(1)(i) through (vi) to read as follows:

#### **§ 7.71 Delaware Water Gap National Recreation Area.**

\* \* \* \* \*  
(e) \* \* \*  
(1) \* \* \*

- (i) Two-axle car, van or truck—\$3
- (ii) Two-axle vehicle with trailer—\$5
- (iii) Two-axle 6-wheeled vehicle—\$8
- (iv) Three-axle vehicle—\$10
- (v) Four-axle vehicle—\$13
- (vi) Five or more-axle vehicle—\$18

\* \* \* \* \*

Dated: June 14, 2004.

**Paul Hoffman,**

*Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 04-14114 Filed 7-2-04; 8:45 am]

BILLING CODE 4312-JG-P

#### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Part 271**

[FRL-7781-8]

#### **Connecticut: Proposed Final Authorization of State Hazardous Waste Management Program Revisions**

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

**ACTION:** Proposed rule and notice of informational meeting.

**SUMMARY:** The State of Connecticut has applied to EPA for Final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The revisions consist of State regulations which update the State's program to meet federal requirements through January 1, 2001. The revisions cover the EPA RCRA Clusters Non-

HSWA VI, HSWA I, HSWA II, and RCRA I through XI, and include such important rules as Corrective Action, land disposal restrictions, toxicity characteristic amendments, burning hazardous waste in boilers and industrial furnaces, recycled used oil, universal wastes, and the expanded RCRA public participation rule. EPA proposes to grant final authorization to Connecticut for these revisions to its hazardous waste program. EPA has determined that these State regulations meet the requirements for authorization as set forth in the RCRA statute and EPA's regulations.

**DATES:** Comments on the proposed rule must be received on or before August 5, 2004. Comments submitted electronically will be considered timely submitted if they are received by 11:59 p.m. (eastern time) on the deadline date. An informational meeting relating to the proposed authorization will be held on July 21, 2004 from 10 a.m. to 12 noon in Hartford, Connecticut.

**ADDRESSES:** Written comments should be mailed to Robin Biscaia, Hazardous Waste Unit, EPA Region I, One Congress St., Suite 1100 (CHW), Boston, MA 02114-2023, or e-mailed to: [biscaia.robin@epa.gov](mailto:biscaia.robin@epa.gov).

The informational meeting will be held on July 21, 2004 from 10 a.m. to 12 noon at the Phoenix Auditorium located on the 5th floor of the Connecticut Department of Environmental Protection, 79 Elm Street, in Hartford, Connecticut.

Dockets containing copies of the State of Connecticut's revision application and the materials which the EPA used in evaluating the revision have been established at the following two locations: (i) Connecticut Department of Environmental Protection, Bureau of Waste Management, Waste Engineering and Enforcement Division, 79 Elm Street—4th floor, Hartford, CT 06106-5127, business hours Monday through Friday 9 a.m. to 4 p.m., tel: (860) 424-3023; and (ii) EPA Region I Library, One Congress Street—11th Floor, Boston, MA 02114-2023, business hours Monday through Thursday 10 a.m.-3 p.m., tel: (617) 918-1990. Records in these dockets are available for inspection and copying during normal business hours.

**FOR FURTHER INFORMATION CONTACT:** Robin Biscaia, Hazardous Waste Unit, EPA Region I, One Congress St., Suite 1100 (CHW), Boston, MA 02114-2023, tel: (617) 918-1642, e-mail: [biscaia.robin@epa.gov](mailto:biscaia.robin@epa.gov).

**SUPPLEMENTARY INFORMATION:** *Informational meeting.* The EPA and the Connecticut Department of

Environmental Protection (CTDEP) will hold an informational meeting in order to address questions related to authorization, including the implementation and transition of the Corrective Action program to the CTDEP. EPA and State personnel will also be available to discuss other program elements. This meeting will not be a public hearing in which comments are formally entered into the administrative record. Instead, all comments related to this proposed action must be submitted in writing, and must be received by the EPA in accordance with the procedures specified above.

#### A. Why Are Revisions to State Programs Necessary?

States with final authorization under section 3006(b) of RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. As the Federal hazardous waste program changes, the States must revise their programs and apply for authorization of the revisions. Revisions to State hazardous waste programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must revise their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

#### B. What Has Connecticut Previously Been Authorized for Under RCRA?

The State of Connecticut received Final Authorization on December 17, 1990, effective December 31, 1990 (55 FR 51707), to implement its base hazardous waste management program. This previously authorized program generally tracks Federal hazardous waste requirements through July 1, 1989.

#### C. What Decisions Is the EPA Proposing To Make in This Rule?

We believe that the State of Connecticut's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant Connecticut Final authorization to operate its hazardous waste program with the changes described in the authorization application.

#### D. What Happens if EPA Receives Written Comments That Oppose This Action?

If EPA receives written comments that oppose this authorization, we will evaluate and address them prior to issuing any final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you should do so at this time.

#### E. What Changes Is the EPA Proposing To Authorize With Today's Action?

The EPA is proposing to authorize Connecticut regulations which update the State's hazardous waste program to meet federal requirements through January 1, 2001. The revisions track the following federal rules in RCRA Clusters Non-HSWA VI, HSWA I, HSWA II, and RCRA I through XI:

##### Non-HSWA VI

- 64 Delay of Closure Period for Hazardous Waste Management Facilities (54 FR 33376, 8/14/89)
- 65 Mining Waste Exclusion I (54 FR 36592, 9/1/89)
- 67 Testing and Monitoring Activities (54 FR 40260, 9/29/89)
- 70 Changes to Part 124 Not Accounted for by Present Checklists

(70) Environmental Permit Regulations; RCRA Hazardous Waste; SDWA Underground Injection Control; CWA National Pollutant Discharge Elimination System; CWA Section 404 Dredge or Fill Programs; and CAA Prevention of Significant Deterioration (48 FR 14146, 4/1/83)

- (70) Hazardous Waste Management System; Permit Program; Requirements for Authorization of State Programs; Procedures for Decisionmaking; Identification and Listing of Hazardous Waste; Standards for Owners and Operators of Hazardous Waste Storage, Treatment, and Disposal Facilities; Interim Status Standards for Owners and Operators of Hazardous Waste Storage, Treatment, and Disposal Facilities; Correction (48 FR 30113, 6/30/83)
- (70) Underground Injection Control Program; Hazardous Waste Disposal Injection Restrictions; Amendments to Technical Requirements for Class I Hazardous Waste Injection Wells; and Additional Monitoring Requirements Applicable to All Class I Wells (53 FR 28118, 7/26/88)
- (70) Safe Drinking Water Act; National Drinking Water Regulations; Underground Injection Control Regulations; Indian Lands (53 FR 37396, 9/26/88)

- (70) National Pollutant Discharge Elimination System Permit Regulations (54 FR 246, 1/4/89)
- 71 Mining Waste Exclusion II (55 FR 2322, 1/23/90)
- 72 Modifications of F019 Listing (55 FR 5340, 2/14/90)
- 73 Testing and Monitoring Activities; Technical Corrections (55 FR 8948, 3/9/90)
- 76 Criteria for Listing Toxic Wastes; Technical Amendment (55 FR 18726, 5/4/90)
- 78N Land Disposal Restrictions for Third Third Scheduled Wastes (55 FR 22520, 6/1/90)
- HSWA I*
- CP Hazardous and Used Oil Fuel Criminal Penalties, (HSWA § 3006(h), § 3008(d) § 3014 HSWA Date of Enactment Provisions, 11/8/84; 50 FR 28702, 7/15/85)
- 14 Dioxin Waste Listing and Management Standards (50 FR 1978, 1/14/85)
- 16 Paint Filter Test (See Revision Checklist 25 in HSWA Cluster I) (50 FR 18370, 4/30/85)
- SI Sharing of Information With the Agency for Toxic Substances and Disease Registry (HSWA § 3019(b), 7/15/85)
- 17 HSWA Codification Rule (50 FR 28702, 7/15/85)
- 17E Location Standards for Salt Domes, Salt Beds, Underground Mines and Caves (50 FR 28702, 7/15/85)
- 17G Dust Suppression (50 FR 28702, 7/15/85)
- 17L Corrective Action (50 FR 28702, 7/15/85)
- 17N Permit Life (50 FR 28702, 7/15/85)
- 17O Omnibus Provision (50 FR 28702, 7/15/85)
- 18 Listing of TDI, TDA, DNT 50 FR 42936, 10/23/85
- 20 Listing of Spent Solvents (50 FR 53315, 12/31/85)
- 21 Listing of EDB Waste (51 FR 5327, 2/13/86)
- 22 Listing of Four Spent Solvents (51 FR 6537, 2/25/86)
- 25 Codification Rule; Technical Correction (Paint Filter Test, 51 FR 19176, 5/28/86)
- 30 Biennial Report; Correction (51 FR 28556, 8/8/86)
- 31 Exports of Hazardous Waste (51 FR 28664, 8/8/86)
- 32 Standards for Generators; Waste Minimization Certifications (51 FR 35190, 10/1/86)
- 33 Listing of EBDC (51 FR 37725, 10/24/86)
- HSWA II*
- 44 HSWA Codification Rule 2 (52 FR 45788, 12/1/87)
- 44A Permit Application Requirements Regarding Corrective Action
- 44B Corrective Action Beyond Facility Boundary
- 44C Corrective Action for Injection Wells
- 44D Permit Modification
- 44E Permit as a Shield Provision
- 44F Permit Conditions to Protect Human Health and the Environment
- 48 Farmer Exemptions; Technical Corrections (53 FR 27164, 7/19/88)
- 66 Land Disposal Restrictions; Correction to First Third Wastes (includes revision checklist 66.1 correction) (54 FR 36967, 9/6/89 as amended by 54 FR 9596, 3/7/89)
- 68 Reportable Quantity Adjustment Methyl Bromide Production Waste (54 FR 41402, 10/6/89)
- 69 Reportable Quantity Adjustment (F024 and F025) (54 FR 50968, 12/11/89)
- 74 Toxicity Characteristics Revision (includes revision checklist 74.1 correction) (55 FR 11798, 3/29/90 as amended by 55 FR 26986, 6/29/90)
- 75 Listing of 1,1-Dimethylhydrazine Production Wastes (55 FR 18496, 5/2/90)
- 78H Land Disposal Restrictions for Third Third Wastes (55 FR 22520, 6/1/90)
- 79 Organic Air Emission Standards for Process Vents and Equipment Leaks (55 FR 25454, 6/21/90)
- RCRA I*
- 80 Toxicity Characteristic; Hydrocarbon Recovery Operations (55 FR 40834, 10/5/90 as amended by 56 FR 3978, 2/01/91 and 56 FR 13406, 4/2/91)
- 81 Petroleum Refinery Primary and Secondary Oil/Water/Solids Separation Sludge Listings (F037 and F038) (55 FR 46354, 11/2/90 as amended by 55 FR 51707, 12/17/90)
- 82 Wood Preserving Listings (55 FR 50450, 12/6/90)
- 83 Land Disposal Restrictions for Third Third Scheduled Wastes; Technical Amendment (56 FR 3864, 1/31/91)
- 84 Toxicity Characteristic; Chlorofluoro-carbon Refrigerants (56 FR 5910, 2/13/91)
- 85 Burning of Hazardous Waste in Boilers and Industrial Furnaces (56 FR 7134, 2/21/91)
- 86 Removal of Strontium Sulfide From the List of Hazardous Waste; Technical Amendment (56 FR 7567, 2/25/91)
- 87 Organic Air Emission Standards for Process Vents and Equipment Leaks; Technical Amendment (56 FR 19290, 4/26/91)
- 88 Administrative Stay for K069 Listing (56 FR 19951, 5/1/91)
- 89 Revision to F037 and F038 Listings (56 FR 21955, 5/13/91)
- 90 Mining Exclusion III (56 FR 27300, 6/13/91)
- 91 Administrative Stay for F032, F034, and F035 Listings (Superseded by 57 FR 5859 and 57 FR 61492, see revision checklists 101 and 120 in RCRA Clusters II and III, respectively) (56 FR 27332, 6/13/91)
- RCRA II*
- 92 Wood Preserving Listings; Technical Corrections (56 FR 30192, 7/1/91)
- 94 Burning of Hazardous Waste in Boilers and Industrial Furnaces; Corrections and Technical Amendments I (56 FR 32688, 7/17/91)
- 95 Land Disposal Restrictions for Electric Arc Furnace Dust (K061) (56 FR 41164, 8/19/91)
- 96 Burning of Hazardous Waste in Boilers and Industrial Furnaces; Technical Amendments II (56 FR 42504, 8/27/91)
- 97 Exports of Hazardous Waste; Technical Correction (56 FR 43704, 9/4/91)
- 98 Coke Ovens Administrative Stay (56 FR 43874, 9/5/91)
- 99 Amendments to Interim Status Standards for Downgradient Ground-Water Monitoring Well Locations (56 FR 66365, 12/23/91)
- 100 Liners and Leak Detection Systems for Hazardous Waste Land Disposal Units (57 FR 3462, 1/29/92)
- 101 Administrative Stay for the Requirement That Existing Drip Pads be Impermeable (Superseded by 57 FR 61492, see Revision Checklist 120 in RCRA Cluster III) (57 FR 5859, 2/18/92)
- 102 Second Correction to the Third Third Land Disposal Restrictions (57 FR 8086, 3/6/92)
- 103 Hazardous Debris Case-by-Case Capacity Variance (57 FR 20766, 5/15/92)
- 104 Oil Filter Exclusion (57 FR 21524, 5/20/92)
- 105 Recycled Coke By-Product Exclusion (57 FR 27880, 6/22/92)
- 106 Lead-Bearing Hazardous Materials Case-by-Case Capacity Variance (57 FR 28628, 6/26/92)
- RCRA III*
- 107 Used Oil Filter Exclusion Corrections (57 FR 29220, 7/1/92)



- 108 Toxicity Characteristic Revisions (57 FR 30657, 7/10/92)
- 109 Land Disposal Restrictions for Newly Listed Waste and Hazardous Debris (57 FR 37194, 8/18/92)
- 110 Coke-By-Products Listings (57 FR 37284, 8/18/92)
- 111 Boilers and Industrial Furnaces; Technical Amendment III (57 FR 38558, 8/25/92)
- 112 Recycled Used Oil Management Standards (57 FR 41566, 9/10/92)
- 113 Consolidated Liability Requirements: Financial Responsibility for Third-Party Liability, Closure, and Post-Closure (includes revision checklists 113.1 and 113.2) [(57 FR 42832, 9/16/92 which amends 53 FR 33938, 9/1/88 (formerly revision checklist 51) and 56 FR 30200, 7/1/91 (formerly revision checklist 93)]
- 114 Boilers and Industrial Furnaces; Technical Amendment IV (57 FR 44999, 9/30/92)
- 115 Chlorinated Toluene Production Waste Listing (57 FR 47376, 10/15/92)
- 116 Hazardous Soil Case-by-Case Capacity Variance (57 FR 47772, 10/20/92)
- 117A Reissuance of the "Mixture" and "Derived From" Rules (includes revision checklists 117A.1 and 117A.2) (57 FR 7628, 3/3/92 as amended by 57 FR 23062, 6/1/92 and 57 FR 49278, 10/30/92)
- 117B Toxicity Characteristic Amendment (57 FR 23062, 6/1/92)
- 118 Liquids in Landfills II (57 FR 54452, 11/18/92)
- 119 Toxicity Characteristic Revision; TCLP Correction (includes checklist 119.1 revision) (57 FR 55114, 11/24/92 as amended by 58 FR 6854, 2/2/93)
- 120 Wood Preserving; Amendments to Listings and Technical Requirements (57 FR 61492, 12/24/92)
- 121 Corrective Action Management Units and Temporary Units (58 FR 8658, 2/16/93)
- 122 Recycled Used Oil Management Standards; Technical Amendments and Corrections (includes checklist 122.1 revisions) (58 FR 26420, 5/3/93 and 58 FR 33341 6/17/93)
- 123 Land Disposal Restrictions; Renewal of the Hazardous Waste Debris Case-by-Case Capacity Variance (58 FR 28506, 5/14/93)
- 124 Land Disposal Restrictions for Ignitable and Corrosive Characteristic Wastes Whose Treatment Standards Were Vacated (58 FR 29860, 5/24/93)
- RCRA IV*
- 125 Boilers and Industrial Furnaces; Changes for Consistency with New Air Regulations (58 FR 38816, 7/20/93)
- 126 Testing and Monitoring Activities (includes checklists 126.1 revisions) (58 FR 46040, 8/31/93 as amended by 59 FR 47980, 9/19/94)
- 127 Boilers and Industrial Furnaces; Administrative Stay and Interim Standards for Bevill Residues (58 FR 59598, 11/9/93)
- 128 Wastes From the Use of Chlorophenolic Formulations in Wood Surface Protection (59 FR 458, 1/4/94)
- 129 Revision of Conditional Exemption for Small Scale Treatability Studies (59 FR 8362, 2/18/94)
- 130 Recycled Used Oil Management Standards; Technical Amendments and Corrections II (59 FR 10550, 3/4/94)
- 131 Recordkeeping Instructions; Technical Amendment (59 FR 13891, 3/24/94)
- 132 Wood Surface Protection; Correction (59 FR 28484, 6/2/94)
- 133 Letter of Credit Revision (59 FR 29958, 6/10/94)
- 134 Correction of Beryllium Powder (P015) Listing (59 FR 31551, 6/20/94)
- RCRA V*
- 135 Recovered Oil Exclusion (59 FR 38536, 7/28/94)
- 136 Removal of the Conditional Exemption for Certain Slag Residues (59 FR 43496, 8/24/94)
- 137 Universal Treatment Standards and Treatment Standards for Organic Characteristic Wastes and Newly Listed Waste (includes checklist 137.1 revisions) (59 FR 47982, 9/19/94 as amended by 60 FR 242, 1/3/95)
- 139 Testing and Monitoring Activities Amendment I (60 FR 3089, 1/13/95)
- 140 Carbamate Production Identification and Listing of Hazardous Waste (includes revision checklists 140.1 and 140.2) (60 FR 7824, 2/9/95 as amended by 60 FR 19165, 4/17/95 and 60 FR 25619, 5/12/95)
- 141 Testing and Monitoring Activities Amendment II (includes checklist 140.1 revisions) (60 FR 17001, 4/4/95 and 60 FR 19165, 4/17/95)
- 142 Universal Waste Rule (60 FR 25492, 5/11/95)
- 142A General Provisions
- 142B Specific Provisions for Batteries
- 142C Specific Provisions for Pesticides
- 142D Specific Provisions for Thermostats
- 142E Petition Provisions to Add a New Universal Waste
- 144 Removal of Legally Obsolete Rules (60 FR 33912, 6/29/95)
- RCRA VI*
- 148 RCRA Expanded Public Participation (60 FR 63417, 12/11/95)
- 150 Identification and Listing of Hazardous Waste; Amendments to Definition of Solid Waste (61 FR 13103, 3/26/96)
- 151 Land Disposal Restrictions Phase III (61 FR 15566, 4/8/96)
- (151.1) Land Disposal Restrictions Phase III—Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners; Partial Withdrawal and Amendment (61 FR 15660, 4/8/96)
- (151.2) Land Disposal Restrictions Phase III—Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners; Correction (61 FR 19117, 4/30/96)
- (151.3) Land Disposal Restrictions Phase III—Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners; Technical Correction (61 FR 33680, 6/28/96)
- (151.4) Land Disposal Restrictions Phase III—Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners; Correction (61 FR 36419, 7/10/96)
- (151.5) Land Disposal Restrictions Phase III—Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners; Emergency Revision (61 FR 43924, 8/26/96)
- (151.6) Land Disposal Restrictions Phase III—Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners; Correction (62 FR 7502, 2/19/97)
- RCRA VII*
- 153 Conditionally Exempt Small Quantity Generator Disposal Options Under Subtitle D (61 FR 34252, 7/1/96)
- 154 Consolidated Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers 154 (includes revisions checklists 154.1–154.6) (59 FR 62896, 12/6/94 as amended by 60 FR 26828, 5/19/95; 60 FR 50426, 9/29/95; 60 FR 56952, 11/13/95; 61 FR 4903, 2/9/96; 61 FR 28508, 6/5/96; and 61 FR 59932, 11/25/96)
- 155 Land Disposal Restrictions Phase III—Emergency Extension of the K088 Capacity Variance (62 FR 1992, 1/14/97)

- 156 Military Munitions Rule (62 FR 6622, 2/12/97)
- 157 Land Disposal Restrictions—Phase IV (62 FR 25998, 5/12/97)
- 158 Testing and Monitoring Activities Amendment III (62 FR 32452, 6/13/97)
- 159 Carbamate Production, Identification and Listing of Hazardous Waste; Land Disposal Restrictions (Conformance With the Carbamate Vacatur) (62 FR 32974, 6/17/97)

*RCRA VIII*

- 160 Land Disposal Restrictions Phase III: Emergency Extension of K088 National Capacity Variance (62 FR 37694, 7/14/97)
- 161 Second Emergency Revision of the Land Disposal Restrictions Treatment Standards for Listed Hazardous Wastes from Carbamate Production (62 FR 45568, 8/28/97)
- 162 Clarification of Standards for Hazardous Waste LDR Treatment Variances (62 FR 64504, 12/5/97)
- 163 Organic Air Emissions Standards for Tanks, Surface Impoundments and Containers; Classification and Technical Amendment (62 FR 64636, 12/8/97)
- 164 Kraft Mill Steam Stripper and Condensate Exclusion (63 FR 18504, 4/15/98)
- 166 Recycled Used Oil Management Standards' Technical Correction and Clarification (including revision checklist 166.1) (63 FR 24963, 5/6/98 and 63 FR 37780, 7/14/98)
- 167A-F Land Disposal Restrictions Phase IV—Treatment Standards for Metal Wastes and Mineral Processing Wastes; Mineral Processing Secondary Metals and Bevill Exclusion Issues; Treatment Standards for Hazardous Soils, and

Exclusion of Recycled Wood Preserving Wastewaters (includes revision checklist 167C.1) (63 FR 28556, 5/26/98)

*RCRA IX*

- 169 Petroleum Refining Process (including revision checklist 169.1) (63 FR 42110, 8/6/98 as amended by 63 FR 54356, 10/9/98)
- 170 Land Disposal Restriction—Phase IV (63 FR 46332, 8/31/98)
- 171 Emergency Revision of LDR Treatment Standards (63 FR 47410, 9/4/98)
- 172 Emergency Revision of LDR Treatment Standards (63 FR 48124, 9/9/98)
- 173 Land Disposal Restrictions Treatment Standards (Spent Potliners) (63 FR 51254, 9/24/98)
- 176 Universal Waste Rule: Technical Amendment (63 FR 71225, 12/24/98)
- 177 Organic Air Emission Standards (64 FR 3382, 1/21/99)
- 178 Petroleum Refining Process Wastes (64 FR 6806, 2/11/99)
- 179 Land Disposal Treatment Standards: Technical Corrections and Clarifications (64 FR 25408, 5/11/99)
- 180 Test Procedures for the Analysis of Oil and Grease and Non-Polar Material (64 FR 26315, 5/14/99)

*RCRA X*

- 181 Universal Waste Rule (64 FR 36466, 7/6/99)
- 182 NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (MACT Rule) (including revision checklist 182.1) (64 FR 52828, 9/30/99 as amended by 64 FR 63209, 11/19/99)
- 183 Land Disposal Restrictions; Wood Preserving Wastes, Metal Wastes,

Zinc Micronutrients Fertilizer, etc. (correction) (64 FR 56469, 10/20/99)

- 184 Wastewater Treatment Sludges from Metal Finishing Industry; 180-day Accumulation Time (65 FR 12378, 3/8/00)

- 185 Organobromine Production Wastes (65 FR 14472, 3/17/00)

- 187 Organobromine Production Waste and Petroleum Refining Process Waste: Technical Correction (65 FR 36365, 6/8/00)

*RCRA XI*

- 189 Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Chlorinated Aliphatics Production Wastes; Land Disposal Restrictions for Newly Identified Wastes; and CERCLA Hazardous Substance Designation and Reportable Quantities (65 FR 67068, 11/8/00)
- 190 Deferral of Phase IV Standards for PCBs as a Constituent Subject to Treatment in Soil (65 FR 81373, 12/26/00)

The revisions also include other State regulations which address federal requirements, including the state provisions identified in Table 3 in the Program Description and including changes that the State has made to its base program regulations that were authorized in 1990.

The specific State regulations that the EPA is proposing to authorize are listed in the table below. The Federal requirements in the table are identified by reference to the Code of Federal Regulations (CFR). The following abbreviation is used in defining corresponding state authority: R.C.S.A. (Regulations of Connecticut State Agencies).

Description of Federal requirements	Analogous state authority
40 CFR part 260:	
None .....	22a-449(c)-100(a)(1)
None .....	22a-449(c)-100(a)(2)
Various record keeping provisions and 262.40(d), 263.22(e), 264.74(b), 265.74(b) and 268.7(a)(8).	22a-449(c)-100(a)(5)
None .....	22a-449(c)-100(c)(28)
None .....	22a-449(c)-100(a)(7) (partially broader in scope)
None .....	22a-449(c)-100(c) Intro
260.10—definition of small quantity generator.	22a-449(c)-100(c)(28)
260.2 .....	22a-449(c)-100(b)(1)(B)
260.3 .....	22a-449(c)-100(b)(2)(A)
260.10 Intro .....	22a-449(c)-100(b)(2)(B)
260.11(b) .....	22a-449(c)-100(b)(2)(C)
261.1(c)(8) .....	22a-449(c)-101(a)(2)(B), 22a-449(c)-101(a)(2)(D) and (F), and 22a-449(c)-106(b)(1)(A)
None, other than definition of Administrator and Regional Administrator in 260.10, 270.2 and State director in 270.2.	22a-449(c)-100(c)(1)

Description of Federal requirements	Analogous state authority
None, other than definition of EPA region in 260.10 and EPA and Environmental Protection Agency in 270.2.	22a-449(c)-100(c)(2)
None .....	22a-449(c)-100(c)(3)
260.10—definition of battery .....	22a-449(c)-100(c)(4)
None .....	22a-449(c)-100(c)(5)
260.10, 270.2—definition of corrective action management unit, CAMU.	22a-449(c)-100(c)(7)
None .....	22a-449(c)-100(c)(10)
260.10—definition of designated facility .....	22a-449(c)-100(c)(11)
260.10—definition of destination facility and 273.80.	22a-449(c)-100(c)(12)
270.2—definition of Director .....	22a-449(c)-100(c)(13)
None .....	22a-449(c)-100(c)(14)
260.10—definition of Facility .....	22a-449(c)-100(c)(15)
None .....	22a-449(c)-100(c)(16)
None .....	22a-449(c)-100(c)(17)
260.10, 273.9—definition of Lamp, Universal waste lamp.	22a-449(c)-100(c)(18)
260.10—definition of Miscellaneous Unit ....	22a-449(c)-100(c)(21)
None .....	22a-449(c)-119(a)(2)(J) and (FFF)
None .....	22a-449(c)-100(c)(24)
260.10—definition of Remediation waste ....	22a-449(c)-100(c)(26)
260.10—definition of Small quantity generator.	22a-449(c)-100(c)(28)
None other than definition of State in 260.10, 270.2 and Approved program and Approved state in 270.2.	22a-449(c)-100(c)(29)
None .....	22a-449(c)-100(c)(30)
None .....	22a-449(c)-100(c)(31)
None .....	22a-449(c)-100(c)(32)
260.10, 273.9—definition of Universal Waste and 273.80.	22a-449(c)-100(c)(33)
273.80 .....	22a-449(c)-100(c)(34)
260.10 and 279.1—definition of Used oil ....	22a-449(c)-100(c)(35) (partially broader in scope)
40 CFR part 261:	
261.1(c)(8) .....	22a-449(c)-101(a)(2)(B), 22a-449(c)-101(a)(2)(D) and (F) and 22a-449(c)-106(b)(1)(A)
261.2(a)(2)(iv) .....	22a-449(c)-101(a)(1)(A)
261.4(a)(16) .....	22a-449(c)-101(a)(1)(B)
261.4(b)(6) .....	22a-449(c)-101(a)(1)(C)
261.4(b)(11) .....	22a-449(c)-101(a)(1)(D)
261.4(g) .....	22a-449(c)-101(a)(1)(E)
261.38 .....	22a-449(c)-101(a)(1)(F)
261.2(c)(3) .....	22a-449(c)-101(a)(2)(D)
261.2(e) .....	22a-449(c)-101(a)(2)(F)
261.3(a)(2)(v) .....	22a-449(c)-101(a)(2)(G)
261.3(c)(2)(i) .....	22a-449(c)-101(a)(2)(H)
261.4(a)(1)(ii) .....	22a-449(c)-101(a)(2)(I)
261.4(a)(15) .....	22a-449(c)-101(a)(2)(J)
261.4(a)(17)(iii) .....	22a-449(c)-101(a)(2)(K)
261.4(a)(17)(v) .....	22a-449(c)-101(a)(2)(N)
261.5(c)(6)/273.80 .....	22a-449(c)-101(a)(2)(Q)
261.5(f)(3)(iv)—261.5(f)(3)(vii) .....	22a-449(c)-101(a)(2)(S)
261.5(g)(2) .....	22a-449(c)-101(a)(2)(T)
261.5(g)(3)(iv)—(vii) .....	22a-449(c)-101(a)(2)(U)
261.5(j) .....	22a-449(c)-101(a)(2)(W)
261.6(a)(4) .....	22a-449(c)-101(a)(2)(Y) (partially broader in scope)
261.6(c)(1) .....	22a-449(c)-101(a)(2)(Z) (partially broader in scope)
261.9/273.80 .....	22a-449(c)-101(a)(2)(AA)
261.9(d)/273.80 .....	22a-449(c)-101(a)(2)(CC)
261.31(a) .....	22a-449(c)-101(a)(2)(DD)
261.32 .....	22a-449(c)-101(a)(2)(EE)
261 Appendix VII .....	22a-449(c)-101(a)(2)(GG)
261 Appendix VIII .....	22a-449(c)-101(a)(2)(HH)
None .....	22a-449(c)-101(b) intro
None .....	22a-449(c)-101(b)(1)
None .....	22a-449(c)-101(b)(2)
None .....	22a-449(c)-101(a)(1), 22a-449(c)-101(a)(2)(D) and (F), and 22a-449(c)-106(b)(1)(A)
None .....	22a-449(c)-101(c)(2)
None .....	22a-449(c)-101(c)(3)
260.40 and 260.41 .....	22a-449(c)-101(c)(4)
40 CFR parts 262:	
262.34(g)(4)(ii) .....	22a-449(c)-102(a)(1)(B)
262.10(g) formerly 262.10(e) .....	22a-449(c)-100(a)(7)

Description of Federal requirements	Analogous state authority
262.11	22a-449(c)-102(a)(2)(A)
262.11(d)/273.80	22a-449(c)-102(a)(2)(B)
262.20(f)	22a-449(c)-102(a)(2)(C)
262.34(a)	22a-449(c)-102(a)(2)(D)
262.34(a)(1)(i) formerly 262.34(a)(1)	22a-449(c)-102(a)(2)(E)
262.34(a)(1)(ii) formerly 262.34(a)(1)	22a-449(c)-102(a)(2)(F)
262.34(a)(1)(iii)	22a-449(c)-102(a)(2)(G)
262.34(a)(1)(iv) intro	22a-449(c)-102(a)(2)(H)
262.34(a)(1)(iv)(A)	22a-449(c)-102(a)(2)(I)
262.34(a)(3)	22a-449(c)-102(a)(2)(J)
262.34(a)(4)	22a-449(c)-102(a)(2)(K) (Also see 22a-449(c)-102(a)(2)(D), 2nd bullet)
262.34(b)	22a-449(c)-102(a)(2)(L)
262.34(c)(1)(i)	22a-449(c)-102(a)(2)(M)
262.34(c)(1)(ii)	22a-449(c)-102(a)(2)(N)
262.34(d)(5)(iv)(C)	22a-449(c)-102(a)(2)(P)
262.34(g)(1)	22a-449(c)-102(a)(2)(R)
262.34(g)(2)	22a-449(c)-102(a)(2)(S)
262.34(g)(4)(i)(A)	22a-449(c)-102(a)(2)(T)
262.34(g)(4)(i)(C)	22a-449(c)-102(a)(2)(U)
262.34(g)(4)(iv)	22a-449(c)-102(a)(2)(W)
262.34(g)(4)(v)	22a-449(c)-102(a)(2)(X)
262.41(a)	22a-449(c)-102(a)(2)(AA)
262.43	22a-449(c)-102(a)(2)(DD)
262.44	22a-449(c)-102(a)(2)(EE)
262 Appendix	22a-449(c)-102(a)(2)(II) (partially broader in scope)
None	22a-449(c)-102(b)(2) and (3)
None	22a-449(c)-102(b)(4)
None	22a-449(c)-100(c)(28)
None	22a-449(c)-102(c)(2)
40 CFR part 263:	
263.10(f)	22a-449(c)-103(a)(1)(A)
263.10(a)	22a-449(c)-103(a)(2)(A)
263.30(c)(1)	22a-449(c)-103(a)(2)(D)
40 CFR part 264:	
264.1(i)	22a-449(c)-104(a)(1)(D)
264.1(j)	22a-449(c)-104(a)(1)(E)
264.90(e)	22a-449(c)-104(a)(1)(G)
264.90(f)	22a-449(c)-104(a)(1)(H)
264.101(d)	22a-449(c)-104(a)(1)(I)
264.110(c)	22a-449(c)-104(a)(1)(J)
264.112(b)(8)	22a-449(c)-104(a)(1)(K)
264.112(c)(2)(iv)	22a-449(c)-104(a)(1)(L)
264.118(b)(4)	22a-449(c)-104(a)(1)(M)
264.118(d)(2)(iv)	22a-449(c)-104(a)(1)(N)
264.140(d)	22a-449(c)-104(a)(1)(O)
264.314(e)	22a-449(c)-104(a)(1)(S)
264.340(b)	22a-449(c)-104(a)(1)(T)
264.554	22a-449(c)-104(a)(1)(U)
264, subpart EE	22a-449(c)-104(a)(1)(W)
264.13(a)(4)	None (Former state requirement was deleted).
264.1(g)(2)	22a-449(c)-104(a)(2)(A)
264.1(g)(11) intro and 273.80	22a-449(c)-104(a)(2)(B)
264.1(g)(11)(iv)/273.80	22a-449(c)-104(a)(2)(D)
264.13(c)(3)	22a-449(c)-104(a)(2)(F), see also 22a-449(c)-104(a)(2)(GG)
264.70	22a-449(c)-104(a)(2)(G)
264.73(b)(17)	22a-449(c)-104(a)(2)(L)
264.75	22a-449(c)-104(a)(2)(M)
264.90(a)(1)	22a-449(c)-104(a)(2)(N) (Note: 40 CFR 264.90(b) is not incorporated into the state's regulations. See 22a-449(c)-104(a)(1)(F).)
264.101(a)	22a-449(c)-104(a)(2)(O)
264.143(h)	22a-449(c)-104(a)(2)(P)
264.145(h)	22a-449(c)-104(a)(2)(R)
264.151	22a-449(c)-104(a)(2)(U)
264.192(d)	22a-449(c)-104(a)(2)(W)
264.196(d)(1)	22a-449(c)-104(a)(2)(Z)
264.222(a)	22a-449(c)-104(a)(2)(AA)
264.252(a)	22a-449(c)-104(a)(2)(BB)
264.302(a)	22a-449(c)-104(a)(2)(FF)
264.316(b)	22a-449(c)-104(a)(2)(GG)
264.340(c) intro	22a-449(c)-104(a)(2)(HH)
264.552(a)	22a-449(c)-104(a)(2)(JJ)
264.552(a)(1)	22a-449(c)-104(a)(2)(KK)
264.552(a)(2)	22a-449(c)-104(a)(2)(LL)
264.552(b)(2)	22a-449(c)-104(a)(2)(MM)

Description of Federal requirements	Analogous state authority
264.552(c) intro	22a-449(c)-104(a)(2)(NN)
264.552(c)(4)	22a-449(c)-104(a)(2)(OO)
264.552(c)(5)	22a-449(c)-104(a)(2)(PP)
264.552(e)	22a-449(c)-104(a)(2)(QQ)
264.552(e)(4)(i)(B)	22a-449(c)-104(a)(2)(RR)
264.552(e)(4)(iii)(F)	22a-449(c)-104(a)(2)(SS)
264.552(e)(4)(iv)	22a-449(c)-104(a)(2)(TT)
264.552(g)	22a-449(c)-104(a)(2)(UU)
264.553(a)	22a-449(c)-104(a)(2)(WW)
264.553(c)(7)	22a-449(c)-104(a)(2)(XX)
264.553(d)	22a-449(c)-104(a)(2)(YY)
264.553(e)	22a-449(c)-104(a)(2)(ZZ)
264.553(f)	22a-449(c)-104(a)(2)(AAA)
264.570(a)	22a-449(c)-104(a)(2)(BBB)
264.570(c)(1)(iv)	22a-449(c)-104(a)(2)(CCC) (partially broader in scope)
264.601 intro	22a-449(c)-104(a)(2)(FFF)
264.1030(c)	22a-449(c)-104(a)(2)(GGG)
264.1033(l) intro	22a-449(c)-104(a)(2)(HHH)
264.1033(l)(1)	22a-449(c)-104(a)(2)(III)
264.1033(l)(2)	22a-449(c)-104(a)(2)(KKK)
264.1034(f)	22a-449(c)-104(a)(2)(LLL)
264.1050(c)	22a-449(c)-104(a)(2)(MMM)
264.1063(f)	22a-449(c)-104(a)(2)(NNN)
264.1080(b)(3)	22a-449(c)-104(a)(2)(OOO)
264.1080(b)(4)	22a-449(c)-104(a)(2)(PPP)
264.1080(b)(7)	22a-449(c)-104(a)(2)(QQQ)
284.1080(c)	22a-449(c)-104(a)(2)(RRR)
264.1080(d) intro	22a-449(c)-104(a)(2)(SSS)
264.1080(d)(1)	22a-449(c)-104(a)(2)(TTT)
264.1080(d)(3)	22a-449(c)-104(a)(2)(UUU)
264.1081	22a-449(c)-104(a)(2)(VVV)
264.1082(b)	22a-449(c)-104(a)(2)(WWW)
264.1082(c)(2)	22a-449(c)-104(a)(2)(XXX)
264.1082(c)(2)(vii)(A)	22a-449(c)-104(a)(2)(ZZZ)
264.1082(c)(2)(viii)(A)	22a-449(c)-104(a)(2)(BBBB)
264.1082(c)(5)(i)	22a-449(c)-104(a)(2)(CCCC) (partially broader in scope)
264.1082(c)(5)(iii)	22a-449(c)-104(a)(2)(DDDD) (partially broader in scope)
264.1082(d)(2)(ii)	22a-449(c)-104(a)(2)(EEEE)
264.1083(a)(1)(i)	22a-449(c)-104(a)(2)(FFF)
264.1083(a)(1)(ii)	22a-449(c)-104(a)(2)(GGG)
264.1083(b)(1)(i)	22a-449(c)-104(a)(2)(HHH)
264.1083(b)(1)(ii)	22a-449(c)-104(a)(2)(III)
264.1084(c)(1)	22a-449(c)-104(a)(2)(KKK)
264.1084(c)(2)	22a-449(c)-104(a)(2)(LLL)
264.1084(c)(2)(i)	22a-449(c)-104(a)(2)(MMM)
264.1084(c)(2)(ii)	22a-449(c)-104(a)(2)(NNN)
264.1084(f)(1)	22a-449(c)-104(a)(2)(QQQ)
264.1084(f)(1)(i)	22a-449(c)-104(a)(2)(RRR)
264.1084(f)(1)(ii)(A)	22a-449(c)-104(a)(2)(SSS)
264.1084(h)(1)	22a-449(c)-104(a)(2)(WWW)
264.1084(i)(1)	22a-449(c)-104(a)(2)(ZZZ) (partially broader in scope)
264.1084(l)(1)(ii)	22a-449(c)-104(a)(2)(BBBB)
264.1085(b)	22a-449(c)-104(a)(2)(CCCC)
264.1085(c)(1)	22a-449(c)-104(a)(2)(EEEE)
264.1085(c)(1)(i)	22a-449(c)-104(a)(2)(FFF)
264.1085(d)(1)(i)	22a-449(c)-104(a)(2)(III)
264.1085(d)(1)(ii)	22a-449(c)-104(a)(2)(JJJ)
264.1085(g)(2)	22a-449(c)-104(a)(2)(MMMM)
264.1086(c)(4)(iii)	22a-449(c)-104(a)(2)(NNNN)
264.1086(d)(4)(iii)	22a-449(c)-104(a)(2)(OOOO)
264.1086(e)(2)(i)	22a-449(c)-104(a)(2)(QQQQ) (partially broader in scope)
264.1086(g)(1)	22a-449(c)-104(a)(2)(SSSS)
264.1086(g)(2)	22a-449(c)-104(a)(2)(TTTT)
264.1086(h)	22a-449(c)-104(a)(2)(UUUU)
264.1087(b)	22a-449(c)-104(a)(2)(VVVV)
264.1087(c)	22a-449(c)-104(a)(2)(XXXX)
264.1087(c)(2)(vi)	22a-449(c)-104(a)(2)(YYYY)
264.1087(c)(3)(ii)	22a-449(c)-104(a)(2)(ZZZZ)
264.1087(c)(6)	22a-449(c)-104(a)(2)(AAAAA)
264.1088(b)	22a-449(c)-104(a)(2)(BBBBB)
264.1089(a)	22a-449(c)-104(a)(2)(CCCCC)
264.1089(b)(1)(ii)(A)	22a-449(c)-104(a)(2)(DDDDD)
264.1089(b)(2)(i)	22a-449(c)-104(a)(2)(EEEEE)
264.1089(b)(2)(iii)(B)	22a-449(c)-104(a)(2)(FFFFF)

Description of Federal requirements	Analogous state authority
264.1089(c)(3)(i) .....	22a-449(c)-104 (a)(2)(GGGGGG)
264.1089(i) .....	22a-449(c)-104 (a)(2)(HHHHHH)
264.1090(a) .....	22a-449(c)-104 (a)(2)(IIIIII)
264.1090(b) .....	22a-449(c)-104 (a)(2)(JJJJJJ)
264.1090(c) .....	22a-449(c)-104 (a)(2)(KKKKKK)
None .....	22a-449(c)-104(c)
None .....	22a-449(c)-104(e)
40 CFR Part 265:	
265.90(c) .....	22a-449(c)-105(a)(1) ( <b>Note:</b> CT's previously authorized program does not incorporate a waiver of groundwater monitoring requirements if the owner or operator can demonstrate that there is a low potential for migration of hazardous waste or hazardous waste constituents from the facility via the uppermost aquifer to water supply wells or surface water. The state's revised regulations, for which it is now seeking authorization, incorporate this waiver through the general incorporation by reference of the federal regulations in 22a-449(c) 105(a)(1).)
265.1(c)(4) .....	22a-449(c)-105(a)(1)(A)
265.1(f) .....	22a-449(c)-105(a)(1)(C)
265.90(f) .....	22a-449(c)-105(a)(1)(E)
265.110(c) .....	22a-449(c)-105(a)(1)(F)
265.110(d) .....	22a-449(c)-105(a)(1)(G)
265.112(b)(8) .....	22a-449(c)-105(a)(1)(H)
265.112(c)(1)(iv) .....	22a-449(c)-105(a)(1)(I)
265.118(c)(4)&(5) .....	22a-449(c)-105(a)(1)(J)
265.118(d)(1)(iii) .....	22a-449(c)-105(a)(1)(K)
265.121 .....	22a-449(c)-105(a)(1)(L)
265.140(d) .....	22a-449(c)-105(a)(1)(M)
265.314(f) .....	22a-449(c)-105(a)(1)(R) ( <b>Note:</b> Since CT does not allow free liquids treated with a sorbent to be landfilled, the state did not incorporate provisions related to sorbents (see 22a-449(c)-105(a)(1)(Q)).)
265.340(b) .....	22a-449(c)-105(a)(1)(S)
265.1082(a) .....	22a-449(c)-105(a)(1)(V) 265, subpart EE 22a-449(c)-105(a)(1)(W)
265.13(a)(4) .....	None 265.1(b)
	22a-449(c)-105(a)(2)(A)
265.13(c)(3) .....	22a-449(c)-105(a)(2)(F) (See 22a-449(c)- 104(a)(2)(MM)).
265.15(b)(4) .....	22a-449(c)-105(a)(2)(G)
265.70 .....	22a-449(c)-105(a)(2)(H) ( <b>Note:</b> CT does not incorporate 40 CFR 266.203(a) which exempts waste military munitions from manifest requirements. See 22a-449(c)-106(a)(1)(D).)
265.73(b)(13) & (14) .....	22a-449(c)-105(a)(2)(K) and (L)
265.75 .....	22a-449(c)-105(a)(2)(M) ( <b>Note:</b> CT's revised regulations require biennial reports rather than annual reports which is equivalent to the federal program.)
265.90(c) .....	22a-449(c)-105(a)(2)(N)
265.143(g) .....	22a-449(c)-105(a)(2)(O)
265.145(g) .....	22a-449(c)-105(a)(2)(Q)
265.147(b)(1) .....	22a-449(c)-105(a)(2)(R)
265.192(d) .....	22a-449(c)-105(a)(2)(S)
265.193(c) .....	22a-449(c)-105(a)(2)(T)
265.196(d)(1) .....	22a-449(c)-105(a)(2)(V)
265.222(b)/265.221(g) .....	22a-449(c)-105(a)(2)(X) ( <b>Note:</b> Federal citation 265.222(b) was redesignated 265.221(g)).
265.222(a) .....	22a-449(c)-105(a)(2)(Y)
265.222(b) .....	22a-449(c)-105(a)(2)(Z)
265.223/265.224 .....	22a-449(c)-105(a)(2)(AA) & (BB) ( <b>Note:</b> Corrected two federal provisions with the same citation and clarified containment system provision.)
265.229(b)(2), (3), and (4) .....	22a-449(c)-105(a)(2)(DD), (EE), and (FF) ( <b>Note:</b> Sec. 22a-449(c)-104(a)(2)(DD), deletes paragraph (b)(2) of 40 CFR 265.229 because the paragraph is incorrectly placed within the section (see 40 CFR 265.228(b)(2)). Authorized state citations 22a-449(c)-104(a)(2)(K) and (L) have been redesignated as (EE) and (FF) and the federal citations modified by these subparagraphs have been revised to reflect the new citations numbers in the July 1, 2000 CFR. CT's revisions to the federal requirements at 265.229(b)(3) and (4) remain unchanged and more stringent.)
265.255(a) .....	22a-449(c)-105(a)(2)(GG), 1st-3rd bullets
265.255(b) .....	22a-449(c)-105(a)(2)(HH)
265.272(a) .....	22a-449(c)-105(a)(2)(II)
265.301(a) .....	22a-449(c)-105(a)(2)(JJ)
265.302(a) .....	22a-449(c)-105(a)(2)(KK)
265.302(b) .....	22a-449(c)-105(a)(2)(LL)
265.316(b) .....	22a-449(c)-105(a)(2)(MM)
265.340(c) .....	22a-449(c)-105(a)(2)(NN)
265.440(a) .....	22a-449(c)-105(a)(2)(PP) ( <b>Note:</b> Clarify applicable effective dates for HSWA drip pads (those used to manage F032 wastes) and non-HSWA drip pads (those that manage all other wastes).)
265.440(c)(1)(iv) .....	22a-449(c)-105(a)(2)(QQ)
265.1033(k) intro .....	22a-449(c)-105(a)(2)(TT)
265.1033(k)(1) .....	22a-449(c)-105(a)(2)(UU)
265.1033(k)(2) .....	22a-449(c)-105(a)(2)(VV)
265.1034(f) .....	22a-449(c)-105(a)(2)(XX)

Description of Federal requirements	Analogous state authority
265.1063(f) .....	22a-449(c)-105(a)(2)(YY)
265.1080(b)(3) .....	22a-449(c)-105(a)(2)(ZZ)
265.1080(b)(4) .....	22a-449(c)-105(a)(2)(AAA)
265.1080(c) intro .....	22a-449(c)-105(a)(2)(CCC)
265.1080(d)(1) .....	22a-449(c)-105(a)(2)(EEE)
265.1080(d)(3) .....	22a-449(c)-105(a)(2)(FFF)
265.1081 .....	22a-449(c)-105(a)(2)(GGG)
265.1082(b)(2)(i) .....	22a-449(c)-105(a)(2)(HHH)
265.1082(c) .....	22a-449(c)-105(a)(2)(III) (Note: Modification made for consistency with 22a-449(c)-105(a)(2)(HHH).)
265.1082 .....	22a-449(c)-105(a)(2)(JJJ)
265.1083(c)(5)(iii) .....	22a-449(c)-105(a)(2)(RRR), 2nd bullet
265.1083(d)(2)(ii) .....	22a-449(c)-105(a)(2)(SSS)
265.1085(c)(2) .....	22a-449(c)-105(a)(2)(ZZZ)
265.1085(c)(2)(i) .....	22a-449(c)-105(a)(2)(AAAA)
265.1085(c)(2)(ii) .....	22a-449(c)-105(a)(2)(BBBB)
265.1085(f)(1) .....	22a-449(c)-105(a)(2)(EEEE)
265.1085(f)(1)(i) .....	22a-449(c)-105(a)(2)(FFFF)
265.1085(f)(1)(ii)(A) .....	22a-449(c)-105(a)(2)(GGGG)
265.1085(h)(1) .....	22a-449(c)-105(a)(2)(KKKK)
265.1085(l)(1)(ii) .....	22a-449(c)-105(a)(2)(PPPP)
265.1086(b) .....	22a-449(c)-105(a)(2)(QQQQ)
265.1086(c)(1) .....	22a-449(c)-105(a)(2)(SSSS)
265.1086(c)(1)(i) .....	22a-449(c)-105(a)(2)(TTTT)
265.1086(d)(1)(i) .....	22a-449(c)-105(a)(2)(WWWWW)
265.1086(d)(1)(ii) .....	22a-449(c)-105(a)(2)(XXXX)
265.1086(g)(2) .....	22a-449(c)-105(a)(2)(AAAAA)
265.1087(c)(4)(iii) .....	22a-449(c)-105(a)(2)(BBBBB)
265.1087(d)(4)(iii) .....	22a-449(c)-105(a)(2)(CCCCC)
265.1088(c) .....	22a-449(c)-105(a)(2)(LLLLL)
265.1088(c)(2)(vi) .....	22a-449(c)-105(a)(2)(MMMMM)
265.1088(c)(3)(ii) .....	22a-449(c)-105(a)(2)(NNNNN)
265.1089(b) .....	22a-449(c)-105(a)(2)(PPPPP)
265.1090(a) .....	22a-449(c)-105(a)(2)(QQQQQ)
265.1090(b)(1)(ii)(A) .....	22a-449(c)-105(a)(2)(RRRRR)
265.1090(b)(2)(i) .....	22a-449(c)-105(a)(2)(SSSSS)
265.1090(b)(2)(iii)(B) .....	22a-449(c)-105(a)(2)(TTTTT)
265.1090(c)(3)(i) .....	22a-449(c)-105(a)(2)(UUUUU)
265.1090(i) intro .....	22a-449(c)-105(a)(2)(VVVVV)
265.1091 .....	22a-449(c)-105(a)(2)(WWWWW)
None .....	22a-449(c)-105(c)(1)(A)
None .....	22a-449(c)-105(c)(1)(B)
None .....	22a-449(c)-105(c)(2)(A)
None .....	22a-449(c)-105(c)(2)(B)
None .....	22a-449(c)-105(c)(3)(A)
None .....	22a-449(c)-105(c)(3)(A)(ii)
None .....	22a-449(c)-105(c)(3)(A)(iii) (Note: Technical correction required since sampling can now occur on a frequency other than quarterly (see 22a-449(c)-105(c)(2)(B)).)
None .....	22a-449(c)-105(c)(3)(B)
None .....	22a-449(c)-105(c)(3)(B)(ii)
None .....	22a-449(c)-105(c)(3)(B)(iii)
None .....	22a-449(c)-105(c)(3)(B)(iv)/(v) (Note: Requirement to submit a groundwater flow contour map moved from 22a-449(c)-105(c)(3)(B)(iii) to 22a-449(c)-105(c)(3)(B)(iv). Provision remaining at section 22a-449(c)-105(c)(3)(B)(iii) redesignated as 22a-449(c)-105(c)(3)(B)(v).)
None .....	22a-449(c)-105(c)(3)(B)(xi) (Note: Technical correction required since sampling can now occur on a frequency other than quarterly (see 22a-449(c)-105(c)(2)(B)).)
None .....	22a-449(c)-105(c)(4)(B)
None .....	22a-449(c)-105(c)(4)(C)
None .....	22a-449(c)-105(e)
265.201(b)(3) .....	22a-449(c)-102(c)(2) (Also see 22a-449(c)-105(a)(1)(O))
None .....	22a-449(c)-105(g)
264.101 interim status land disposed facilities.	22a-449(c)-105(h)(1) -(11) and 22a-449(c)-110(a)(2)(RR)
40 CFR part 266:	
266.80 .....	22a-449(c)-106(a)(1)(A)
266.100(b) .....	22a-449(c)-106(a)(1)(B)
266.100(d)(3)(i)(D) .....	22a-449(c)-106(a)(1)(C)
266, subpart M .....	22a-449(c)-106(a)(1)(D)
None .....	22a-449(c)-106(a)(2)
266.100(a) .....	22a-449(c)-106(a)(2)(A)
266.100(d) intro .....	22a-449(c)-106(a)(2)(B)
266.100(d)(1) intro .....	22a-449(c)-106(a)(2)(C)
266.100(d)(1)(ii) .....	22a-449(c)-106(a)(2)(E)
266.100(d)(1)(iii) .....	22a-449(c)-106(a)(2)(F)

Description of Federal requirements	Analogous state authority
None .....	22a-449(c)-106(a)(2)(G)
266.100(d)(3) intro .....	22a-449(c)-106(a)(2)(J)
266.100(d)(3)(ii) .....	22a-449(c)-106(a)(2)(N)
266.100(g)(2) .....	22a-449(c)-106(a)(2)(O)
266.100(g)(3) .....	22a-449(c)-106(a)(2)(P)
None .....	22a-449(c)-106(a)(2)(Q)
266.100(h) .....	22a-449(c)-106(a)(2)(R)
266.100(e)(3)(i)(E) .....	22a-449(c)-106(a)(2)(T)
266.112(b)(2)(i) .....	22a-449(c)-106(a)(2)(V)
279.12/279.71 .....	22a-449(c)-119(a)(2)(J) and (a)(2)(TTT)
None .....	22a-449(c)-106(b)(1)(A)
None .....	22a-449(c)-106(b)(1)(B)
None .....	22a-449(c)-106(c)(1)
None .....	22a-449(c)-106(c)(1)(A)
None .....	22a-449(c)-106(c)(1)(B)
None .....	22a-449(c)-106(c)(1)(C)
None .....	22a-449(c)-106(c)(1)(D)
266.80(a) .....	22a-449(c)-106(c)(2)
266.80(b)(1) .....	22a-449(c)-106(c)(3)
266.80(b)(2) .....	22a-449(c)-106(c)(4)
None .....	22a-449(c)-106(c)(5)
None .....	22a-449(c)-106(c)(6)
261.32, see entry for K174 and K175 .....	22a-449(c)-106(d)(1)
261.32 (K174 listing) .....	22a-449(c)-106(d)(2) (partially broader in scope)
261.32 (K174 listing) .....	22a-449(c)-106(d)(3)
261.32 (K174 listing) .....	22a-449(c)-106(d)(4)
261.32 (K174 listing) .....	22a-449(c)-106(d)(5)
266.202(d) .....	22a-449(c)-106(e)
40 CFR Part 268:	
268.6 .....	None
268.1(c)(3) .....	22a-449(c)-108(a)(1)(A)
268.37(b) .....	22a-449(c)-108(a)(1)(C)
268.50(g) .....	22a-449(c)-108(a)(1)(D)
None .....	22a-449(c)-108(a)(2)
268.1(f) and 273.80 .....	22a-449(c)-108(a)(2)(A)
268.1(f)(4)/273.80 .....	22a-449(c)-108(a)(2)(C)
268.2(c) .....	22a-449(c)-108(a)(2)(D)
268.7(a)(2) .....	22a-449(c)-108(a)(2)(E)
268.7(a)(3)(i) .....	22a-449(c)-108(a)(2)(F)
268.7(a)(3)(ii) .....	22a-449(c)-108(a)(2)(G)
268.7(a)(3)(iii) .....	22a-449(c)-108(a)(2)(H)
268.7(a)(4) .....	22a-449(c)-108(a)(2)(I)
268.7(a)(7) .....	22a-449(c)-108(a)(2)(J)
268.7(a)(9)(i) .....	22a-449(c)-108(a)(2)(K)
268.7(a)(9)(ii) .....	22a-449(c)-108(a)(2)(L)
268.7(b)(3)(i) .....	22a-449(c)-108(a)(2)(N)
268.7(b)(3) .....	22a-449(c)-108(a)(2)(M)
268.7(b)(4)(i) .....	22a-449(c)-108(a)(2)(O)
268.7(d)(1) .....	22a-449(c)-108(a)(2)(R)
268.7(e)(2) .....	22a-449(c)-108(a)(2)(U)
268.32-268.33 .....	22a-449(c)-108(a)(2)(V)
268.37(a) .....	22a-449(c)-108(a)(2)(W)
268.38(a) .....	22a-449(c)-108(a)(2)(X)
268.38(b) .....	22a-449(c)-108(a)(2)(Y)
268.39(b) .....	22a-449(c)-108(a)(2)(Z)
268.40(e) .....	22a-449(c)-108(a)(2)(AA)
268.40 Table .....	22a-449(c)-108(a)(2)(BB)
268.44(h)(5) .....	22a-449(c)-108(a)(2)(CC)
268.48 Table .....	22a-449(c)-108(a)(2)(DD)
268.49(d) .....	22a-449(c)-108(a)(2)(EE)
268 Appendix I-III .....	22a-449(c)-108(a)(2)(FF)
268.48 Appendix VII .....	22a-449(c)-108(a)(2)(GG)
None .....	22a-449(c)-108(a)(3)
None .....	22a-449(c)-108(b)
None .....	22a-449(c)-108(c)
40 CFR parts 270 and 124:	
None .....	22a-449(c)-110(a)(1) (Note: CT added federal citations inadvertently omitted from 40 CFR 271.14.)
270.1(c)(1)(i) .....	22a-449(c)-110(a)(1)(B)
270.1(c)(7) .....	22a-449(c)-110(a)(1)(D)
270.10(e)(2) .....	22a-449(c)-110(a)(1)(E)
270.11(d)(2) .....	22a-449(c)-110(a)(1)(G)
270.12 .....	22a-449(c)-110(a)(1)(H) (Note: Claims of confidentiality are subject to state FOIA requirements. See C.G.S. 1-200 et. seq.)



Description of Federal requirements	Analogous state authority
270.19(e) .....	22a-449(c)-110(a)(1)(I)
270.22 intro .....	22a-449(c)-110(a)(1)(J)
270.28 .....	22a-449(c)-110(a)(1)(K)
270.42(h) .....	22a-449(c)-110(a)(1)(M)
270.42(i) .....	22a-449(c)-110(a)(1)(N)
270.42(j) .....	22a-449(c)-110(a)(1)(O)
270.42, App I, Item L(9) .....	22a-449(c)-110(a)(1)(P)
270.62 intro .....	22a-449(c)-110(a)(1)(S)
270.64 .....	22a-449(c)-110(a)(1)(T)
270.66 intro .....	22a-449(c)-110(a)(1)(U)
270.68 .....	22a-449(c)-110(a)(1)(V)
270.72(b)(8) .....	22a-449(c)-110(a)(1)(W)
270, subpart H .....	22a-449(c)-110(a)(1)(X)
124.10(c)(1)(viii) .....	22a-449(c)-110(a)(1)(Z)
270.1(c) intro .....	22a-449(c)-110(a)(2)(A)
270.2 .....	22a-449(c)-110(a)(2)(F)
270.4 (a) .....	22a-449(c)-110(a)(2)(G)
270.10(e)(4) .....	22a-449(c)-110(a)(2)(I)
270.10(f)(2) .....	22a-449(c)-110(a)(2)(J)
270.10(g)(1)(iii) .....	22a-449(c)-110(a)(2)(L)
270.14(a) .....	22a-449(c)-110(a)(2)(N)
270.14(b)(18) .....	22a-449(c)-110(a)(2)(O) (Note: Since CT administers the financial requirements of 40 CFR 264, subpart H, CT does not incorporate 40 CFR 264.149. See 22a-449(c)-104(a)(1)(P).)
270.14(b)(22) .....	22a-449(c)-110(a)(2)(P)
270.19(d) intro .....	22a-449(c)-110(a)(2)(R)
270.27(a)(3) .....	22a-449(c)-110(a)(2)(S)
270.29 .....	22a-449(c)-110(a)(2)(T)
270.30(k)(3) .....	22a-449(c)-110(a)(2)(U)
270.32(c) .....	22a-449(c)-110(a)(2)(X)
270.40(a) .....	22a-449(c)-110(a)(2)(Y)
270.41 .....	22a-449(c)-110(a)(2)(Z)
270.42(b)(2) .....	22a-449(c)-110(a)(2)(BB), 1st bullet
270.42(b)(5) .....	22a-449(c)-110(a)(2)(CC)
270.42(b)(7) .....	22a-449(c)-110(a)(2)(DD)
270.42(c)(2) .....	22a-449(c)-110(a)(2)(EE)
270.42(d)(1) .....	22a-449(c)-110(a)(2)(FF)
270.42(f)(1) .....	22a-449(c)-110(a)(2)(GG)
270.42 App I .....	22a-449(c)-110(a)(2)(HH)
270.43 .....	22a-449(c)-110(a)(2)(II)
270.62(b)(5) .....	22a-449(c)-110(a)(2)(KK)
270.62(b)(6) .....	22a-449(c)-110(a)(2)(LL)
270.62(b)(6)(i) .....	22a-449(c)-110(a)(2)(MM)
270.62(d) .....	22a-449(c)-110(a)(2)(NN)
270.66(d)(3) .....	22a-449(c)-110(a)(2)(OO)
270.66(d)(3)(i) .....	22a-449(c)-110(a)(2)(PP)
270.66(g) .....	22a-449(c)-110(a)(2)(QQ), 2nd, 3rd, and 4th bullets
270.73(a) .....	22a-449(c)-110(a)(2)(RR), 1st and 2nd bullets
270.73 .....	22a-449(c)-110(a)(2)(SS)
124.3(a) .....	22a-449(c)-110(a)(2)(TT)
124.5(a) .....	22a-449(c)-110(a)(2)(UU)
124.5(c)(3) .....	22a-449(c)-110(a)(2)(VV)
124.6(a) .....	22a-449(c)-110(a)(2)(XX)
124.6(e) .....	22a-449(c)-110(a)(2)(YY)
124.8(a) .....	22a-449(c)-110(a)(2)(ZZ)
124.8(b)(4) .....	22a-449(c)-110(a)(2)(AAA)
124.10(a)(1)(iii) .....	22a-449(c)-110(a)(2)(BBB)
124.10(b)(2) .....	22a-449(c)-110(a)(2)(DDD)
124.10(d)(1)(v) .....	22a-449(c)-110(a)(2)(EEE), 2nd bullet
124.10(d)(2) .....	22a-449(c)-110(a)(2)(GGG)
124.10(d)(2)(ii) and (iii) .....	22a-449(c)-110(a)(2)(HHH)
124.12(a) .....	22a-449(c)-110(a)(2)(III)
124.13 .....	22a-449(c)-110(a)(2)(JJJ), 2nd bullet
124.17(a) .....	22a-449(c)-110(a)(2)(KKK)
124.17(c) .....	22a-449(c)-110(a)(2)(LLL)
124.31(a) .....	22a-449(c)-110(a)(2)(MMM)
124.31(b) .....	22a-449(c)-110(a)(2)(NNN)
124.31(d) .....	22a-449(c)-110(a)(2)(OOO)
124.31(d)(1)(i) .....	22a-449(c)-110(a)(2)(PPP), 2nd bullet
124.31(d)(1)(ii) .....	22a-449(c)-110(a)(2)(QQQ)
124.31(d)(1)(iii) .....	22a-449(c)-110(a)(2)(RRR)
124.32(a) .....	22a-449(c)-110(a)(2)(TTT)
124.32(b)(1) .....	22a-449(c)-110(a)(2)(UUU), 1st bullet
124.32(b)(2) .....	22a-449(c)-110(a)(2)(VVV)
124.32(b)(3) .....	22a-449(c)-110(a)(2)(WWW)

Description of Federal requirements	Analogous state authority
124.33(a) .....	22a-449(c)-110(a)(2)(XXX)
124.33(b) .....	22a-449(c)-110(a)(2)(YYY), 1st and 2nd bullets
124.33(d) .....	22a-449(c)-110(a)(2)(ZZZ), 2nd bullet
124.33(e) .....	22a-449(c)-110(a)(2)(AAAA), 1st bullet
124.33(f) .....	22a-449(c)-110(a)(2)(BBBB)
None .....	22a-449(c)-110(a)(3)
40 CFR part 273:	
273.32(a)(3) .....	22a-449(c)-113(a)(1) (Note: CT did not adopt 40 CFR 273.32(a)(3) because the alternate notification allowed for large quantity handlers of recalled universal waste pesticides under 40 CFR 165 has been repealed.)
273.1(b) .....	22a-449(c)-113(a)(2)(C)
273.13(c)(1) .....	22a-449(c)-113(a)(2)(F)
273.13(d)(1) .....	22a-449(c)-113(a)(2)(G)
273.13(d)(2) .....	22a-449(c)-113(a)(2)(H)
273.14(d) .....	22a-449(c)-113(a)(2)(I)
273.17(b) .....	22a-449(c)-113(a)(2)(K)
273.32(a)(1) .....	22a-449(c)-113(a)(2)(N) (Also see 22a-449(c)-113(a)(1))
273.33(c)(1) .....	22a-449(c)-113(a)(2)(Q)
273.33(d)(1) .....	22a-449(c)-113(a)(2)(R)
273.33(d)(2) .....	22a-449(c)-113(a)(2)(S)
273.34(d) .....	22a-449(c)-113(a)(2)(T)
273.37(b) .....	22a-449(c)-113(a)(2)(V)
273.60(a) .....	22a-449(c)-113(a)(2)(AA) (partially broader in scope)
273.80(a) .....	22a-449(c)-113(a)(2)(DD) (Also see 22a-449(c)-100(b)(1)(C).)
273.80(b) .....	22a-449(c)-113(a)(2)(EE)
273.32(a)(3) .....	22a-449(c)-113(a)(2)(FF)
40 CFR part 279:	
279.10(b)(3) .....	22a-449(c)-119(a)(1)(A)
279.82(b) and (c) .....	22a-449(c)-119(a)(1)(B) (See 22a-449(c)-119(a)(2)(H) for associated revision to 40 CFR 279.12(b).)
279.1 .....	22a-449(c)-119(a)(2)(A) 1st bullet (See 22a-449(c)-100(b)(2)(B)) 2nd-4th bullets and 6th-9th bullets
279.10(b)(1)(ii) .....	22a-449(c)-119(a)(2)(B)
279.10(b)(2) .....	22a-449(c)-119(a)(2)(C)
279.10(b)(2)(ii) .....	22a-449(c)-119(a)(2)(D)
279.11 .....	22a-449(c)-119(a)(2)(G)
279.12(b) .....	22a-449(c)-119(a)(2)(H)
279.12 .....	22a-449(c)-119(a)(2)(J)
279.21(b) .....	22a-449(c)-119(a)(2)(L)
279.22 intro .....	22a-449(c)-119(a)(2)(M)
279.22(d) .....	22a-449(c)-119(a)(2)(N)
279.22(d)(3) .....	22a-449(c)-119(a)(2)(O)
279.23 .....	22a-449(c)-119(a)(2)(P)
279.24(a)(3) .....	22a-449(c)-119(a)(2)(Q)
279.31(b)(2) .....	22a-449(c)-119(a)(2)(R)
279.42(a) .....	22a-449(c)-119(a)(2)(U)
279.43(c)(2) .....	22a-449(c)-119(a)(2)(V)
279.43(c)(3)(i) .....	22a-449(c)-119(a)(2)(W)
279.43(c)(5) .....	22a-449(c)-119(a)(2)(X)
279.44(b)(1) .....	22a-449(c)-119(a)(2)(Z)
279.44(b)(2) .....	22a-449(c)-119(a)(2)(AA)
279.44(c) .....	22a-449(c)-119(a)(2)(BB)
279.45 intro .....	22a-449(c)-119(a)(2)(CC)
279.45(a) .....	22a-449(c)-119(a)(2)(DD), 1st bullet
279.45(h) .....	22a-449(c)-119(a)(2)(EE)
279.45(h)(3) .....	22a-449(c)-119(a)(2)(FF)
279.51(a) .....	22a-449(c)-119(a)(2)(GG)
279.52(a)(3) .....	22a-449(c)-119(a)(2)(II)
279.52(b)(6)(iv)(B) .....	22a-449(c)-119(a)(2)(MM)
279.53(b)(1) .....	22a-449(c)-119(a)(2)(PP)
279.53(b)(2) .....	22a-449(c)-119(a)(2)(QQ)
279.53(c) .....	22a-449(c)-119(a)(2)(RR)
279.53 .....	22a-449(c)-119(a)(2)(SS)
279.54 intro .....	22a-449(c)-119(a)(2)(TT)
279.54(g) .....	22a-449(c)-119(a)(2)(UU)
279.54(g)(3) .....	22a-449(c)-119(a)(2)(VV)
279.54(h)(1)(i) .....	22a-449(c)-119(a)(2)(WW)
279.54(h)(2)(ii) .....	22a-449(c)-119(a)(2)(XX)
279.55(b) .....	22a-449(c)-119(a)(2)(ZZ)
279.57(a)(2) .....	22a-449(c)-119(a)(2)(AAA)
279.57(b) .....	22a-449(c)-119(a)(2)(BBB)
279.61 .....	22a-449(c)-119(a)(2)(FFF)
279.63(b)(1) .....	22a-449(c)-119(a)(2)(III)
279.63(b)(2) .....	22a-449(c)-119(a)(2)(JJJ)

Description of Federal requirements	Analogous state authority
279.63(c) .....	22a-449(c)-119(a)(2)(KKK)
279.63(c)(2) .....	22a-449(c)-119(a)(2)(LLL)
279.64 intro .....	22a-449(c)-119(a)(2)(MMM)
279.64(g) .....	22a-449(c)-119(a)(2)(OOO)
279.64(g)(3) .....	22a-449(c)-119(a)(2)(PPP)
279.70(b)(1) .....	22a-449(c)-119(a)(2)(SSS)
279.71 .....	22a-449(c)-119(a)(2)(TTT)
279.72(a) .....	22a-449(c)-119(a)(2)(UUU)
279.72(b) .....	22a-449(c)-119(a)(2)(VVV)
279.74(b)(4) .....	22a-449(c)-119(a)(2)(WWW)
279.81 .....	22a-449(c)-119(a)(2)(YYY)
279.82(a) .....	22a-449(c)-119(a)(2)(ZZZ)
None .....	22a-449(c)-119(b)
None .....	22a-449(c)-119(c)
None .....	22a-449(c)-119(d)
None .....	22a-449(c)-119(e)

**Notes:**

1. Various state regulations are proposed to be authorized even though they are listed opposite "none" in the description of the corresponding federal requirements, because the state regulations either are equivalent to the federal regulations overall (e.g., add clarifying language) or because the state regulations add more stringent requirements which will become part of the federally enforceable RCRA program.
2. In addition to authorizing the particular state regulations listed above, the EPA is proposing to authorize the various state regulations which generally incorporate federal requirements by reference, namely R.C.S.A. 22a-449(c)-100(b)(1), 22a-449(c)-101(a)(1), 22a-449(c)-102(a)(1), 22a-449(c)-103(a)(1), 22a-449(c)-104(a)(1), 22a-449(c)-105(a)(1), 22a-449(c)-106(a)(1), 22a-449(c)-108(a)(1), 22a-449(c)-110(a)(1), 22a-449(c)-113(a)(1), and 22a-449(c)-119(a)(1). Many of these regulations were previously authorized insofar as they incorporated federal requirements through July 1, 1989. The EPA now is proposing to authorize all of these regulations in order to include in the authorized Connecticut program federal requirements through January 1, 2001.
3. In addition to authorizing the state universal waste regulations listed in the 40 CFR part 273 part of the tables above, the EPA is proposing to authorize the state regulations regarding used electronics in R.C.S.A. 22a-449(c)-113(b) through (f).
4. In addition to the regulations listed in the tables above and in footnotes 2 and 3 above, there are various state regulations to which the state has made minor editorial, error correction or similar changes, or to which the state has changed the regulation number (redesignated), as described in the footnotes to the State Regulatory Checklists (in the docket). The EPA also is proposing to authorize these minor changes.
5. The proposed authorization of new state regulations and regulation changes is in addition to the previous authorization of state regulations, which have not changed and remain part of the authorized program.

Following review of the Connecticut regulations, the EPA has determined that they are equivalent to, no less stringent than and consistent with the Federal program. The reasons for these determinations are set forth in the Administrative Docket, which is available for public review. Many of the State regulations incorporate Federal requirements by reference and are virtually identical. In some cases, the State regulations add clarifying language, and the EPA considers the clarifications to be equivalent to the federal regulations. Finally, there are some State regulations which are more stringent than, broader in scope than, or different but equivalent to the federal regulations, as described in the Program Description and summarized below.

#### F. Where Are the Proposed State Rules Different From the Federal Rules?

The most significant differences between the proposed State rules and the Federal rules are summarized below. It should be noted that this summary does not describe every difference, or every detail regarding the differences that are described. Members of the regulated community are advised to read the complete regulations to ensure that they understand all of the requirements with which they will need to comply.

#### 1. More Stringent Provisions

There are aspects of the Connecticut program which are more stringent than the Federal program. All of these more stringent requirements are or will become part of the federally enforceable RCRA program when authorized by the EPA, and must be complied with in addition to the State requirements which track the minimum Federal requirements. These more stringent requirements include the following, which are more fully described in the Program Description:

- Additional registration, reporting and other requirements for hazardous waste recyclers;
- Additional specifications regarding when to make hazardous waste determinations;
- Additional waste handling and other requirements for large quantity generators, small quantity generators and conditionally exempt small quantity generators. Note also that the State more stringently defines who may qualify to be small quantity generators or conditionally exempt small quantity generators (e.g., anyone accumulating more than 1,000 kg of hazardous waste is a large quantity generator in Connecticut vs. the federal accumulation limit is 6,000 kg);

- Additional requirements regarding manifests;
- Additional requirements regarding transporter temporary storage and personnel training;
- Additional requirements regarding management of lead acid batteries;
- Additional requirements regarding Boilers and Industrial Furnaces. Note also that Connecticut did not incorporate by reference 40 CFR 266.100(b), which replaced the standards applicable to BIFs in 40 CFR part 266, subpart H with the Maximum Achievable Control Technology requirements of 40 CFR, part 63, subpart EEE, and thus Connecticut continues to require following the more stringent part 266, subpart H standards;
- Prohibition of the underground injection of hazardous waste;
- Additional groundwater monitoring requirements for interim status facilities;
- Additional requirements for permitted facilities;
- Additional requirements for used oil.

#### 2. Broader-in-Scope Provisions

There also are aspects of the Connecticut program which are broader in scope than the Federal program. The State requirements which are broader in scope are not considered to be part of the Federally enforceable RCRA

program. However, they are fully enforceable under State law and must be complied with by sources within Connecticut. These broader-in-scope requirements include the following, which are more fully described in the Program Description:

- While the EPA generally does not regulate the recycling process itself, and exempts some recyclable materials from all RCRA regulation, the CTDEP Commissioner may impose additional requirements on persons engaging in recycling activities, including those recycling activities and recyclable materials that would otherwise be exempt from regulation. Such additional requirements will generally involve matters beyond the scope of EPA's regulations;
- Connecticut regulates certain recyclable materials that are exempt from RCRA regulation under the federal regulations, including scrap metals meeting the characteristics of ignitability or reactivity, and commercial chemical products when accumulated speculatively;
- Connecticut requires hazardous waste transporters to obtain state permits and prohibits generators from offering hazardous wastes to any transporters who do not have permits;
- In addition to the federally enforceable RCRA permitting requirements, Conn. Gen. Stat. 22a-454 requires persons engaged in certain additional activities to obtain permits (e.g., facilities in the business of collecting, storing, or treating used oil);
- Connecticut law requires approval by the Connecticut Siting Council for hazardous waste facilities;
- Connecticut has established fees for hazardous waste permits and certain status changes;
- Connecticut expanded the definition of "used oil" to include oil that has not been used but is no longer suitable for the services for which it was manufactured due to the presence of impurities or a loss of original properties. This expanded definition results in the regulation under the State's used oil program of some additional oils which would not be regulated in the federal used oil program. Also, some of these oils are not characteristically hazardous and thus would not be regulated as fully regulated hazardous wastes in the federal RCRA program. (This expanded definition also allows for the regulation of some additional oils which are characteristically hazardous, under the used oil

program rather than under the full RCRA program.)

### 3. *Different But Equivalent Provisions*

There also are some Connecticut regulations which differ from, but have been determined to be equivalent to, the Federal regulations. These State regulations are or will become part of the Federally enforceable RCRA program when authorized by the EPA. These different but equivalent requirements include some requirements related to Corrective Action described in the next section, and also the following:

- In addition to batteries, pesticides, thermostats and mercury-containing lamps included in the federal universal waste rule, Connecticut added used electronics (including CRTs) to the State's universal waste rule;
- Under federal regulations, K174 wastes are not classified as hazardous wastes if certain requirements are met. Connecticut classifies K174 wastes as hazardous wastes but excludes these wastes from certain hazardous waste requirements provided certain requirements are met. While Connecticut's approach is different, the State's requirements for these wastes are equivalent to the federal requirements;
- Connecticut modified the federal provisions for rebutting the presumption that used oil has been mixed with F001 or F002 wastes in order to incorporate a long-standing EPA policy interpretation.

### G. *What Is the Connecticut Corrective Action Program That Is Being Authorized?*

As part of this program update, the State will be assuming responsibility for operating the federal Corrective Action program. The program proposed to be authorized covers all Treatment Storage and Disposal Facilities (TSDFs) subject to 40 CFR 264.101, which includes (i) active facilities which need permits to conduct ongoing treatment, storage or disposal, and (ii) interim status land disposal facilities which have been required to seek post closure permits under the EPA regulations.

The State regulations incorporate 40 CFR 264.101 by reference with certain more stringent changes and thus meet the federal Corrective Action requirements with respect to all facilities which have been or will be permitted. In addition, the State has adopted regulations (R.C.S.A. 22a-449(c)-105(h) and 22a-449(c)-110(a)(2)(RR)) which will accelerate Corrective Action at the interim status

land disposal facilities, prior to permitting. Under these regulations, all of the interim status land disposal facilities have been required to submit Environmental Condition Assessment Forms (ECAFs) to the CTDEP. Following review by the CTDEP of the ECAFs, the regulations require that Corrective Action occur either under the direct supervision of the CTDEP or under the direction of a Licensed Environmental Professional (LEP). Whether sites are remediated under the direction of the CTDEP or under the direction of a LEP, the regulations specify that there will be a review of the remediation by the CTDEP prior to any determination that remediation is complete. Sites will remain in interim status until there is such a completeness determination. The regulations further provide for opportunities for public comment for all sites both at the time of remedy selection and prior to any completeness determination.

The State's regulations also recognize that some sites have or will undertake Corrective Action pursuant to Connecticut General Statutes sections 22a-134 to 22a-134e (the "Transfer Act"). Corrective Action at such sites will be subject to the same requirements for CTDEP review (including review of LEP determinations) and the same public comment procedures as specified above.

The EPA believes that the proposed State program is "equivalent" to the EPA Corrective Action program, for the reasons explained below, and further explained in the January 30, 2002 Memorandum entitled "Connecticut Corrective Action Regulations" by EPA Assistant Regional Counsel Jeffry Fowley (in the docket). The EPA regulations contemplate that Corrective Action will occur at sites subject to 40 CFR 264.101, pursuant to permits (or orders). Under the State program, permits similarly will be issued to active facilities and ultimately to some interim status facilities requiring long term operation and maintenance (e.g., closed landfills). While other interim status facilities may satisfy their closure obligations at regulated units and achieve full remediation pursuant to the State regulations and the Transfer Act prior to being issued post closure permits, and thus may never need to be issued post closure permits, this involves an acceleration of effort which is environmentally beneficial. The EPA believes that the State's approach—of having the State agency review whether Corrective Action is complete, after Corrective Action has been carried out under the State regulations and the Transfer Act (sometimes under the

direction of a LEP)—is equivalent to the EPA approach of carrying out Corrective Action under the direction of the EPA through a permit. Also, the opportunities for public comment required by the State regulations are equivalent to the public comment procedures applicable to EPA permits. Finally, the State has the needed enforcement authority to ensure that Corrective Action is promptly and fully carried out at sites subject to the State regulations and Transfer Act.

In determining whether remediation is complete, the State and EPA will utilize the Connecticut Remediation Standard Regulations (RSRs), R.C.S.A. 22a-133k-1 *et seq.*, as their primary tool. The EPA believes that the State's approach will meet the federal (section 264.101) requirement for protection of human health and the environment for the reasons explained below, and further explained in the June 2, 2004 Memorandum entitled "CT Remediation Standard Regulations" by David Lim, CT State Coordinator, EPA RCRA Corrective Action Section (in the docket). The RSRs contain numeric standards for the remediation of soil and groundwater which generally are at least as protective as what would be achieved through site specific assessments in EPA directed cleanups. For those rare situations where the general standards of the RSRs might not be sufficient, the RSRs contain "Omnibus" provisions (sections 22a-133k-2(i) and 22a-133k-3(i)) that allow the State to require additional measures. In the Memorandum of Agreement, the EPA and CTDEP have identified particular situations in which this Omnibus authority will be used at Corrective Action sites.

In addition to the sites subject to 40 CFR section 264.101, there are other sites in Connecticut subject to Corrective Action under RCRA section 3008(h). These are former non-land disposal facilities (mostly container storage areas and tanks) which may no longer need permits. However, under the federal Corrective Action program, as permit applicants initially, these facilities acquired site-wide Corrective Action obligations that must be met. The EPA has not established a mechanism for authorizing States to administer the Corrective Action program for such sites. However, in the Memorandum of Agreement (MOA), the EPA and CTDEP have agreed on a coordinated approach to avoid duplication of effort with respect to such sites. In particular, the EPA and CTDEP expect that many of these sites will undertake Corrective Action under the Transfer Act. The CTDEP has agreed

in the MOA to utilize the same governmental review and public comment procedures with respect to these non-land disposal facilities as it follows for the land disposal facilities. As also specified in the MOA, the EPA will retain all of its statutory enforcement authority with respect to the non-land disposal facilities, just as it retains its statutory enforcement authority even with respect to the sites subject to the formal authorization. However, the EPA generally does not anticipate taking enforcement action against non-land disposal facilities which promptly and fully carry out Corrective Action pursuant to the Transfer Act, just as the EPA generally does not anticipate taking enforcement action against land disposal facilities which promptly and fully carry out Corrective Action pursuant to the State regulations described above and the Transfer Act. This agreement entered into by the EPA and CTDEP to avoid duplication of effort is further described in the MOA. While the statements in the MOA (and in this Federal Register notice) do not create any legal rights or defenses, the EPA hopes that the agreed upon coordination between the EPA and the CTDEP will foster site cleanups using a One-Cleanup approach.

It is the long-term goal of the EPA and CTDEP that the CTDEP will be the lead overseeing agency for all sites subject to Corrective Action in Connecticut. However, the EPA will continue to be the lead agency for certain sites for a variety of reasons that could include maximizing the federal and state resources available to oversee the program, implementing special initiatives such as achieving environmental indicators or enhancing enforcement. Further, the EPA and CTDEP will at times provide technical and/or logistical support to one another.

#### H. What Will Be the Effect of the Proposed Authorization Decision?

At the Federal level, the effect of the proposed authorization decision will be that entities in Connecticut subject to RCRA will be able to comply with the authorized State requirements instead of the Federal requirements, with respect to the matters covered by the authorized State requirements, in order to comply with RCRA. However, there will continue to be a dual Federal RCRA program in Connecticut for the few HSWA rules (adopted since January 1, 2001) for which the state is not presently seeking authorization, and for any self-implementing HSWA statutory requirements for which the State has not adopted regulations (*e.g.*, RCRA section 3005(j), 42 U.S.C. 6925(j)). RCRA was

amended by the Hazardous and Solid Waste Amendments ("HSWA") in 1984. Section 3006(g) of RCRA, 42 U.S.C. 6906(g), provides that when the EPA promulgates new regulatory requirements pursuant to HSWA, the EPA shall directly carry out these requirements in states authorized to administer the underlying base hazardous waste program, until the states are authorized to administer these new requirements. The EPA has established a few new regulatory requirements pursuant to HSWA which are not yet proposed to be authorized to be administered by Connecticut. Regulated entities will need to comply with these HSWA requirements as set out in the Federal regulations and statute in addition to authorized State program requirements. A complete list of HSWA requirements is set out in 40 CFR 271.1, Tables 1 and 2.

#### I. Who Handles Permits After the Authorization Takes Effect?

With respect to TSDF permitting, Connecticut will continue to issue permits for all the provisions for which it is authorized and will administer the permits it issues. The EPA will continue to administer any RCRA hazardous waste permits or portions of permits it has issued. The EPA also will continue to issue permits or portions of permits covering HSWA requirements for which Connecticut is not authorized.

#### J. How Will Today's Proposed Action Affect Indian Country in Connecticut?

Connecticut is not authorized to carry out its hazardous waste program in Indian country within the State (land of the Mohegan Nation and the Mashantucket Pequot Tribal Nation). The proposed action will have no effect on Indian country. The EPA will continue to implement and administer the RCRA program in these lands.

#### K. What Is Codification and Will EPA Codify Connecticut's Hazardous Waste Program as Authorized in This Rule?

The EPA is proposing to authorize but not codify the enumerated revisions to the Connecticut program. Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. The EPA does this by referencing the authorized State rules in 40 CFR part 272. The EPA reserves the amendment of 40 CFR part 272, subpart H for the codification of the Connecticut's program until a later date.

### L: Administrative Requirements

The EPA has examined the effects of the proposed State authorization decision discussed above and reached the conclusions set out below.

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB.

This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, the EPA certifies that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate, or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action 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 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA.

This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. 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.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State

authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. 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.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA also has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule 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 rule does not impose any information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority:** RCRA sections 2002 and 3006, 42 U.S.C. 6912 and 6926.

Dated: June 23, 2004.

**Robert W. Varney,**  
Regional Administrator, EPA New England.

[FR Doc. 04-15102 Filed 7-2-04; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 45 CFR Part 46

RIN 0940-AA06

#### Institutional Review Boards: Registration Requirements

**AGENCY:** Office of Public Health and Science, HHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Office for Human Research Protections (OHRP), Office of Public Health and Science, Department of Health and Human Services (HHS), is proposing to require registration of institutional review boards (IRBs) that review human subjects research conducted or supported by HHS and

that are designated under an assurance of compliance approved for federalwide use by OHRP. The registration information would include contact information, approximate numbers of active protocols involving research conducted or supported by HHS, accreditation status, IRB membership, and staffing for the IRB. The proposed registration requirements will make it easier for OHRP to convey information to IRBs and will support the current IRB registration system operated by OHRP. Under the current OHRP IRB registration system, the submission of certain information is required by the existing HHS human subjects protection regulations, and certain other information may be submitted voluntarily. A request for the approval of this collection of information requirement will be submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act. Under the proposed rule, all registration information will be required, making the IRB registration system uniform with the proposed IRB registration requirements of the Food and Drug Administration (FDA), and creating a single HHS IRB registration system. FDA simultaneously is publishing a proposed rule regarding FDA IRB registration requirements.

**DATES:** You may submit written or electronic comments on this proposed rule, RIN number 0940-AA06, by October 4, 2004.

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

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: [irbregistrationohrp@osops.dhhs.gov](mailto:irbregistrationohrp@osops.dhhs.gov).
- Fax: 301-402-2071.
- Mail to: Irene Stith-Coleman, Office for Human Research Protections, The Tower Building, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852.
- Hand Delivery or Courier to: Irene Stith-Coleman, Office for Human Research Protections, The Tower Building, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852

Comments received within the comment period will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of this notice, at the above address on Monday through Friday of each week from 8:30 a.m. to 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Irene Stith-Coleman, Office for Human Research Protections, The Tower Building, 1101 Wootton Parkway, Suite

200, Rockville, MD 20852, 301-402-7005 or by e-mail to:

([istithco@osophs.dhhs.gov](mailto:istithco@osophs.dhhs.gov)).

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

IRBs are boards, committees, or groups formally designated by an institution to review, approve, and have continuing oversight of research involving human subjects. An IRB's primary purpose during such reviews is to ensure the protection of the rights and welfare of human research subjects. The HHS regulations regarding the protection of human research subjects, which address the appropriate role of IRBs in helping to ensure this protection, are found at 45 CFR part 46.

In 1998, the HHS Office of Inspector General (OIG) issued several reports on IRBs. The OIG sought to identify the challenges facing IRBs and to make recommendations on improving Federal oversight of IRBs. One recommendation was that all IRBs should register with the Federal government on a regular basis as part of an effort to develop a more streamlined, coordinated, and probing means of assessing IRB performance and to enhance the Federal government's ability to identify and respond to emerging problems before they result in "serious transgressions." (Ref. 1, pp. 20 and 21).

After reviewing OIG's recommendation, OHRP concluded that IRB registration would serve several important goals. IRB registration would enable OHRP to: (1) identify more precisely those IRBs reviewing research conducted or supported by HHS under an assurance of compliance approved for federalwide use by OHRP; (2) keep an accurate, up-to-date list of IRBs; (3) send educational information and other information to IRBs, increasing the efficiency of OHRP educational and outreach efforts; and (4) help OHRP identify IRBs that are subject to HHS regulations for monitoring and oversight purposes.

In December 2000, OHRP initiated a process for registering IRBs. This IRB registration system was designed to collect information required under the HHS human subjects protection regulations at 45 CFR 46.103(b)(3). That regulatory provision requires institutions that are engaged in human subjects research conducted or supported by HHS to file with OHRP an assurance of compliance with the HHS human subjects protection regulations. Under 45 CFR 46.103(a), other Federal Department or Agency heads shall accept an assurance on file with HHS that is approved for federalwide use by

OHRP, and that is appropriate for the research in question. Among other things, assurances of compliance must include information on the institution's designated IRB, and a list of IRB members identified by name, earned degrees, representative capacity, experience, and any employment or other relationship with the institution, 45 CFR 46.103(b)(2),(3). The IRB registration system also was designed to collect additional information, to be provided voluntarily by institutions or IRBs, regarding the accreditation status of the institution or IRB organization, total numbers of active research protocols reviewed by the IRB (including protocols supported by other Federal departments or agencies) and the nature of those protocols, and IRB staffing. The current OHRP IRB registration form can be accessed at: <http://ohrp.osophs.dhhs.gov/humansubjects/assurance/regirb.rtf>.

OHRP now proposes to require that any IRB designated under an assurance of compliance approved for federalwide use by OHRP that reviews human subjects research conducted or supported by HHS submit most of the information listed on the IRB registration form that is currently used by OHRP. By requiring IRBs to provide such information, OHRP IRB registration requirements will become substantially consistent with requirements for IRB registration that are simultaneously being proposed by FDA elsewhere in this issue. OHRP and FDA plan to operate a single registration system for HHS in which all IRBs that review research conducted or supported by HHS or clinical investigations regulated by FDA can be registered. The HHS IRB registration system will be operated at a single Internet site on the OHRP Web site.

OHRP currently posts all registered IRBs on its Web site, including the name and location of the organization operating the IRB(s), called the IRB organization, and the name and location of each IRB. Numbers are assigned to the IRB organization and each IRB is given a unique IRB registration number. An institution submitting an assurance includes the IRB registration number for each IRB designated under its assurance, thereby eliminating the need for multiple submissions of the same information to OHRP.

The Privacy Act does not apply to the information contained in the IRB registration database. OHRP will not be retrieving information about individuals from this Internet site by name or other individual identifier. Therefore, this Internet site will not be a "system of

records" that would be subject to the requirements of the Privacy Act of 1974.

Upon the effective date of the rule, OHRP will continue to post the name and location of each registered IRB and its IRB registration number on the OHRP Web site. All other information collected in the IRB registration, including names of individual IRB members, would be subject to the Freedom of Information Act, and therefore, may be available to the public upon request. Beyond such access to the information, OHRP will maintain the confidentiality of the information submitted with the IRB registration to the extent allowed by law.

All of the IRB registration information that is submitted to the Internet site will be transferred to a separate server which will not be accessible via the Internet. In this manner, a high level of security can be maintained for the IRB Registration database.

OHRP will provide browse-only access to the database containing all information collected in the IRB Registration, via a password protected mechanism, to all Federal departments and agencies that have adopted the Federal Policy for the Protection of Human Subjects, known as the "Common Rule," which HHS has codified as 45 CFR part 46, subpart A.

##### II. Description of the Proposed Rule

The proposed rule would amend the HHS human subjects protection regulations at 45 CFR part 46 by adding subpart F, entitled "Registration of Institutional Review Boards." The proposed rule would require IRBs that review human subjects research conducted or supported by HHS and that are designated under an assurance of compliance approved for federalwide use by OHRP to register with HHS.

###### 1. Who Must Register? (Proposed § 46.601)

Proposed § 46.601 requires registration of each IRB that is designated by an institution under an assurance of compliance with HHS human subjects protection regulations that has been approved for federalwide use by OHRP, under 45 CFR 46.103(a), and that reviews human subjects research conducted or supported by HHS.

Proposed § 46.601 also specifies that an individual authorized to act on behalf of the institution or IRB must submit the registration information. The individual may be an IRB member or any other person authorized by the institution, or IRB, to submit the registration information.

**2. What Information Must an IRB Provide When Registering? (Proposed § 46.602)**

Proposed § 46.602 describes the information to be submitted as part of the registration process. The proposal requires IRBs to provide the following information:

- The name and mailing address of the institution or organization operating the IRB; the name, earned degree, title, mailing address, phone number, fax number, and e-mail address of the senior or head official of that institution or organization who is responsible for overseeing the activities performed by the IRB; and the name, title, telephone number, fax number, and e-mail address of the person providing the registration information must be provided. The senior or head official should not be an IRB member or IRB staff. This information enables OHRP to identify the institution(s) or organization(s) with which the IRB is affiliated. Information about the senior or head official of the institution enables OHRP to contact that person directly if significant issues or problems arise that involve or could involve the institution, and to forward educational information to that person. Information about the contact person enables OHRP to contact that person directly on routine issues, forward information, and send electronic mail to the contact person.

- The IRB number, registration name and address; the name, earned degree, title, area of specialty, affiliation, gender, telephone, fax, e-mail address, and mailing address of the IRB chairperson; and an IRB roster that includes the names, earned degrees, gender, area of specialty and affiliation of each voting (including the IRB chairperson) and alternate IRB members must be provided. Collection of this information is consistent with the requirements of 45 CFR 46.103(b)(3) and 46.107(a), and helps OHRP to contact the IRB chairperson quickly, if necessary, on important issues, to send educational information and electronic mail, and to confirm that IRB membership meets the minimum regulatory requirements.

- The approximate number of active protocols undergoing initial and continuing review; the approximate number of active protocols supported by HHS; and the approximate number of full time positions devoted to the IRB's administrative activities. In this proposal, "active protocol" would mean any protocol or study for which an IRB conducted an initial review or a continuing review during the preceding calendar year.

The proposal would not require an institution or IRB organization to report a specific number of protocols; instead, registration would indicate the range of the number of protocols reviewed in the preceding calendar year. The proposal would consider a "small" number of protocols to be 1 to 25 protocols, "medium" to be 26 to 499, and "large" to be 500 or more protocols. This information will enable OHRP to determine how active an IRB is and to assign its quality improvement, educational, and compliance oversight resources based on an IRB's activity level. For example, scheduling the site of an OHRP national workshop could involve assessment of the volume of research conducted by an institution in a potential locale. Furthermore, HHS regulations for the protection of human subjects at 45 CFR 46.103(b)(2) require that assurances of compliance applicable to HHS conducted or supported research include the designation of one or more IRBs for which, among other things, provisions are made for meeting space and sufficient staff to support the IRB's review and record keeping duties. In OHRP's experience, the number of FTEs and the volume of research are useful parameters for assessing whether an IRB has sufficient staff, as required by HHS regulations for the protection of human subjects at 45 CFR 46.103(b)(2).

- An indication as to whether the assured institution or IRB organization is currently accredited by a human subjects protection program accrediting organization, and if so, the date of its last accreditation and the name of that accrediting organization must be provided. OHRP recognizes that accreditation is a developing concept, so information on accreditation will help OHRP to evaluate the extent and value of IRB accreditation. OHRP specifically solicits public comment related to the perceived value of collecting information on the accreditation status of IRBs.

In addition, the IRB registration process includes information required by FDA under its proposed rule: the number of active protocols (small, medium, or large) involving FDA-regulated products reviewed (both initial reviews and continuing reviews); and a description of the types of FDA-regulated products (such as biological products, color additives, food additives, human drugs, or medical devices) involved in active protocols that the IRB reviews.

Due to statutory and regulatory differences between OHRP and FDA, the Internet registration site may request more information from IRBs reviewing

research conducted or supported by HHS than those reviewing clinical investigations regulated by FDA that are not conducted or supported by HHS. In those instances where the registration site would seek more information than FDA would require under its proposal, the internet site would clarify that IRBs regulated solely by FDA are not required to provide the additional information.

The proposed rule would not require submission of one element of information that currently is submitted voluntarily. It would not require IRBs to provide information on the approximate number of currently active protocols supported by other Federal departments or agencies. OHRP determined that collection of such information should not be required because the proposed rule would apply only to IRBs that are designated under an OHRP-approved assurance of compliance and that review research conducted or supported by HHS.

**3. When Must an IRB Register? (Proposed § 46.603)**

Proposed § 46.603 requires IRBs to register when designated under an assurance approved for federalwide use by OHRP. Specifically, the proposal would require an IRB to register when any institution files with OHRP an assurance of compliance with the HHS human subjects protection regulations under 45 CFR 46.103(a), that is to be approved for federalwide use by OHRP, and that designates the IRB to review human subjects research conducted or supported by HHS. IRB registration will become effective on the date that OHRP lists the IRB registration on its website.

To show how this would work, assume that an institution is engaged, for the first time, in human subjects research conducted or supported by HHS. The institution then would be subject to the HHS human subjects protection regulations, and would be required to file an assurance of compliance with those regulations under 45 CFR 46.103(a). Designation of an IRB is part of that assurance process. If the institution's assurance is submitted to, and approved for federalwide use by, OHRP, the IRB(s) designated under the assurance would have to register with HHS if not previously registered. Further, if the institution designates an additional IRB under its assurance, the additional IRB must first register and the assurance must be updated to include the new IRB. As discussed under item 5 below, OHRP will continue to recognize IRB registrations that were completed prior to the effective date of the rule, and will give such IRBs 90 days from the



effective date of the rule to submit to OHRP revisions to the existing registration information, if necessary, to meet additional requirements of the proposed rule.

Proposed § 46.603 also requires IRBs to renew their registrations every 3 years. Requiring IRBs to renew their registrations periodically helps to ensure that HHS information remains current.

#### 4. Where Can an IRB Register? (Proposed § 46.604)

Proposed § 46.604 directs IRBs to register at a specific HHS Internet site or, if the institution or IRB organization lacks the ability to register electronically, to send registration information to OHRP's mailing address. Although Internet registration may be easier and faster than written registration, OHRP cannot determine how widespread Internet access is among IRBs. Thus, OHRP also allows for written registration in addition to Internet registration.

#### 5. How Does an IRB Revise Its Registration Information? (Proposed § 46.605)

Under proposed § 46.605, if contact or IRB membership registration information changes, the IRB must revise its registration information within 90 days of the change. All information involving changes other than changes in an IRB contact, an IRB chairperson or the IRB roster only need to be updated at the time of the 3 year renewal pursuant to proposed § 46.603. For example, if an IRB selects a new chairperson, the IRB, under proposed § 46.605, would revise its registration information within 90 days after the new chairperson's selection.

Proposed § 46.605 also considers an assured institution's or IRB organization's decision, to disband a registered IRB, or to stop reviewing research conducted or supported by HHS, to be a change that must be reported to HHS within 30 days. Requiring an IRB to report to HHS when it has disbanded or discontinued reviewing research conducted or supported by HHS will enable OHRP to stop sending educational information to the IRB and ensure that the HHS IRB registration system is accurate and up to date. More importantly, funding agencies that rely on the HHS IRB registration system will then be able to rely on the IRB registration website for a current, accurate list of designated IRBs for an institution.

OHRP will continue to recognize IRB registrations that were completed prior to the effective date of the rule, but will

give IRBs that previously did not include complete information 90 days from the effective date of the rule to provide such information. That is, IRBs that chose not to provide registration information that previously was considered voluntary would be expected to complete the registration form and provide that information within 90 days of enactment of the rule.

Revised registration information may be submitted electronically to OHRP or, if an IRB lacks Internet access, in writing, to OHRP's mailing address.

#### 6. What Happens if an IRB Does Not Register or Fails To Revise its Registration Information?

An IRB cannot be designated under an assurance of compliance approved for federalwide use by OHRP if it fails to register. For example, if an assurance submitted to OHRP for approval lists only one IRB that reviews research conducted or supported by HHS, and that IRB fails to register, OHRP would not approve that assurance. If an assurance approved for federalwide use by OHRP lists two or more IRBs that will review research conducted or supported by HHS, and one IRB fails to register, OHRP could issue a restricted approval of the assurance so that the unregistered IRB may not review HHS-conducted or supported research.

If an IRB designated under an assurance approved for federalwide use by OHRP fails to appropriately revise its registration information in accordance with § 46.605 of the proposed rule, OHRP could restrict or revoke its approval of the assurance. For example, if an IRB fails to appropriately revise its registration information in accordance with § 46.605 of the proposed rule, and the IRB is reviewing human subjects research conducted or supported by HHS, OHRP could take appropriate action under the institution's assurance and OHRP's compliance oversight policies and procedures. OHRP believes that the proposed registration requirement is both simple and straightforward, so it does not expect that many institutions or IRB organizations will refuse or fail to register or revise its registration information.

#### III. Implementation

OHRP intends to make any final rule based on this proposal effective within 60 days after the final rule is published in the *Federal Register*. Initial registration with all required information and required revisions to registration must be submitted within 60 days of the effective date of the rule.

IRBs voluntarily may register before the required registration deadline.

#### IV. Legal Authority

Section 491 of the Public Health Service Act authorizes the Secretary, by regulation, to require each entity which applies for a grant, contract, or cooperative agreement under the Act for any project or program which involves the conduct of biomedical or behavioral research involving human subjects to submit assurances satisfactory to the Secretary that it has established an IRB to review research conducted at or supported by the entity in order to protect the rights of the human subjects (see 42 U.S.C. 289(a)). Section 491 of the Public Health Service Act also authorizes the Secretary to establish a program under which requests for clarification and guidance with respect to ethical issues raised in connection with biomedical or behavioral research involving human subjects are responded to promptly and appropriately (see 42 U.S.C. 289(b)). These authorities are delegated to OHRP (see 67 FR 10216-18, March 6, 2002).

By requiring IRB registration, the proposed rule would, if finalized, aid in the efficient implementation of the Public Health Service Act's provisions regarding assurances and providing guidance and education to IRBs involved in human subjects research conducted or supported by HHS. Moreover, by requiring IRBs to register, the proposed rule would enable OHRP to contact IRBs more quickly and efficiently on various issues, such as new regulatory requirements or policies or other matters related to the conduct of human subjects research. OHRP concludes that it has sufficient legal authority to issue the proposed rule.

#### V. Economic Impact Analysis

OHRP has examined the impact of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601-612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104-121)), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 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). Under the Regulatory Flexibility Act, if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that

would minimize any significant impact of the rule on small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million in any one year (adjusted annually for inflation).

The proposed rule is consistent with the principles set forth in Executive Order 12866 and these two statutes. As explained below, the proposed rule is not an economically significant regulatory action as defined in Executive Order 12866 and does not require a Regulatory Flexibility Act Analysis. The Unfunded Mandates Reform Act does not require HHS to prepare a statement of costs and benefits for the proposed rule because the proposed rule is not expected to result in any 1-year expenditure that would exceed \$100 million adjusted for inflation. The current inflation-adjusted statutory threshold is approximately \$110 million.

The proposed rule would require IRBs designated under an assurance of compliance approved for Federalwide use by OHRP to register with HHS. The information sought through the registration process would be minimal, consisting largely of names and addresses for a contact person, the institution operating the IRB (if an institution exists), the senior or head officer of the institution who is responsible for overseeing the activities performed by the IRB, the IRB chairperson, and limited information about the IRB members' gender, earned degree, scientific or nonscientific specialty, and affiliation. The

registration would also indicate whether the IRB reviews a "small," "medium," or "large" number of research protocols. IRBs would also indicate whether they are accredited and, if so, identify the accrediting body or organization. OHRP estimates that initial IRB registration may require 1 hour to complete. If the average wage rate is \$40 per hour, this means that each IRB would spend \$40 for an initial registration (\$40 per hour x 1 hour per initial registration).

OHRP estimates that renewal of registration would require less time, especially if the IRB is only verifying existing information. If renewal registration requires 30 minutes, then the cost of renewal registration to each IRB would be approximately \$20 (\$40 per hour x 0.5 hour per renewal registration).

Revising an IRB's registration information would probably involve costs similar to renewal registration costs. If the revision requires 30 minutes, then the cost of revising an IRB's registration information would be approximately \$20 per IRB.

Additionally, assuming that the maximum number of IRBs that would be subject to the proposed rule would be 5,000; 2,000 initial registrations; 1,000 renewals; and 2,000 revisions, the proposed rule, if finalized, would result in a 1-year expenditure of \$140,000 (2,000 x \$40 = \$80,000; 1,000 x \$20 = \$20,000; and 2,000 x \$20 = \$40,000).

Given the minimal registration information that would be required and the low costs associated with registration, this proposed rule is not a significant regulatory action, and OHRP certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. The proposal is not a significant regulatory action under

Executive Order 12866 and does not require a Regulatory Flexibility Act analysis.

Because the total expenditure under the rule will not result in a 1-year expenditure of \$100 million or more, OHRP is not required to perform a cost-benefit analysis under the Unfunded Mandates Reform Act.

## VI. Environmental Impact

OHRP has determined 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.

This proposed rule contains information collection requirements that are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). OHRP submitted the IRB Registration form to OMB for approval pursuant to the Paperwork Reduction Act prior to issuing this proposed rule.

*Title:* Institutional Review Boards: Registration Requirements.

*Description:* The proposed rule would require institutions and IRB organizations to register their designated IRBs with HHS.

*Description of Respondents:* Businesses and individuals.

The estimated annual burden associated with the current information collection is 3,500 hours. The estimated annual burden associated with the information collection requirements of this proposed rule is 3,500 hours. One element of information currently collected would not be collected after adoption of the proposed rule (i.e., information on the approximate number of active protocols supported by other Federal departments or agencies).

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN (CURRENT)

45 CFR section	No. of respondents	Frequency of responses	Total annual responses	Hours per response	Total hours
§ 46.603 (initial registration) .....	2,000	1	2,000	1	2,000
§ 46.603 (re-registration) .....	0	0	0	0	0
§ 46.605 (revisions) .....	2,090	1	2,090	0.5	1,045
Total .....					3,045

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN (PROPOSED RULE)

45 CFR Section	No. of respondents	Frequency of responses	Total annual responses	Hours per response	Total hours
§ 46.603 (initial registration) .....	2,000	1	2,000	1	2,000
§ 46.603 (re-registration) .....	1,000	1	1,000	0.5	500
§ 46.605 (revisions) .....	2,000	1	2,000	0.5	1,000
Total .....					3,500

There are no capital costs or operating and maintenance costs associated with this collection of information.

OHRP's estimates are based on the following considerations. According to a 1998 OIG report, there are 3,000 to 5,000 IRBs in the United States, and most are associated with hospitals and academic centers (Ref. 1, p. 3). While not all IRBs review human subjects research conducted or supported by HHS or otherwise covered under an assurance approved by OHRP, the agency, for purposes of the Paperwork Reduction Act, will use 5,000 as the maximum number of IRBs subject to the proposed rule. Additionally, because the proposed rule would require basic information about an IRB (such as names and addresses) and because registration would, in most cases, be done electronically, OHRP assumes that registration currently takes, and will take (under the proposed rule), only 1 hour per IRB for new registrations, and one half hour per IRB for revisions or renewals.

Thus, the total burden hours would be 2,000 for new registrations per year (2,000 IRBs  $\times$  1 hour per IRB).

Renewal registration and revisions to existing registration information should require less time than initial registration. OHRP assumes that renewal registration and revisions currently takes, and will take (under the proposed rule), only 30 minutes per IRB for a total of 500 burden hours for renewals (1,000 IRBs  $\times$  0.5 hour = 500) and 1,000 for revisions (2,000 IRBs hour  $\times$  .5 hour) = 1,000 hours.

A notice seeking public comments on the existing IRB registration requirements was published in the *Federal Register* on April 19, 2002 (67 FR 19438). OHRP is inviting additional comments on both the current information collection and the proposed information collection.

Request for Comment: In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for an agency to provide opportunity for public comment on current information collections and also on proposed information collection projects, OHRP invites comments on: (1) Whether the collection of information is necessary for the proper performance of OHRP's functions, including whether the information will have practical utility; (2) the accuracy of OHRP's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the

collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology. In this same issue of the *Federal Register*, OHRP also is soliciting public comment on the information collection in the Federalwide Assurance (FWA).

Interested persons are requested to send comments regarding the current and proposed information collections by August 5, 2004 to the following:

Department of Health and Human Services, Naomi Cook, OS/ASBTF/OIRM/OIRM/OITP, IT Desk Officer/GPEA, 200 Independence Ave., SW., Washington, DC 20201

and

Office of Information and Regulatory Affairs, Office of Management and Budget, fax number (202) 395-6974, Attn: Fumie Yokota.

#### VIII. Federalism

OHRP has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. OHRP 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 order and, consequently, a federalism summary impact statement is not required.

#### IX. Request for Comments

Interested persons may submit to OHRP (*see ADDRESSES*) written or electronic comments regarding this proposal by October 4, 2004.

#### X. Reference

The following reference is available from OHRP through the contact listed above or can be accessed at: <http://oig.hhs.gov/oei/reports/oei-01-97-00193.pdf>.

1. OIG, HHS, "Institutional Review Boards: A Time for Reform," June 1998.

#### List of Subjects in 45 CFR Part 46

Health—Clinical research, Medical research, Human research subjects, Reporting and recordkeeping requirements

Dated: June 2, 2004.

Cristina V. Beato,  
Acting Assistant Secretary for Health.

Approved: June 22, 2004.

Tommy G. Thompson,  
Secretary of Health and Human Services.

For the reasons set forth in the preamble, it is proposed that 45 CFR part 46 be amended as follows:

#### PART 46—PROTECTION OF HUMAN SUBJECTS

1. The authority citation for 45 CFR part 46 continues to read as follows:

**Authority:** 5 U.S.C. 301; 42 U.S.C.289; 42 U.S.C.300v-1(b).

2. Subpart F is added to part 46 to read as follows:

##### Subpart F—Registration of Institutional Review Boards

Sec.

- 46.601 Who must register?  
46.602 What information must an IRB provide?  
46.603 When must an IRB register?  
46.604 Where can an IRB register?  
46.605 How does an IRB revise its registration information?

##### Subpart F—Registration of Institutional Review Boards

###### § 46.601 Who must register?

Each IRB that is designated by an institution under an assurance of compliance approved for federalwide use by the Office for Human Research Protections (OHRP) under § 46.103(a) and that reviews research involving human subjects conducted or supported by the Department of Health and Human Services (HHS) must register with HHS. An individual authorized to act on behalf of the institution or IRB must submit the registration information.

###### § 46.602 What information must an IRB provide?

Each IRB must provide the following information to HHS:

- (a) The name and mailing address of the institution or organization operating the IRB; and the name, earned degree, title, mailing address, telephone number, facsimile number, and electronic mail address of the senior or head official of that institution or organization who is responsible for overseeing activities performed by the IRB;
- (b) The name, title, telephone number, facsimile number, and electronic mail address of the contact person providing the registration information;
- (c) The IRB number, registration name (for an initial registration, OHRP will assign the IRB number and registration name), and address;

(d) The name, gender, earned degree, title, mailing address, telephone number, facsimile number and electronic mail address of each IRB chairperson;

(e) An IRB roster that includes the name, gender, degree, scientific or nonscientific specialty, and affiliation of each voting and alternate IRB member, including the chairperson;

(f) Using the measures "small," "medium," and "large," the approximate number of total active protocols undergoing initial and continuing review; and active protocols supported by HHS. For purposes of this subpart, an "active protocol" is any protocol or study for which an IRB conducted an initial review or a continuing review during the preceding calendar year. A "small" number of protocols is 1 to 25 protocols, "medium" is 26 to 499 protocols, and "large" is 500 protocols or more;

(g) The approximate number of full time positions devoted to the IRB's administrative activities;

(h) An indication whether the institution or IRB organization is accredited and, if so, the date of the last accreditation and the name of the accrediting body or organization.

**§ 46.603 When must an IRB register?**

Each IRB must register when designated under an assurance approved for federalwide use by OHRP under § 46.103(a). The registration will be effective for 3 years. Each IRB must renew its registration every three years. Any complete update or renewal that is submitted to, and approved by, OHRP, begins a new 3-year effective period. IRB registration becomes effective when HHS posts that information on its Web site.

**§ 46.604 Where can an IRB register?**

Each IRB may register electronically through [Web site address to be added

in the final rule]. If an IRB lacks the ability to register electronically, it must send its registration information, in writing, to OHRP.

**§ 46.605 How does an IRB revise its registration information?**

If registration information regarding an IRB contact, an IRB chairperson or IRB roster changes, the IRB must revise that information within 90 days by submitting any changes in that information. An assured institution's or IRB organization's decision to disband a registered IRB or to discontinue reviewing research conducted or supported by HHS also must be reported within 30 days. All other information changes may be reported when the IRB renews its registration. The revised information may be sent to HHS either electronically or in writing in accordance with § 46.604.

[FR Doc. 04-14679 Filed 7-2-04; 8:45 am]

BILLING CODE 4150-36-P

## Notices

Federal Register

Vol. 69, No. 128

Tuesday, July 6, 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

#### Forest Service

#### Notice of Public Meeting, Davy Crockett National Forest Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Secure Rural Schools and Community Self Determination Act of 2000 (Pub. L. 106-393) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of Agriculture, Forest Service, Davy Crockett National Forest Resource Advisory Committee (RAC) meeting will meet as indicated below.

**DATES:** The Davy Crockett National Forest RAC meeting will be held on July 29, 2004.

**ADDRESSES:** The Davy Crockett National Forest RAC meeting will be held at the Davy Crockett Ranger Station located on State Highway 7, approximately one-quarter mile west of FM 227 in Houston County, Texas. The meeting will begin at 6 p.m. and adjourn at approximately 9 p.m. A public comment period will be at 8:45 p.m.

**FOR FURTHER INFORMATION CONTACT:**

Raoul Gagne, District Ranger, Davy Crockett National Forest, Rt. 1, Box 55 FS, Kennard, Texas 75847; Telephone: 936-655-2299 or e-mail at: [rgagne@fs.fed.us](mailto:rgagne@fs.fed.us).

**SUPPLEMENTARY INFORMATION:** The Davy Crockett National Forest RAC proposes projects and funding to the Secretary of Agriculture under section 203 of the Secure Rural Schools and Community Self Determination Act of 2000. The purpose of the July 29, 2004, meeting is to discuss the operational requirements of the RAC, including a process to solicit and evaluate project proposals. These meetings are open to the public. The public may present written comments to the RAC. Each formal RAC

meeting will also have time, as identified above, allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

Dated: June 29, 2004.

**Raoul W. Gagne,**

*Designated Federal Officer, Davy Crockett National Forest RAC.*

[FR Doc. 04-15221 Filed 7-2-04; 8:45 am]

BILLING CODE 3410-11-M

### DEPARTMENT OF AGRICULTURE

#### Forest Service

RIN 0596-AB73

#### National Environmental Policy Act Documentation Needed for Certain Special Use Authorizations

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of issuance of final directive.

**SUMMARY:** The Forest Service is revising procedures for implementing the National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) regulations for certain actions, which can be categorically excluded from documentation in an environmental assessment or an environmental impact statement. These final implementing procedures will be issued in an amendment to Forest Service Environmental Policy and Procedures Handbook (FSH) 1909.15, Chapter 30, sections 31.12 and 31.2. This amendment creates two new categorical exclusions for the amendment to or replacement of special use authorizations involving administrative changes when no changes are proposed in the authorized facilities and no increase in the scope or intensity of authorized activities is proposed. The intent of these categorical exclusions is to facilitate employees' consistent interpretation and application of CEQ regulations and related agency policy.

The Forest Service is also making technical changes to the Zero Code Chapter and Chapters 10, 30, and 40 of FSH 1909.15. These technical changes do not substantively change the agency's NEPA procedures. The amendments incorporate into parent

text of the agency policy and procedures previously set forth in interim directives to Chapter 30; reformat the Handbook; and make minor editorial changes throughout the Handbook. The amendment to Chapter 30 revises incorrect section codes 31.1a and 31.1b to 31.11 and 31.12 respectively. Accordingly, references to section 31.1b in the proposal to revise the agency's NEPA procedures (66 FR 48412) now relate to section 31.12.

**EFFECTIVE DATE:** These amendments Nos. 19090.15-2004-1 through 4 are effective July 6, 2004.

**ADDRESSES:** These new categorical exclusions are available electronically from the Forest Service via the World Wide Web/Internet at <http://www.fs.fed.us/im/directives>. Single paper copies of these categorical exclusions are also available by contacting Dave Sire, Forest Service, USDA, Ecosystem Management Coordination Staff (Mail Stop 1104), 1400 Independence Avenue, SW., Washington, DC 20250-1104.

**FOR FURTHER INFORMATION CONTACT:** Dave Sire, Ecosystem Management Coordination Staff, 202-205-2935 or Melissa Hearst, Lands Staff, 202-205-1196.

**SUPPLEMENTARY INFORMATION:**

#### Summary of the Categorical Exclusions for Certain Special Use Authorizations

A special use is defined in 36 CFR Part 251, Subpart B as "All uses of National Forest System lands, improvements, and resources, except those provided for in regulations governing the disposal of timber (part 223) and minerals (part 228) and the grazing of livestock (part 222) \* \* \*". The Forest Service controls the occupancy and use of National Forest System lands, improvements, and resources through issuance of special use authorizations, such as permits, leases, or easements.

It is important to note that ski areas and organizational camps are the two types of special uses of National Forest System lands that are not addressed by the new final categorical exclusions. Ski area permits are addressed by an existing categorical exclusion (FSH 1909.15 sec. 31.12 para. 9). The ministerial issuance or amendment of an organizational camp special use authorization is not subject to the

National Environmental Policy Act (16 U.S.C. 6231 *et seq.*)

In April 1997, the Forest Service completed a study of its special uses program to identify changes needed to manage the program in a more efficient and customer service oriented manner. The study may be viewed at <http://www.fs.fed.us/recreation/permits/final1.htm>. The study revealed a large backlog of unprocessed special use applications involving administrative changes of ownership or control of authorized facilities or activities, or applications for a new special use authorization to replace an expired authorization. The study concluded that a primary cause of this backlog is the inconsistent application and misinterpretation of agency policy found in Forest Service Handbook (FSH) 1909.15, Environmental Policy and Procedures Handbook, Chapter 30, which addresses categorical exclusion from documentation in an environmental assessment (EA) or environmental impact statement (EIS). Some units were categorically excluding administrative changes to special use authorizations, while others preparing EAs, which emphasized a need for clarification.

#### **Proposed Interim Directive to Forest Service Handbook 1909.15, Chapter 30**

On September 20, 2001, the Forest Service published a notice of proposed interim directive to Forest Service Handbook (FSH) 1909.15, Chapter 30, which would partially revise the agency's direction on the use of categorical exclusions (66 FR 48412). The intent of this proposed interim directive was to assist employees in interpreting and complying with the National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) regulations for certain special use authorization actions, which can be categorically excluded from documentation in an environmental assessment or an environmental impact statement. The proposed interim directive would have added three new categories for special use authorizations involving administrative changes when no changes are proposed in the authorized facilities or activities. The proposal also included a modification of Handbook text to clarify agency policy concerning extraordinary circumstances.

Nearly 26,000 responses in the form of letters, postcards, and e-mail messages were received during the 60-day comment period. These comments came from private citizens, elected officials, and from groups and

individuals representing businesses, private organizations, and Federal agencies. Responses consisted of over 800 original letters and over 25,000 form letters.

Public comment on the proposed interim directive addressed a wide range of topics, many of which were directed at general Forest Service management direction, particularly the management of roadless areas. Most comments revealed a significant split in opinion on the proposal. Many people opposed the proposed interim directive or recommended further restriction of the use of categorical exclusions, both in general and for those proposed for certain special use authorizations, while many others supported the proposed interim directive, or favored further expansion of the use of categorical exclusions. Some respondents agreed that existing direction concerning special use authorizations needed clarification.

Because of the volume and nature of comments received on the proposed interim directive, the agency separated the special use authorization categorical exclusions portion of the proposal from the clarification of extraordinary circumstances. On August 23, 2001, the Forest Service published a final interim directive to Forest Service Handbook (FSH) 1909.15, Chapter 30, which revised and clarified the agency's direction on extraordinary circumstances (67 FR 54622). Accordingly, this notice addresses only those comments received on the proposed categorical exclusions for certain special use authorization actions.

The proposed additions to the Handbook were intended to provide clear direction to agency personnel regarding certain types of special use authorization actions that the agency has concluded do not individually or cumulatively have a significant effect on the human environment, and therefore, may be categorically excluded from documentation in an EA or EIS. The proposed additions to sections 31.1b (now coded 31.12) and 31.2 included the following:

#### *Section 31.1b Categories Established by the Chief*

Two new categories of actions were proposed to be added to this section:

10. Amendment to an existing special use authorization during its term, involving no change in the authorized use and occupancy other than administrative changes. Examples include but are not limited to:

a. Amending a special use authorization to reflect administrative

changes, such as changes to the land use rental fee or conversion to a new type of special use authorization for a particular occupancy or use (for example, converting a permit to a lease or easement).

b. Amending a special use authorization to include nondiscretionary environmental standards or updating a special use authorization to bring it into conformance with current laws or regulations (for example, new water quality standards that require monitoring).

11. Change in ownership of authorized improvements during the term of an existing special use authorization, involving no change in the authorized use and occupancy of National Forest System lands other than administrative changes. Examples include but are not limited to issuance of a new special use authorization to a new owner of the authorized improvements, when there is no change to the authorized use and occupancy.

#### *Section 31.2 Categories of Actions for Which a Project or Case File and Decision Memo Are Required*

One new category was proposed to be added to this section:

10. Issuance of a new special use authorization to the holder of an existing special use authorization when:

a. The existing special use authorization terminates at the end of its term;

b. The holder is in full compliance with the terms and conditions of the terminating special use authorization; and

c. There would be no change in the physical environment or facilities or the scope or intensity of the operations.

Based on further study and review of the comments received, the proposed special use authorization categorical exclusions have been revised and are printed in their entirety at the end of this notice.

#### **Comments on the Need for the Proposed Interim Directive**

*Comment:* Many respondents commented that there is no need for the proposed changes. Some respondents said that proposed actions can be analyzed with a concise EA, if necessary and, therefore, there is no need to create additional categorical exclusions. Others expressed strong disapproval of the agency's use of categorical exclusions altogether and recommended either further restricting their use, or a complete elimination of categorical exclusions. Conversely, other respondents supported the proposed

categories and some advocated that the agency should make greater use of categorical exclusions.

*Response:* The CEQ regulations (40 CFR 1500.4(p)) encourage the appropriate use of categorical exclusions to reduce paperwork and unnecessary delays. The agency believes that its use of categorical exclusions has been and continues to be appropriate. The agency further believes that the time and expense required by even the most concise EA is not justified for those actions that qualify for categorical exclusion. Categorical exclusions are a legitimate tool for reducing excessive paperwork and to avoid allocating resources where they are not needed, thereby allowing the agency to devote more resources to environmental analysis and documentation for those requests for new special use authorizations that may have significant effects. Therefore, the agency will proceed with issuance of the categorical exclusions.

*Comment:* The preamble for the proposed categorical exclusions referred to a backlog of unprocessed special use authorizations resulting from inconsistent application of agency policy. One respondent commented that a backlog exists not due to inconsistent application of policy by the agency, but rather because demand is growing for special use authorizations.

*Response:* While it is true that there has been some increase in demand for new special use authorizations for new facilities or activities, the categorical exclusions make no changes to how the agency deals with new uses proposed on National Forest System lands. As identified in the preamble to the proposed categorical exclusions (66 FR 48412), the 1997 study determined that much of the backlog of applications was associated with proposed administrative actions related to ongoing or expiring special use authorizations.

*Comment:* Some respondents stated there was a real need for this proposal because uncertainty caused by not knowing whether or when an ongoing authorization was going to be replaced with a new authorization causes extreme financial and emotional hardship. They suggested that issuance of a new special use authorization to replace an existing authorization prior to its expiration will increase certainty and not disrupt ongoing uses and management of facilities and activities.

*Response:* The Forest Service agrees. The proposed categorical exclusion at section 31.2, paragraph 10 addressed issuing new special use authorizations when an existing special use authorization terminates at the end of its

term. However, administratively, it would be more efficient to issue the new special use authorization before it expires. Therefore, this categorical exclusion has been modified to address existing special use authorizations that are due to expire, as well as those that have expired, when there is no change to the authorized facilities or in the scope or intensity of the authorized activity, when the applicant or holder is in full compliance with the terms and conditions of the authorization, and the only changes are administrative.

Due to the development of other agency categorical exclusions, the proposed categorical exclusion originally identified as paragraph 10 of section 31.2 is now paragraph 15 of section 31.2.

#### Comments on Compliance With Law and Regulation

*Comment:* Many respondents believed the proposed categorical exclusions did not comply with the CEQ NEPA regulations because special use authorizations are used for a broad array of activities including actions that may have the potential for significant effects.

*Response:* The CEQ regulations define categorical exclusion as a "category of actions which do not individually or cumulatively have a significant effect on human environment \* \* \*" (40 CFR 1508.4). The proposed categories of actions described specific administrative actions to existing special use authorizations that would involve no change in the authorized facilities or activities other than administrative changes. In other words, the categorical exclusion is designed to cover situations where administrative actions would not cause an individually or cumulatively significant effect on the human environment.

Discussions and follow-up took place with special use authorization specialists and environmental policy compliance specialists throughout the Forest Service regarding their experience with special use authorizations of all kinds, in all types of forests, over many years. The specialists involved represent over 800 years of combined experience in Forest Service special uses administration and environmental compliance. They reviewed and discussed the environmental effects of special use authorizations individually and cumulatively over time, of administrative changes, and of the extension of the term or time period of the occupancy and use in situations when the occupancy and use is conducted in accordance with the terms and conditions of the authorization.

After that review, they concluded that the activities described in the final categorical exclusions do not have individual or cumulative significant effects. In those few situations where the potential for significant environmental effects arose, they concluded that the scoping and/or review of extraordinary circumstances in accordance with direction in FSH 1909.15, Section 30.3 resulted in preparation of either an EA or an EIS.

*Comment:* Some respondents believe that the proposed categorical exclusions did not comply with the CEQ regulations. Their reason was that when considering all of the actions that the Forest Service authorizes through special use authorizations, these actions may have cumulative effects.

*Response:* The actions that the agency is categorically excluding are specific administrative actions that do not result in significant effects on the environment. As described above, the agency has determined they do not have individually or cumulatively significant effects, and therefore, these categorical exclusions meet the CEQ regulations' definition of categorical exclusions.

*Comment:* Some respondents stated that many special use authorizations have never undergone NEPA analysis even though the authorizations may have resulted in significant impacts to the human environment. Respondents believed that using a categorical exclusion to amend a current authorization or to issue a new authorization to replace an existing special use authorization, which had not been analyzed under NEPA would not comply with the CEQ regulations.

*Response:* While it is true that there are some existing special use authorizations that were issued without undergoing a NEPA analysis, this situation occurred generally when the authorization was issued prior to enactment of NEPA and subsequent guidance. Categorical exclusions in paragraph 10 of section 32.12 and paragraph 15 of section 31.2 are for administrative actions that do not change the facilities nor increase the level of activity. The previously noted review of all types of special use authorizations, including those special use authorizations that have not previously been reviewed through the NEPA process, demonstrated that existing special uses in compliance with their authorizations have not had significant environmental effects. Agency experience shows that under the conditions described in the text of the categorical exclusions at the end of this notice, issuing or amending special use authorizations does not individually or

cumulatively have significant effects, and are therefore in compliance with the CEQ regulations. The agency reviewed the proposed categorical exclusions and considered them in conjunction with the recently clarified NEPA procedures concerning extraordinary circumstances (67 FR 54622). The agency review determined its recently clarified NEPA procedures concerning extraordinary circumstances would identify any potentially significant effects on the human environment and the Forest Service would, therefore, preclude use of the categorical exclusions at paragraph 10 of section 32.12 and paragraph 15 of section 31.2 and would assure preparation of the appropriate level of NEPA analysis and documentation.

#### Comments on Public Participation

*Comment:* A considerable amount of comment revolved around the proposed categorical exclusions' effect on the public role in decisionmaking. Many respondents are concerned that the proposal would increase the use of categorical exclusions and thereby decrease the public's opportunity for involvement and oversight of the management of National Forest System lands. Other respondents think that scoping is not warranted for actions that may be categorically excluded.

*Response:* The Forest Service will continue to conduct scoping for all proposed actions subject to NEPA (FSH 1909.15, section 11). Through scoping, the Forest Service identifies any important issues, identifies interested and affected persons, and determines the appropriate level of public involvement and the appropriate level of environmental analysis and documentation. When the Forest Service contemplates categorically excluded a proposed action, scoping is used to help determine whether any extraordinary circumstances exist. An integral part of this scoping process is determining the appropriate level of public participation. Forest Service Handbook 1909.15, section 11, directs the Responsible Official to consider options for involving potentially interested and affected agencies, organizations, and persons in the analysis process commensurate with public interest in the proposed action. "Scoping is required on all proposed actions, including those that would appear to be categorically excluded." (FSH 1909.15, section 30.3).

*Comment:* Respondents were also concerned that more decisions will be made through a categorical exclusion and, consequently, fewer decisions will be appealable.

*Response:* The two new categories being established are limited to amendment to or issuance to replace special use authorizations involving administrative changes or where there are no changes in the authorized facilities or increase in the scope or intensity of authorized activities. In the agency's experience, authorizations involving administrative adjustments or continuance of ongoing activities are less likely to be appealed than new actions. The actions covered by these categories are comparable to the types of activities that have been excluded from appeal in the agency's implementing regulations since enactment of the Appeal Reform Act (ARA). The ARA does not require that all actions by the Forest Service, regardless of their scope, be subject to appeal. To the contrary, Congress has delegated the responsibility for delineating which projects should be subject to appeal, and which should not. The agency's interpretation and implementation of the ARA is outlined in the *Federal Register* notice establishing the final rule (68 FR 33582, June 4, 2003). As previously noted, the agency will continue to conduct scoping for all proposed actions subject to NEPA and the responsible official will consider the appropriate level of public involvement commensurate with the level of public interest in a proposed action. The agency believes that including affected and interested individuals in project planning early in the process is more effective than applying the additional appeal procedures.

However, decisions to amend current special use authorizations that are addressed by these new final categorical exclusions may be subject to appeal by parties who hold a special use authorization (36 CFR Part 251 Subpart C). The appeal process in Subpart C is a structured, grievance oriented procedure that provides the elements of due process fundamental to resolving issues arising from a business or legal relationship between the Forest Service and an eligible appellant.

#### Comments on Impacts

*Comment:* Some respondents who were opposed to the proposed categorical exclusions feel that any increase in the use of categorical exclusions represents a reduction in environmental review and the use of science in decisionmaking. As a result, they feel that the proposed categorical exclusions could result in adverse impacts to National Forest System lands and resources including roadless areas, wilderness areas, national recreation areas, threatened and endangered

species, American Indian sacred sites, and archaeological sites.

*Response:* Categorical exclusions are to be used for routine actions that have been found by the agency through experience and environmental review to have no significant environmental effects either individually or cumulatively (40 CFR 1508.4). On August 23, 2002, the Forest Service published a final interim directive to Forest Service Handbook (FSH) 1909.15, Chapter 30, which provided direction regarding how actions, which may be categorically excluded, should be considered to determine if they warrant further analysis and documentation in an EA or EIS (67 FR 54622). Agency NEPA procedures require that all proposed actions to be categorically excluded from documentation in an EA or EIS must be reviewed for extraordinary circumstances, which includes appropriate surveys and analyses, using the best available science, attendant in appropriate consultation with Tribes and consultation with regulatory agencies, such as those required by the Endangered Species Act, the National Historic Preservation Act, Clean Water Act, and Clear Air Act. Accordingly, these categorical exclusions do not apply where there are extraordinary circumstances, such as adverse effects on the following: threatened and endangered species or their designated critical habitat; wilderness areas; inventoried roadless areas; wetlands; impaired waters; national recreation areas; and archaeological, cultural, or historic sites. Pursuant to 36 CFR 251.64, new special use authorizations to replace existing authorizations must comply with Federal and State laws and regulations and must be consistent with land management plan goals and objectives, and where appropriate, standards and guidelines set out in the plan.

*Comment:* Some respondents stated that they view the NEPA review process when an authorization expires as an opportunity to consider new information, which may bear on the environmental impact of an existing use or occupancy, and an opportunity to assess the impact of an authorization holder's facilities and/or activities. Respondents believed there would be less opportunity and inclination to evaluate these authorized facilities and activities under the proposed categorical exclusions. Provisions for the changes of ownership drew similar comments.

*Response:* The agency's procedures pursuant to NEPA require scoping on all proposed actions, including those that would appear to be categorically



excluded (FSH 1909.15, section 11). This scoping includes consulting with experts and other agencies familiar with such actions and their direct, indirect, and cumulative effects. Using the information obtained through scoping, the Responsible Official then determines if the proposed action can be categorically excluded from documentation in an EIS or an EA or, alternatively, determines the type of document that should be prepared. Moreover, Forest Service regulations (36 CFR Part 251, subpart B) and policies (Forest Service Manual (FSM) 2700 and FSH 2709.11) governing special uses already require the agency to consider if significant new information or circumstances have developed prior to amending a special use authorization, or prior to replacing an existing authorization. These regulations and policies also specify that, if new significant information or circumstances have developed, then the appropriate environmental analysis must be completed and accompany the decision before an authorization can be amended or issued anew.

#### Comments on the Interim Nature of the Directive

*Comment:* Some respondents questioned why the proposed categorical exclusions were being issued as an interim directive and how long it would be in effect or under what circumstances it would terminate.

*Response:* As was stated in the preamble for the proposed interim directive published in the September 20, 2001, *Federal Register* (66 FR 48412), the changes were proposed to be made through an interim directive for administrative efficiency. In further consideration, and in response to this comment, the final categorical exclusions are not issued as an interim directive but rather are incorporated directly into the text of Forest Service Handbook (FSH) 1909.15, Chapter 30.

#### Comments on the Categories

*Comment:* Some respondents commented that not all special use authorization holders have equal impacts on the human environment, and therefore, the agency should not assume that a change in legal ownership does not trigger a NEPA analysis.

*Response:* All authorization holders, regardless of their legal status (e.g., partnership, individual, nonprofit organization, corporation) are responsible for complying with the applicable laws, regulations, and terms and conditions of the special use authorization. By regulation (36 CFR Part 251, Subpart B) and policy (FSM

2700 and FSH 2709.1), applicants for and holders of special use authorizations must be able to demonstrate that they have the technical and financial capability to undertake the use in compliance with the terms and conditions of the authorization. It is this demonstrated evidence of technical and financial capability, and not merely the status of ownership, which has a bearing on the applicant or holder qualifications, which the authorized officer must consider prior to amending or issuing a special use authorization. To highlight this requirement, and in response to this comment, the phrase "and the applicant or holder is in full compliance with the terms and conditions of the special use authorization" was added to the final categorical exclusions.

Consequently, a change in ownership or control of authorized facilities and activities during the term of an existing special use authorization, involving no increase in the authorized facilities or scope or intensity of authorized activities on National Forest System lands (i.e., the activity takes place in the same or smaller geographic area and the amount of the use does not increase), is an example of an administrative change that typically results in no significant effect on the human environment. These were among the types of special use authorizations examined by agency experts and determined to have no significant effects on the human environment, either individually or cumulatively.

*Comment:* Some respondents were confused by the language in the categorical exclusion proposed for paragraph 11 of section 31.1b because it referred to a change in ownership of "authorized improvements." The respondents were concerned that this did not address situations where there was a change in ownership of uses, such as an outfitting business where there are no physical improvements on National Forest System lands.

*Response:* Based on respondents' concerns, the final categories do not use the phrase "authorized improvements." The categorical exclusions now use the terms "authorized facilities" and "increases in the scope or intensity of authorized activities" to encompass both situations.

*Comment:* One respondent stated that the Forest Service must define the term "administrative change" to clarify that it refers only to clerical changes with no substantive changes to the terms of the authorization. They were concerned that it could be interpreted any number of ways. Another respondent asked the Forest Service to clarify terms used in

the proposed categorical exclusions. The respondent suggested that the proposed categorical exclusions would not meet agency intent to facilitate consistent interpretation of policy.

*Response:* One final categorical exclusions contains examples of what is meant by the term "administrative changes." Specifically, the categorical exclusion in paragraph 10 of section 31.12 includes "\* \* \* administrative changes such as adjustment to the land use fees, inclusion of non-discretionary environmental standards or updating a special use authorization to bring it into conformance with current laws or regulations (for example, new monitoring required by water quality standards.)" In clarifying the term "administrative change," the agency realized that the categorical exclusions proposed for paragraphs 10 and 11 of section 31.1b were very similar in that they addressed administrative changes which occur within the term of an existing authorization. The agency chose to combine the two proposed categorical exclusions (paragraphs 10 and 11 of section 31.1b) and their examples into one category in paragraph 10 of section 31.12 (formerly coded 31.1b) for clarity, and to reduce redundancy. In combining these two categories, the two examples under the proposed categorical exclusion in paragraph 10 were combined into one and a second example was added to illustrate the originally proposed categorical exclusion in paragraph 11. The words "extensions to the term of authorized" were added to the phrase "does not involve changes in the authorized facilities or increases in the scope or intensity of authorized activities" to clarify that the term of the authorization cannot change under the categorical exclusion in paragraph 10 of section 31.12. The word "changes" appeared twice in the same sentence in the proposed section 31.1b example, so in the second instance where the word "change" appears, it was replaced with "adjustment" for readability. In this same example, the word "rental" was found to be redundant and was also deleted to be consistent with agency special uses policy language.

In responding to this comment it became apparent that the proposed categories used different terminology to describe the same condition under which the categories could be used. The requirement for one category was, "no change in the use or occupancy" while the other category required "no change in the physical environment or facilities or the scope or intensity of operations." The two phrases, while worded differently, had the same intent.

Therefore, the categories have been reworded for consistency. Both final categories now utilize the phrase "does not involve changes in the authorized facilities or increases in the scope or intensity of authorized activities."

In another editorial clarification, the conditions enumerated in the categorical exclusion proposed for paragraph 10 of section 31.2 were combined and incorporated into the final categorical exclusion in paragraph 15. In so doing, the phrase "authorization [that] expires at the end of its term" was replaced with "expired." The words "for a new term" were added to replace "at the end of the term" for readability and clarity. The words "applicant or" were added before "holder" to recognize that in the case of an expired permit there would be an applicant but no holder.

These edits do not change the substance of the proposed categorical exclusions, but rather improve their clarity and readability.

#### Regulatory Certifications

##### *Environmental Impact*

These categorical exclusions add direction to guide field employees in the USDA Forest Service regarding procedural requirements for National Environmental Policy Act (NEPA) documentation for administration of special use authorizations. The Council on Environmental Quality does not direct agencies to prepare a NEPA analysis or document before establishing agency procedures that supplement the CEQ regulations for implementing NEPA. Agencies are required to adopt NEPA procedures that establish specific criteria for, and identification of, three classes of actions; those that require preparation of an environmental impact statement; those that require preparation of an environmental assessment; and those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). Categorical exclusions are part of those agency procedures, and therefore establishing categorical exclusions does not require preparation of a NEPA analysis or document. Agency NEPA procedures are internal procedural guidance to assist agencies in the fulfillment of agency responsibilities under NEPA, but are not the agency's final determination of what level of NEPA analysis is required for a particular proposed action. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3, and the USDA Forest Service has provided an opportunity for public review and has consulted with

the Council on Environmental Quality during the development of these categorical exclusions. Furthermore, the determination that establishing categorical exclusions does not require NEPA analysis and documentation has been upheld in *Heartwood, Inc. v. U.S. Forest Service*, 73 F. Supp. 2d 962, 972-73 (S.D. III. 1999), *aff'd*, 230 F.3d 947, 954-55 (7th Cir. 2000).

##### *Regulatory Impact*

These final categorical exclusions have been reviewed under USDA procedures and Executive Order 12866, Regulatory Planning and Review. It has been determined that this is not a significant action. This action to issue agency direction will not have an annual effect of \$100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This action will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this action is not subject to Office of Management and Budget review under Executive Order 12866.

Moreover, the final categorical exclusions have been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it is hereby certified that the final categorical exclusions will not have a significant economic impact on a substantial number of small entities as defined by the act because they will not impose recordkeeping requirements on them; they will not affect their competitive position in relation to large entities; and will not affect their cash flow, liquidity, or ability to remain in the market.

##### *Federalism and Consultation and Coordination With Indian Tribal Governments*

The agency has considered these final categorical exclusions under the requirements of Executive Order 13132, Federalism, and has concluded that the final categorical exclusions conform with the federalism principles set out in this Executive order; will not impose any compliance costs on the States; and will not have substantial direct effects on the States or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the agency has determined that no

further assessment of federalism implications is necessary.

Moreover, these final categorical exclusions do not have tribal implications as defined by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and therefore advance consultation with tribes was not required.

##### *No Takings Implications*

These final categorical exclusions have been analyzed in accordance with the principles and criteria contained in Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and it has been determined that the final categorical exclusions do not pose the risk of a taking of private property.

##### *Civil Justice Reform*

These final categorical exclusions have been reviewed under Executive Order 12988, Civil Justice Reform. After adoption of this policy as final, (1) all State and local laws and regulations that conflict with these final categorical exclusions or that would impede their full implementation will be preempted; (2) no retroactive effects would be given to this final policy; and (3) this final policy would not require administrative proceedings before parties may file suit in court challenging their provisions.

##### *Unfunded Mandates*

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538), which the President signed into law on March 22, 1995, the agency has assessed the effects of these final categorical exclusions on State, local, and tribal governments and the private sector. These final categorical exclusions do not compel the expenditure of \$100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

##### *Energy Effects*

These final categorical exclusions have been reviewed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that these final categorical exclusions do not constitute a significant energy action as defined in the Executive order.

##### *Controlling Paperwork Burdens on the Public*

These final categorical exclusions do not contain any additional record-

keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use, and therefore, impose no additional paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

#### Conclusion

Having considered the comments received, the Forest Service is adopting procedures that clarify direction regarding administrative changes to special use authorizations where there are no changes in the authorized facilities or increases in the scope or intensity of authorized activities by creating two new categories of actions that can be excluded from documentation in an EA or an EIS. This change is being implemented through amendment to FSH 1909.15, Environmental Policy and Procedures Handbook, Chapter 30, which is effective upon publication of this notice in the Federal Register.

Dated: June 29, 2004.

Tom L. Thompson,  
Acting Chief.

#### Text of Final directive

**Note:** The Forest Service organizes its directive system by alphanumeric codes and subject headings. Only those sections of the Forest Service Handbook (FSH) 1909.15, Environmental Policy and Procedures handbook, affected by this policy are included in this notice. This direction will be used by Forest Service employees charged with project planning and environmental analysis when appropriate. Selected headings and existing text are provided to assist the reader in placing the revised direction in context. Paper and electronic copies of these categorical exclusions and the entire chapter 30 of FSH 1909.15 are available as set out in the ADDRESS section at the beginning of this notice.

To provide context for understanding the new categorical exclusions that are established as paragraph 10 in section 31.12 and paragraph 15 in section 31.2, the introductory text of each section follows (in italics):

FSH 1909.15—Environmental Policy and Procedures Handbook

Chapter 30—Categorical Exclusion From Documentation

Chapter 31.12—Categories Established by the Chief

*The following categories of routine administrative, maintenance, and other actions normally do not individually or cumulatively have a significant effect on the quality of the Human environment (sec. 05)*

*and, therefore, may be categorically excluded from documentation in an EIS or an EA unless scoping indicates extraordinary circumstances (sec. 30.3) exists:*

10. Amendment to or replacement of an existing special use authorization that involves only administrative changes and does not involve changes in the authorized facilities or increases in the scope or intensity of authorized activities, or extensions to the term of authorization, when the applicant or holder is in full compliance with the terms and conditions of the special use authorization. Examples include but are not limited to:

a. Amending a special use authorization to reflect administrative changes, such as adjustment to the land use fees, inclusion of non-discretionary environmental standards or updating a special use authorization to bring it into conformance with current laws or regulations (for example, new monitoring required by water quality standards).

b. Issuance of a new special use authorization to reflect administrative changes, such as a change of ownership or control of previously authorized facilities or activities, or conversion of the existing special use authorization to a new type of special use authorization (for example, converting a permit to a lease or easement).

31.2—Categories of Actions for Which a Project or Case File and Decision Memo Are Required

*Routine, proposed actions within any of the following categories may be excluded from documentation in an EIS or an EA; however, a project or case file is required and the decision to proceed must be documented in a decision memo (sec. 32). As a minimum, the project or case file should include any records prepared, such as: the names of interested and affected people, groups, and agencies contacted; the determination that no extraordinary circumstances exist; a copy of the decision memo (sec. 05); and a list of the people notified of the decision. Maintain a project or case file and prepare a decision memo for routine, proposed actions within any of the following categories:*

15. Issuance of a new special use authorization for a new term to replace an existing or expired special use authorization when the only changes are administrative, there are no changes to the authorized facilities or increases in the scope or intensity of authorized activities, and the applicant or holder is in full compliance with the terms and conditions of the special use authorization.

[FR Doc. 04-15219 Filed 7-2-04; 8:45 am]

BILLING CODE 3410-11-M

## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

#### Proposed Posting, Posting, and Deposting of Stockyards

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** We propose to post nine stockyards. We have received information that the stockyards meet the definition of a stockyard under the Packers and Stockyards Act and, therefore, need to be posted. Posted stockyards are subject to the provisions of the Packers and Stockyards Act. We have posted 11 stockyards. We determined that the stockyards meet the definition of a stockyard under the Packers and Stockyards Act and, therefore, needed to be posted. We are also deposing one stockyard. This facility can no longer be used as a stockyard and, therefore, is no longer required to be posted.

**DATES:** For the proposed posting of stockyards, we will consider comments that we receive by July 21, 2004.

For the deposed stockyard, the deposing is effective on July 6, 2004.

**ADDRESSES:** We invite you to submit comments on this notice. You may submit comments by any of the following methods:

- E-mail: Send comments via electronic mail to [comments.gipsa@usda.gov](mailto:comments.gipsa@usda.gov).
- Mail: Send hardcopy written comments to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647-S, Washington, DC 20250-3604.
- Fax: Send comments by facsimile transmission to: (202) 690-2755.
- Hand Delivery or Courier: Deliver comments to: Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647-S, Washington, DC 20250-3604.

**SUPPLEMENTARY INFORMATION:** The Grain Inspection, Packers and Stockyards Administration (GIPSA) administers and enforces the Packers and Stockyards Act of 1921, as amended and supplemented (7 U.S.C. 181-229) (P&S Act). The P&S Act prohibits unfair, deceptive, and fraudulent practices by livestock market agencies, dealers, stockyard owners, meat packers, swine contractors, and live poultry dealers in the livestock, poultry, and meatpacking industries.

Section 302 of the P&S Act (7 U.S.C. 202) defines the term "stockyard" as follows:

\* \* \* any place, establishment, or facility commonly known as stockyards, conducted, operated, or managed for profit or nonprofit as a public market for livestock producers, feeders, market agencies, and buyers, consisting of pens, or other inclosures, and their appurtenances, in which live cattle, sheep, swine, horses, mules, or goats are received, held, or kept for sale or shipment in commerce.

Section 302 (b) of the P&S Act requires the Secretary to determine which stockyards meet this definition, and to notify the owner of the stockyard and the public of that determination by posting a notice in each designated stockyard. After giving notice to the

stockyard owner and to the public, the stockyard will be subject to the provisions of Title III of the P&S Act (7 U.S.C. 201–203 and 205–217a) until the Secretary deposits the stockyard by public notice.

This document notifies the stockyard owners and the public that the following nine stockyards meet the definition of stockyard and that we propose to designate the stockyards as posted stockyards.

Facility No.	Stockyard name and location
AL-192 .....	Mid State Stockyards, LLP, Letohatchee, Alabama.
CA-192 .....	Red Ryder Ranch, Lancaster, California
KY-178 .....	Wig Wam Livestock Market, Inc., Horse Cave, Kentucky.
OK-214 .....	4 B Auction Company, Ada, Oklahoma.
MS-175 .....	West Point Stockyard, West Point, Mississippi.
PA-160 .....	Beach's Dairy Auction, Martinsburg, Pennsylvania.
SC-160 .....	Martin & Martin Cattle, Inc., Williamston, South Carolina.
TN-194 .....	Starr Mountain Auction, Etowah, Tennessee.
TX-347 .....	Tri-County Commission Company, Santo, Texas.

This document also notifies the public that the following 11 stockyards meet the definition of stockyard and that we have posted the stockyards. We published notices proposing to post the 11 stockyards on September 13, 2000, August 25, 2003, and November 7, 2003

(65 FR 55217, 68 FR 51005, and 68 FR 63065–63056, respectively). We received no comments in response to any of these proposed posting notices. To post stockyards, we assign the stockyard a facility number, notify the owner of the stockyard facility, and

send notices to the owner of the stockyard to post on display in public areas of the stockyard. The date of posting is the date on which the posting notices are physically displayed.

Facility number	Stockyard name and location	Date of posting
CA-190 .....	Tulare Sales Yard, Inc., Tulare, California .....	November 5, 2003.
CA-191 .....	B and B Livestock Auction, Madera, California .....	November 5, 2003.
MN-193 .....	Fergus Falls Livestock Auction Market, Fergus Falls, Minnesota .....	November 28, 2003.
MS-174 .....	Solomon's Horse Sale, Belmont, Mississippi .....	March 17, 2004.
MO-283 .....	Cameron Livestock Sales, Warrensburg, Missouri .....	December 4, 2003.
MO-284 .....	Southwest City Livestock Auction, L.L.C., Southwest City, Missouri .....	November 29, 2003.
MO-285 .....	Gainesville Livestock Auction, Inc., Gainesville, Missouri .....	March 15, 2004.
OK-212 .....	Perkins Livestock Sales, Inc., Perkins, Oklahoma .....	January 21, 2004.
OK-213 .....	Bakers Auction, Butler, Oklahoma .....	November 21, 2003.
TX-346 .....	Shamrock Livestock Commission, Shamrock, Texas .....	November 3, 2003.
VA 161 .....	Wythe County Livestock Exchange, L.L.C. Wytheville, Virginia .....	April 1, 2004.

Additionally, this document notifies the public that the following one stockyard no longer meets the definition of stockyard and that we are deposing the facility. We deposit a stockyard when

the facility can no longer be used as a stockyard. Some of the reasons a facility can no longer be used as a stockyard include: The facility has been moved and the posted facility is abandoned, the

facility has been torn down or otherwise destroyed, such as by fire, the facility is dilapidated beyond repair, or the facility has been converted and its function changed.

Facility No.	Stockyard name and location	Date posted
PA-159 .....	Troy Sales, Troy, Pennsylvania .....	September 17, 1997

**Effective Date**

This deposing is effective upon publication in the **Federal Register** because it relieves a restriction and, therefore, may be made effective in less than 30 days after publication in the **Federal Register** without prior notice or other public procedure.

Authority: 7 U.S.C. 202.

**Dated:**

**Donna Reifschneider,**  
*Administrator, Grain Inspection, Packers and Stockyards Administration.*

[FR Doc. 04-15215 Filed 7-2-04; 8:45 am]

BILLING CODE 3410-EN-P

**DEPARTMENT OF AGRICULTURE**

**Rural Housing Service**

**Farm Service Agency**

**Notice of Request for Extension of a Currently Approved Information Collection**

**AGENCIES:** Rural Housing Service, Farm Service Agency, USDA.

**ACTION:** Extension of a Currently Approved Information Collection; comments requested.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the subject agencies' intention to request an extension for a currently approved information collection in support of the programs for 7 CFR, part 1955, subpart B, "Management of Property".

**DATES:** Comments on this notice must be received by September 7, 2004 to be assured of consideration.

**FOR FURTHER INFORMATION CONTACT:** Constance Beckwith, Senior Loan Officer, USDA, FSA, Farm Loan Programs, Loan Servicing Division, 1400 Independence Ave. SW., Washington, DC 20250-0523, telephone (202) 720-9769. Electronic mail: [constance\\_beckwith@wdc.usda.gov](mailto:constance_beckwith@wdc.usda.gov).

**SUPPLEMENTARY INFORMATION:**

*Title:* 7 CFR, Part 1955-B, Management of Property.  
*OMB Number:* 0575-0110.  
*Expiration Date of Approval:* January 31, 2005.

*Type of Request:* Extension of a currently approved information collection.

*Abstract:* This regulation prescribes the policies and procedures for the management of real property which has been taken into custody by the agency after abandonment by the borrower and management of real and chattel property which is in the agency inventory.

*Estimate of Burden:* Public reporting for this collection of information is estimated to average 28 minutes per response.

*Respondents:* Individuals or households, businesses or other for profit organizations and farms.

*Estimated Number of Respondents:* 155.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Number of Responses:* 155.

*Estimated Total Annual Burden on Respondents:* 73.

*Comments:* Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the subject agencies, including whether the information will have practical utility; (b) the accuracy of the agencies' estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or

other forms of information technology. Comments may be sent to Renita Bolden, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: June 23, 2004.

**James R. Little,**  
*Administrator, Farm Service Agency.*

Dated: June 25, 2004.

**James C. Alsop,**  
*Administrator, Rural Housing Service.*  
[FR Doc. 04-15137 Filed 7-2-04; 8:45 am]

BILLING CODE 3410-XV-P

## CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

### Sunshine Act Meeting

**TIME AND DATE:** Thursday, July 15, 2004, at 10 a.m. EDT.

**PLACE:** General Services Administration Auditorium, 18th and F Streets, NW., Washington, DC 20006.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** The Chemical Safety and Hazard Investigation Board (CSB) is convening this public meeting in connection with its investigation of an explosion and fire that occurred in March 2004 at a Huntsman facility in Port Neches, Texas and, separately, its examination of the hazards associated with sodium hydrosulfide.

At this meeting CSB staff will present to the Board a safety bulletin based on the investigation of the Huntsman incident. The key issue examined in the bulletin is the removal of hazardous liquids in piping systems. The bulletin briefly explains the facts of the Huntsman incident, describes the incident causes, and reviews lessons learned.

CSB staff will also present to the Board a safety bulletin on the hazards associated with sodium hydrosulfide (NaHS), a chemical used in a variety of industries, including the leather tanning and pulp and paper industries. NaHS can cause severe burns and has a propensity to produce toxic hydrogen sulfide gas, which has resulted in a number of worker fatalities. The bulletin is intended to increase awareness of the hazards of NaHS and to outline safety practices to minimize the potential for harm to workers and the public. The

bulletin also includes brief case studies of selected incidents involving NaHS.

After the staff presentations the Board will allow time for public comment. Following the conclusion of the comment period, the Board will consider whether to vote to approve the two safety bulletins.

All staff presentations are preliminary and are intended solely to allow the Board to consider in a public forum the issues and factors involved in the cases. Factual analyses, conclusions, or findings contained in the staff presentations should not be considered final. Only after the Board has considered the staff presentations and approved the staff reports will the safety bulletins be final Board products.

The meeting will also include a brief presentation on activity in the CSB recommendations program.

This meeting will be open to the public. Please notify CSB if a translator or interpreter is needed, at least five (5) business days prior to the meeting.

Individuals attending this meeting should plan to arrive 20 to 30 minutes before the scheduled start time in order to be processed through the building's security screening.

**FOR FURTHER INFORMATION CONTACT:** Daniel Horowitz, (202) 261-7600.

Dated: June 30, 2004.

**Christopher W. Warner,**  
*General Counsel.*

[FR Doc. 04-15287 Filed 6-30-04; 4:38 pm]

BILLING CODE 6350-01-P

## DEPARTMENT OF COMMERCE

### Economics and Statistics Administration

#### Performance Review Board Membership

**SUMMARY:** Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the Economics and Statistics Administration Senior Executive Service (SES) Performance Appraisal System:

Hermann Habermann  
Shirin A. Ahmed  
Teresa Angueira  
William G. Bostic, Jr.  
Chester E. Bowie  
Cynthia Z. F. Clark  
Douglas R. Clift  
Nancy M. Gordon  
Gloria A. Gutierrez  
Arnold A. Jackson  
Theodore A. Johnson  
Ruth Ann Killion  
Frederick T. Knickerbocker

John F. Long  
 Michael J. Longini  
 Thomas L. Mesenbourg  
 C. Harvey Monk  
 Walter C. Odom, Jr.  
 Marvin D. Raines  
 Brian Monaghan  
 Rajendra P. Singh  
 Richard W. Swartz  
 Alan R. Tupek  
 Carol M. Van Horn  
 Preston J. Waite  
 Mark E. Wallace  
 Ewen M. Wilson  
 J. Steven Landefeld  
 Suzette C. Kern  
 Dennis J. Fixler  
 Barbara M. Fraumeni  
 Ralph H. Kozlow  
 Alan C. Lorish  
 Rosemary D. Marcuss  
 Brent R. Moulton  
 Sumiye O. Okubo  
 John W. Ruser  
 James K. White  
 Katherine Wallman

**FOR FURTHER INFORMATION CONTACT:**

Nancy Osborn, 301-763-3727.

Dated: June 28, 2004.

**James K. White,**

*Associate Under Secretary for Management,  
 Chair, Performance Review Board.*

[FR Doc. 04-15159 Filed 7-2-04; 8:45 am]

BILLING CODE 3510-BS-P

**DEPARTMENT OF COMMERCE**

**Foreign-Trade Zones Board**

[Order No. 1340]

**Approval for Manufacturing Authority  
 Kvaerner Oilfield Products (Undersea  
 Umbilicals) Within Foreign-Trade Zone  
 82; Mobile, AL**

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas*, the City of Mobile, Alabama, grantee of Foreign-Trade Zone 82, has requested authority under § 400.32(b)(2) of the Board's regulations on behalf of Kvaerner Oilfield Products to manufacture undersea umbilicals under zone procedures within FTZ 82, Mobile, Alabama (FTZ Docket 30-2003, filed June 18, 2003);

*Whereas*, notice inviting public comment has been given in the **Federal Register** (68 FR 38009, 6/26/03); and,

*Whereas*, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and

that approval of the application is in the public interest;

*Now, therefore*, the Board hereby approves the request subject to the FTZ Act and the Board's regulations, including § 400.28.

Attest:

Pierre V. Duy,

*Acting Executive Secretary.*

Signed at Washington, DC, this 25th day of June 2004.

**James J. Jochum,**

*Assistant Secretary for Import  
 Administration, Alternate Chairman, Foreign-  
 Trade Zones Board.*

[FR Doc. 04-15234 Filed 7-2-04; 8:45 am]

BILLING CODE 3510-DS-P

**DEPARTMENT OF COMMERCE**

**Foreign-Trade Zones Board**

[Order No. 1341]

**Expansion of Foreign-Trade Zone 219;  
 Yuma, AZ, Area**

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas*, the Yuma County Airport Authority, Inc., grantee of Foreign-Trade Zone 219, submitted an application to the Board for authority to expand FTZ 219 to include a site (75 acres) at the warehouse facility of Big Industrial, LLC, in Somerton (Site 3), and to formally terminate Subzone 219A (Meadowcraft), within the San Luis Customs port of entry (FTZ Docket 57-2003; filed 11/3/03);

*Whereas*, notice inviting public comment was given in the **Federal Register** (68 FR 64852, 11/17/03) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

*Whereas*, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

*Now, therefore*, the Board hereby orders:

The application to expand FTZ 219 and to terminate Subzone 219A (Meadowcraft) is approved, subject to the Act and the Board's regulations, including § 400.28.

Attest:

Pierre V. Duy,

*Acting Executive Secretary.*

Signed at Washington, DC, this 25th day of June 2004.

**James J. Jochum,**

*Assistant Secretary of Commerce for Import  
 Administration, Alternate Chairman, Foreign-  
 Trade Zones Board.*

[FR Doc. 04-15235 Filed 7-2-04; 8:45 am]

BILLING CODE 3510-DS-P

**DEPARTMENT OF COMMERCE**

**Foreign-Trade Zones Board**

[Order No. 1339]

**Grant of Authority for Subzone Status:  
 The Acushnet Company (Sporting  
 Goods); New Bedford, MA Area**

Pursuant to its authority under the Foreign-Trade Zones Act, of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas*, the Foreign-Trade Zones Act provides for " \* \* \* the establishment \* \* \* of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

*Whereas*, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

*Whereas*, the City of New Bedford, grantee of Foreign-Trade Zone 28, has made application to the Board for authority to establish special-purpose subzone at the sporting goods manufacturing and distribution facilities of the Acushnet Company, located in the New Bedford, Massachusetts area (FTZ Docket 55-2003, filed 10/17/03);

*Whereas*, notice inviting public comment was given in the **Federal Register** (68 FR 61393-61394, 10/28/03); and,

*Whereas*, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

*Now, therefore*, the Board hereby grants authority for subzone status at the sporting goods manufacturing and distribution facilities of the Acushnet Company, located in the New Bedford, Massachusetts area (Subzone 28F), at the locations described in the

application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Attest:

Pierre V. Duy,  
Acting Executive Secretary.

Signed at Washington, DC, this 25th day of June, 2004.

James J. Jochum,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 04-15233 Filed 7-2-04; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### Information Systems, Technical Advisory Committee; Notice of Partially Closed Meeting

The Information Systems Technical Advisory Committee (ISTAC) will meet on July 21 and 22, 2004, 9 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Pennsylvania Avenue and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to information systems equipment and technology.

July 21

#### Public Session

1. Opening remarks and introductions.
2. Comments or presentations by the public.
3. Summary of the Wassenaar Arrangement inter-sessional meeting on semiconductor manufacturing equipment.
4. Presentation on computational capability of graphics processors.
5. Update on Bureau of Industry and Security programs and activities.

July 21-22

#### Closed Session

6. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation

materials to Committee members, the Committee suggests that public presentation materials or comments be forwarded before the meeting to Ms. Lee Ann Carpenter at [Lcarpent@bis.doc.gov](mailto:Lcarpent@bis.doc.gov).

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on June 15, 2004, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § (10)(d)), that the portion of this meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, contact Lee Ann Carpenter on (202) 482-2583.

Dated: June 29, 2004.

Lee Ann Carpenter,  
Committee Liaison Officer.

[FR Doc. 04-15139 Filed 7-2-04; 8:45 am]

BILLING CODE 3510-JT-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-002]

#### Chloropicrin From the People's Republic of China; Final Results of the Expedited Sunset Review of Antidumping Duty Order

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

**ACTION:** Expedited sunset review of antidumping duty order on Chloropicrin from the People's Republic of China; final results.

**SUMMARY:** On March 1, 2004, the Department of Commerce ("the Department") published a notice of initiation of sunset review on chloropicrin from the People's Republic of China ("China"). On the basis of the notice of intent to participate, adequate substantive comments filed on behalf of the domestic interested parties, and an inadequate response (in this case, no response) from respondent interested parties, we determined to conduct an expedited, 120-day sunset review. As a result of this review, we find that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels listed below in the section entitled "Final Results of Review."

**DATES:** Effective July 6, 2004.

#### FOR FURTHER INFORMATION CONTACT:

Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone: (202) 482-5050.

#### SUPPLEMENTARY INFORMATION:

##### Background

On March 1, 2004, the Department published the notice of initiation of sunset review of the antidumping duty order on chloropicrin from China pursuant to section 751(c) of the Tariff Act of 1930, as amended (the "Act").<sup>1</sup> The Department received Notice of Intent to Participate on behalf of Ashta Chemicals, Inc., Arvesta Corporation, Niklor Chemical Company, and Trinity Manufacturing Inc., (collectively, "the domestic interested parties"), within the deadline specified in section 351.218(d)(1)(i) of the Department's Regulations ("Sunset Regulations"). The domestic interested parties claimed interested party status under Section 771(9)(C) of the Act as U.S. producers of chloropicrin. We received a complete response from the domestic interested parties within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). We received no response from any interested party respondents in this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited, 120-day, sunset review of this antidumping duty order.

This order remains in effect for all Chinese manufacturers, producers, and exporters.

##### Scope of the Order

The merchandise subject to this antidumping duty order is chloropicrin, also known as trichloronitromethane. A major use of the product is as a pre-plant soil fumigant (pesticide). Such merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item number 2904.90.50. The HTS item number is provided for convenience and customs purposes. The written description remains dispositive.

##### Analysis of Comments Received

All issues raised in this case are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to Jeffrey A. May, Acting Assistant Secretary for Import

<sup>1</sup> See *Initiation of Five-Year (Sunset) Reviews*, 69 FR 9585 (March 1, 2004).

Administration, dated June 29, 2004, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the finding were to be revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in room B-099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at <http://ia.ita.doc.gov/frn>, under the heading "July 2004." The paper copy and electronic version of the Decision Memorandum are identical in content.

#### Final Results of Review

We determine that revocation of the antidumping duty order on chloropicrin from China would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average percentage margins:

Manufacturers/Exporters/Producers	Weighted-average margin (percent)
China National Chemicals Import and Export Corporation (SINOCEM) .....	58.00
China-wide rate .....	58.00

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: June 29, 2004.

**Jeffrey A. May,**

Acting Assistant Secretary for Import Administration.

[FR Doc. 04-15230 Filed 7-2-04; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-868]

#### Folding Metal Tables and Chairs From the People's Republic of China: Preliminary Results of First Antidumping Duty Administrative Review

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

**ACTION:** Notice of preliminary results of first antidumping duty administrative review.

**SUMMARY:** In response to requests from interested parties, the Department of Commerce (the Department) is conducting the first administrative review of the antidumping duty order on folding metal tables and chairs ("tables and chairs") from the People's Republic of China ("PRC"). The period of review ("POR") is December 3, 2001 to May 31, 2003. See *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part and Deferral of Administrative Reviews*, 68 FR 44524, July 29, 2003 ("Initiation Notice"). We rescinded our review of two companies that did not properly file their request for review. We preliminarily determine that one company failed to cooperate by not acting to the best of its ability to comply with our requests for information and, as a result, should be assigned a rate based on adverse facts available. Finally, we have preliminarily determined that one cooperative company made sales to the United States of the subject merchandise at prices below normal value.

We invite interested parties to comment on these preliminary results. Parties that submit comments are requested to submit with each argument (1) a statement of the issue, and (2) a brief summary of the argument(s).

**DATES:** Effective July 6, 2004.

**FOR FURTHER INFORMATION CONTACT:** Anya Naschak or Jim Nunno at (202) 482-6375 or (202) 482-0783, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

#### SUPPLEMENTARY INFORMATION:

##### Background

On June 2, 2003, the Department published a notice of opportunity to

request an administrative review of the antidumping duty order on tables and chairs from the PRC. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 68 FR 32727 (June 2, 2003). On June 16, 2003, the Department received a timely request from Wok & Pan Industry, Inc. ("Wok & Pan") requesting that the Department conduct an administrative review of the antidumping duty order on tables and chairs for entries of subject merchandise made by Wok & Pan. On June 26, 2003, EJ Footwear, LLC requested the Department conduct an administrative review of entries of subject merchandise made by Dongguan Shichang Metals Factory Co., Ltd. ("Shichang"). On June 30, 2003, the Mecor Corporation ("petitioner") requested the Department conduct an administrative review of entries of subject merchandise exported by three Chinese producers/exporters: Feili Furniture Development Co., Ltd and Feili (Fujian) Co., Ltd ("Feili"), New-Tec Integration Co., Ltd. ("New-Tec"), and Shichang. On July 29, 2003, the Department initiated an administrative review of the antidumping duty order on tables and chairs from the PRC, for the period of December 3, 2001, to May 31, 2003, in order to determine whether merchandise imported into the United States is being sold at less than fair value with respect to these companies. See *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part and Deferral of Administrative Reviews*, 68 FR 44524, July 29, 2003 ("Initiation Notice").

On August 5, 2003, the Department issued antidumping duty questionnaires to the above-referenced four PRC companies. On September 3, 2003, we received a response to Section A of our antidumping duty questionnaire from Wok & Pan. On September 11, 2003, we received responses to Sections C and D of our antidumping duty questionnaire from Wok & Pan. On September 12, 2003, we received responses to Section A of our antidumping duty questionnaire from Feili, New-Tec, and Shichang. On September 30, 2003, we received responses to Sections C and D of our antidumping duty questionnaire from Feili, New-Tec, and Shichang.

On October 27, 2003, petitioner withdrew their request for review of Feili and New-Tec. On November 26, 2003, the Department rescinded, in part, its review of the administrative review of the antidumping duty order of tables and chairs with respect to Feili and New-Tec. See *Certain Folding Metal*



*Tables and Chairs From the People's Republic of China: Notice of Partial Rescission of First Antidumping Duty Administrative Review*, 68 FR 66397 (November 26, 2003) and Memorandum to the File from Case Analysts to Joseph A. Spetrini on Rescission of 2001–2003 First Administrative Review of Folding Metal Tables and Chairs from the People's Republic of China, dated November 20, 2003 ("Rescission Memo"). As discussed in the Rescission Memo, Feili and New-Tec did not properly file their request for administrative review. Therefore, because the only parties that requested a review of these companies subsequently withdrew their request, the Department determined that rescission was appropriate.

On November 5, 2003, the Department rejected Wok & Pan's Section A, C, and D responses as improperly filed under 19 CFR 351.303, and requested that Wok & Pan re-file its Section A, C, and D responses and serve all interested parties. See Letter from Abdelali Elouaradia to Wok & Pan, dated November 5, 2003 ("Wok & Pan Refiling Letter"). Also on November 5, 2003, petitioner submitted comments on Shichang's questionnaire responses. Wok & Pan resubmitted its responses on November 14, 2003. On December 1, 2003, the Department rejected Wok & Pan's responses, as improperly filed (see further discussion below). On December 3, 2003, we invited interested parties to comment on the Department's surrogate country selection and/or significant production in the potential countries, and to submit publicly-available information to value the factors of production. On December 10, 2003, we issued a supplemental questionnaire to Shichang. On January 5, 2004, we received Shichang's supplemental questionnaire response. On January 13, 2004, petitioner submitted comments on Shichang's supplemental questionnaire response.

On January 15, 2004, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2) of the Department's regulations, the Department determined to extend the time limits for these preliminary results until June 29, 2004. See *Notice of Extension of Preliminary Results of Antidumping Duty Review: Certain Folding Metal Tables and Chairs From the People's Republic of China*, 69 FR 2329 (January 15, 2004). On January 28, 2004, we issued an additional supplemental questionnaire to Shichang.

On February 2, 2004, we received petitioner's and Shichang's comments on surrogate information with which to value the factors of production in this

proceeding. None of the interested parties in this proceeding commented on the selection of a surrogate country. On February 9, 2004, we received Shichang's second supplemental questionnaire response.

#### Scope of the Antidumping Duty Order

The merchandise subject to this review consists of assembled and unassembled folding tables and folding chairs made primarily or exclusively from steel or other metal, as described below:

- (1) Assembled and unassembled folding tables made primarily or exclusively from steel or other metal ("folding metal tables"). Folding metal tables include square, round, rectangular, and any other shapes with legs affixed with rivets, welds, or any other type of fastener, and which are made most commonly, but not exclusively, with a hardboard top covered with vinyl or fabric. Folding metal tables have legs that mechanically fold independently of one another, and not as a set. The subject merchandise is commonly, but not exclusively, packed singly, in multiple packs of the same item, or in five piece sets consisting of four chairs and one table. Specifically, excluded from the scope of folding metal tables are the following:
  - a. Lawn furniture;
  - b. Trays commonly referred to as "TV trays";
  - c. Side tables;
  - d. Child-sized tables;
  - e. Portable counter sets consisting of rectangular tables 36" high and matching stools; and
  - f. Banquet tables. A banquet table is a rectangular table with a plastic or laminated wood table top approximately 28" to 36" wide by 48" to 96" long and with a set of folding legs at each end of the table. One set of legs is composed of two individual legs that are affixed together by one or more cross-braces using welds or fastening hardware. In contrast, folding metal tables have legs that mechanically fold independently of one another, and not as a set.
- (2) Assembled and unassembled folding chairs made primarily or exclusively from steel or other metal ("folding metal chairs"). Folding metal chairs include chairs with one or more cross-braces, regardless of shape or size, affixed to the front and/or rear legs with rivets, welds or any other type of fastener. Folding metal chairs include: those that are made solely of steel or other metal; those that have a back pad, a seat pad, or both a back pad and a seat pad; and those that have seats or backs made of plastic or other materials. The subject merchandise is commonly, but

not exclusively, packed singly, in multiple packs of the same item, or in five piece sets consisting of four chairs and one table. Specifically excluded from the scope of folding metal chairs are the following:

- a. Folding metal chairs with a wooden back or seat, or both;
- b. Lawn furniture;
- c. Stools;
- d. Chairs with arms; and
- e. Child-sized chairs.

The subject merchandise is currently classifiable under subheadings 9401710010, 9401710030, 9401790045, 9401790050, 9403200010 and 9403200030 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and U.S. Customs and Border Protection ("CBP") purposes, the Department's written description of the merchandise is dispositive.

#### Verification

As provided in section 782(i)(2) of the Tariff Act of 1930, as amended (the Act), and section 351.307 of the Department's regulations, we conducted verification of the questionnaire and supplemental responses of Shichang. We used standard verification procedures, including on-site inspection of the production facility of Shichang. Our verification results are outlined in the Memorandum to the File, through Abdelali Elouaradia, Program Manager, Verification of U.S. Sales and Factors of Production Information Submitted by Dongguan Shichang Metals Factory, Ltd. and Maxchief Investments, Ltd., dated April 23, 2004 ("Verification Report"). A public version of this report is on file in the Central Records Unit ("CRU") located in room B-099 of the Main Commerce Building.

#### Separate Rates

In proceedings involving non-market economy ("NME") countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to its export activities. In this review, Shichang requested a separate company-specific rate.

To establish whether a company is sufficiently independent in its export activities from government control to be entitled to a separate, company-specific rate, the Department analyzes the exporting entity in an NME country under the test established in the *Final*

*Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991) ("Sparklers"), and amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585, 22586-22587 (May 2, 1994) ("Silicon Carbide").

The Department's separate-rate test is unconcerned, in general, with macroeconomic/border-type controls (e.g., export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. See, e.g., *Certain Cut-to-Length Carbon Steel Plate From Ukraine: Final Determination of Sales at Less Than Fair Value*, 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997); and *Honey From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 60 FR 14725, 14726 (March 20, 1995). Shichang provided separate-rate information in its responses to our original and supplemental questionnaires. Accordingly, we performed a separate-rates analysis to determine whether this exporter is independent from government control (see *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 56570 (April 30, 1996), for a summary of the process by which the Department conducts this analysis).

As stated above in the "Background" section, the Department rejected Wok & Pan's questionnaire responses as untimely and improperly filed. Wok & Pan filed its Sections A, C, and D responses on September 3, 2003 and September 11, 2003. However, as noted in the Wok & Pan Refiling Letter, Wok & Pan failed to serve all interested parties with hard copies of their responses in accordance with 19 CFR 351.303. Specifically, the Department noted that Section 351.303 (f)(1)(i) requires that "a person filing a document with the Department simultaneously must serve a copy of the document on all other persons on the service list by personal service or first class mail." Therefore, the Department returned Wok & Pan's responses and gave Wok & Pan an opportunity to alleviate this discrepancy by re-filing its responses by November 13, 2003. The

Department further noted in a letter from Abdelali Elouaradia to Wok & Pan dated November 6, 2003, that if Wok & Pan did not remedy its service problems by the deadline, the Department "may not be able to consider your Section A, C or D submissions in this administrative review." The Department received Wok & Pan's submissions past the deadline, on November 14, 2003. Further, Wok & Pan failed to serve these responses on interested parties, despite explicit instructions to do so. On November 24, 2003, analyst John Drury spoke with counsel for all interested parties, regarding Wok & Pan's November 14, 2003, submission. Interested parties noted that they had not received copies of Wok & Pan's November 14, 2003, submission. See Memorandum to the File from Case Analyst John Drury: Telephone Conversation with Interested Parties regarding Wok & Pan's November 14, 2003, Submission. On December 1, 2003, the Department rejected Wok & Pan's questionnaire responses in accordance with 19 CFR 351.302(d) because they were not received in a timely manner, and were not properly served on interested parties pursuant to 19 CFR 351.303(f)(1)(i) and (ii), and informed Wok & Pan that it will be considered an interested party rather than a respondent for the duration of this administrative review. See Letter from Abdelali Elouaradia to Wok & Pan dated December 1, 2003. Therefore, the Department preliminarily determines that, for the purpose of these preliminary results, Wok & Pan has not responded to our requests for information regarding separate rates and therefore separate rates treatment is not warranted. See, e.g., *Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 57389 (November 6, 1996). Consequently, consistent with the statement in our notice of initiation, we find that, because Wok & Pan does not qualify for a separate rate, it is deemed to be part of the PRC-entity. See *Administrative Review Initiation*. See also "The PRC-wide Rate and Use of Facts Otherwise Available" section below.

Based on a review of the responses we have concluded that Shichang is owned by a Taiwanese national and incorporated in the British Virgin Islands. Therefore, we determine that no separate-rate analysis is required for this company.

#### The PRC-wide Rate and Use of Facts Otherwise Available

Shichang and Wok & Pan were given the opportunity to respond to the Department's questionnaire. We received questionnaire responses from Shichang, and we have calculated a separate rate for Shichang. The PRC-wide rate applies to all entries of subject merchandise except for entries Fromaves\notices.xml PRC producers/exporters that have their own calculated rate.

As discussed above, Wok & Pan is appropriately considered to be part of the PRC-wide entity. Therefore, we determine it is necessary to review the PRC-wide entity because it did not provide information necessary to the instant proceeding. In doing so, we note that section 776(a)(1) of the Act mandates that the Department use the facts available if necessary information is not available on the record of an antidumping proceeding. In addition, section 776(a)(2) of the Act provides that if an interested party or any other person: (A) Withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination under this title. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department shall promptly inform the party submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that party with an opportunity to remedy or explain the deficiency. Section 782(e) of the Act provides that the Department shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority. Because the PRC-wide entity provided no information, we determine that sections 782(d) and (e) of the Act are not relevant to our analysis.

According to section 776(b) of the Act, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information,"

the Department may use information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See *Statement of Administrative Action ("SAA")* accompanying the URAA, H. Doc. No. 316, 103d Cong., 2d Session at 870 (1994). Furthermore, "an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference." *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27340 (May 19, 1997).

As above stated, the PRC-wide entity did not respond to our requests for information. Because the PRC-wide entity did not respond to our request for information in the form or manner requested, we find it necessary, under section 776(a)(2) of the Act, to use facts otherwise available as the basis for the preliminary results of review for the PRC-wide entity.

In addition, pursuant to section 776(b) of the Act, we find that the PRC-wide entity failed to cooperate by not acting to the best of its ability to comply with a request for information. As noted above, the PRC-wide entity failed to respond in the proper format or in a timely manner to the Department's questionnaire, despite repeated requests that it do so. Thus, because the PRC-wide entity refused to participate fully in this proceeding, we find it appropriate to use an inference that is adverse to the interests of the PRC-wide entity in selecting from among the facts otherwise available. By doing so, we ensure that the companies that are part of the PRC-wide entity will not obtain a more favorable result by failing to cooperate than had they cooperated fully in this review.

An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. See section 776(b) of the Act. It is the Department's practice to assign the highest rate from any segment of the proceeding as total adverse facts available when a respondent fails to cooperate to the best of its ability. See, e.g., *Stainless Steel Wire Rods from India, Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 69 FR 29923, 29924 (May 26, 2004).

In accordance with the Department's practice, we have preliminarily assigned to the PRC-wide entity (including Wok & Pan) the rate of 70.71 percent as

adverse facts available. This rate is the PRC-wide rate established in the LTFV investigation based on information contained in the petition. See Memorandum to the File from Abdelali Elouaradia to Richard Weible: Final Determination in the Antidumping Investigation of Folding Metal Tables and Chairs from the People's Republic of China: Total Facts Available Corroboration Memorandum, dated April 17, 2002 ("Final AFA Memo"). In selecting a rate for adverse facts available, the Department selects a rate that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." See *Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

We note that information from a prior segment of this proceeding constitutes "secondary information," and section 776(c) of the Act provides that, when the Department relies on such secondary information rather than on information obtained in the course of a review, the Department shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is described in the SAA as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." See SAA at 870. The SAA states that the independent sources may include published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation or review. The SAA also clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. See SAA at 870. As noted in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) ("TRBs"), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.

We note that in the LTFV investigation, the Department corroborated the information in the petition that formed the basis of the 70.71 percent PRC-wide entity rate. See Final AFA Memo. Specifically, in the LTFV investigation, the Department compared the prices in the petition to the prices submitted by individual respondents for comparable merchandise. For normal value ("NV"), we compared petitioners' factor-consumption data to data reported by respondents. See Final AFA Memo.

In order to satisfy the corroboration requirements under section 776(c) of the Act, in the instant review, we reviewed the Department's corroboration of the petition rates from the LTFV investigation. See Memorandum to the File from Case Analyst, through Edward C. Yang, Office Director, The Use of Adverse Facts Available for non-responsive companies (i.e., Wok & Pan Industry, Inc. ("Wok & Pan")), and the PRC-wide entity; Corroboration of Secondary Information, dated June 29, 2004 ("AFA & Corroboration Memo"). No information has been presented to call into question the reliability of the information from the investigation. Therefore, we find that the petition information is reliable. See AFA & Corroboration Memo at 1 and Attachment 2.

We further note that, with respect to the relevance aspect of corroboration, the Department stated in TRBs that it will "consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin." See TRBs at 61 FR 57392. See also *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (disregarding the highest margin in the case as best information available because the margin was based on another company's uncharacteristic business expense resulting in an extremely high margin). The rate used is the rate currently applicable to all exporters subject to the PRC-wide rate. Further, as noted above, there is no information on the record that the application of this rate would be inappropriate in this administrative review or that the margin is not relevant. Thus, we find that the information is relevant. Therefore, the Department preliminarily determines that the PRC-wide entity rate of 70.71 is reliable and relevant, and has probative

value within the meaning of section 776(c) of the Act.

#### Normal Value Comparisons

To determine whether Shichang's sales of the subject merchandise to the United States were made at prices below normal value, we compared their United States prices to normal values, as described in the "United States Price" and "Normal Value" sections of this notice.

#### United States Price

For Shichang, we based United States price on export price ("EP") in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation, and constructed export price ("CEP") was not otherwise warranted by the facts on the record. We calculated EP based on the packed FOB price from the exporter to the first unaffiliated customer in the United States. Where applicable, we deducted foreign inland freight, and brokerage and handling from the starting price (gross unit price), in accordance with section 772(c) of the Act.

#### Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using a factors-of-production methodology if (1) the merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Shichang did not contest such treatment in this review. Accordingly, we have applied surrogate values to the factors of production to determine NV for Shichang. See Factors of Production Valuation Memorandum for the Preliminary Results of the First Administrative Review of the Antidumping Duty Order on Folding Metal Tables and Chairs from the People's Republic of China, dated June 29, 2004 ("Factor Valuation Memo"). A public version of this memorandum is on file in the CRU located in room B-099 of the Main Commerce Building.

We calculated NV based on factors of production and market economy prices paid by Shichang for certain inputs in accordance with section 773(c)(4) of the

Act and section 351.408(c) of our regulations. Consistent with the LTFV investigation of this order, we determine that India (1) is comparable to the PRC in level of economic development, and (2) is a significant producer of comparable merchandise. See *Notice of Final Determination of Sales at Less Than Fair Value: Folding Metal Tables and Chairs from the People's Republic of China*, 67 FR 20090 (April 24, 2002) ("Final Determination"). Accordingly, we valued the factors of production for inputs purchased from a NME using publicly available information from India. In selecting the surrogate values for inputs where Shichang did not purchase from a market economy supplier, we considered the quality, specificity, and contemporaneity of the data, in accordance with our practice. Where appropriate, we adjusted Indian import prices by adding foreign inland freight expenses in order to derive delivered prices. When we used Indian import values to value inputs sourced domestically by PRC suppliers, we added to Indian surrogate values a surrogate freight cost calculated using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest port of export to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1408 (Fed. Cir. 1997).

We valued raw material inputs using the weighted-average unit import values derived from the World Trade Atlas, which notes that its data was obtained from the Ministry of Commerce of India ("Indian Import Statistics") for the time period corresponding to the POR (see Factor Valuation Memo). When we relied on Indian import values to value inputs, in accordance with the Department's practice, we excluded imports from both NMEs and countries deemed to have generally available export subsidies (i.e., Indonesia, Korea, and Thailand) from our surrogate value calculations. For those Indian rupee values not contemporaneous with the POR, we adjusted for inflation using wholesale price indices published in the International Monetary Fund's International Financial Statistics.

For the inputs used in the production of subject merchandise that were purchased from a market economy supplier and paid for in a convertible currency, § 351.408(c)(1) of the Department's regulations stipulates that "where a factor is purchased from a market economy supplier and paid for in a market economy currency, the Secretary normally will use the price

paid to the market economy supplier." For the inputs that Shichang demonstrated that it purchased the raw material from a market economy supplier and paid in convertible currency, we used the purchase price paid, as reported in Shichang's Second Supplemental questionnaire response dated February 9, 2004, at Exhibit 6, and Verification Exhibit 16. Modifications were made to these prices as described in the Proprietary Memorandum to the File from Anya Naschak through Edward C. Yang: Preliminary Results Analysis Memorandum for Dongguan Shichang Metals Factory Co., Ltd., and Maxchief Investments Ltd., dated June 29, 2004 ("Analysis Memo").

It is, however, the Department's practice to exclude the market economy purchase price if it has reason to believe or suspect these prices may be dumped or subsidized prices. See *Final Determination for the 1998-99 Administrative Review of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China*, 66 FR 1953 (January 10, 2001) ("TRBs 2001"), Issues and Decision Memorandum at Comment 1. Petitioners have placed on the record documentation indicating that the cold rolled steel purchased by Shichang is being sold at dumped prices (for a description of the input and its country of origin, see Analysis Memo). Respondents did not respond to this information on the record. Therefore, the Department has determined that for these preliminary results, Shichang's purchases of cold rolled steel were purchased at dumped prices. Because the Department's practice is to exclude prices that are dumped or subsidized, the Department has calculated the value for this input using a surrogate value derived from Indian Import Statistics, rather than the purchase price paid.

In accordance with § 351.301(c)(3)(ii) of the Department's regulations, for the final results of an antidumping administrative review, interested parties may submit publicly available information to value factors of production within 20 days after the date of publication of these preliminary results.

#### Currency Conversion

We made currency conversions pursuant to section 351.415 of the Department's regulations at the rates certified by the Federal Reserve Bank.

#### Preliminary Results of Review

We preliminarily determine that the following antidumping duty margins exist:

Exporter	POR	Margin (percent)
Dongguan Shichang Metals Factory Ltd .....	12/03/01-05/31/03	2.97
PRC-wide Entity (including Wok & Pan) .....	12/03/01-05/31/03	70.71

For details on the calculation of the antidumping duty weighted-average margin for Shichang, see Analysis Memo. A public version of this memorandum is on file in the CRU.

#### Assessment Rates

Pursuant to section 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (i.e., at or above 0.50 percent), the Department will issue appraisal instructions directly to CBP to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculated importer-specific assessment rates for the subject merchandise by aggregating the antidumping duties due for all U.S. sales to each importer and dividing the amount by the total quantity of the sales to that importer. If these preliminary results are adopted in our final results of review, we will direct CBP to assess the resulting rate against the total quantity for the subject merchandise on each of Shichang's importer's/customer's entries during the POR.

#### Cash-Deposit Requirements

The following cash-deposit rates will be effective upon publication of the final results of this review for all shipments of tables and chairs from the PRC entered, or withdrawn from warehouse, for consumption on or after publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For subject merchandise exported by Shichang, the cash-deposit rate will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated or reviewed companies not listed above that have separate rates, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) the cash-deposit rate for all other PRC exporters (including Wok & Pan) will be the "PRC-wide" rate established in the final results of this review; and (4) the cash deposit rate for all other non-PRC exporters will be the rate applicable to

the PRC exporter that supplied that exporter.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

#### Schedule for Final Results of Review

The Department will disclose calculations performed in connection with the preliminary results of this review within five days of the date of publication of this notice in accordance with section 351.224(b) of the Department's regulations. Any interested party may request a hearing within 30 days of publication of this notice in accordance with section 351.310(c) of the Department's regulations. Any hearing would normally be held 37 days after the publication of this notice, or the first workday thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with section 351.309(c)(ii) of the Department's regulations. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed. If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing

within 48 hours before the scheduled time. The Department will issue the final results of this review, which will include the results of its analysis of issues raised in the briefs, not later than 120 days after the date of publication of this notice.

#### Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are published in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: June 29, 2004.

Jeffrey A. May,

Acting Assistant Secretary for Import Administration.

[FR Doc. 04-15231 Filed 7-2-04; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-831]

#### Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review

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

**SUMMARY:** In response to a request from a new shipper, the Department of Commerce is conducting a new shipper review of the antidumping duty order on fresh garlic from the People's Republic of China. The period of review is November 1, 2002, through October 31, 2003.

We preliminarily determine that Jinxiang Shanyang Freezing Storage Co., Ltd., has made sales in the United States at prices below normal value.

We invite interested parties to comment on these preliminary results.

Parties who submit comments are requested to submit with each argument a statement of the issue and a brief summary of the argument.

**EFFECTIVE DATE:** July 6, 2004.

**FOR FURTHER INFORMATION CONTACT:**

Brian Ellman or Lyn Johnson, Office of Antidumping/Countervailing Duty Enforcement 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482-4852 or (202) 482-5287, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On January 7, 2004, we published in the *Federal Register* the *Notice of Initiation of New Shipper Antidumping Duty Review: Fresh Garlic from the People's Republic of China* (69 FR 903) for entries of subject merchandise grown by Kaifeng Wangtun Fresh Vegetables Factory (Wangtun) and exported by Jinxiang Shanyang Freezing Storage Co., Ltd. (Shanyang). The period of review (POR) is November 1, 2002, through October 31, 2003.

On June 4, 2004, the petitioners (the Fresh Garlic Producers Association and its individual members) submitted comments addressing the Department's approach to the valuation of the factors of production (FOP). In that submission, the petitioners contend that the Department's current FOP methodology does not account for certain significant cost components (e.g., the cost of leasing farmland). Furthermore, the petitioners argue that many of the consumption factors reported by the respondents in segments of this proceeding are substantially disparate and anomalous, and thus call into question the basic credibility of the data. As such, citing the Department's decision in *Final Determination of Sales at Less Than Fair Value: Certain Frozen Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003), the petitioners argue that the Department should determine the normal value of garlic based on a surrogate value for raw (i.e., unprocessed) garlic, rather than valuing upstream input factors in order to determine normal value.

We have addressed the petitioners' comments with respect to the valuation of land leasing. For a further discussion, see the "Factors of Production" section below and the memorandum from Brian Ellman to the File entitled "Analysis for the Preliminary Results of the New Shipper Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Jinxiang

Shanyang Freezing Storage Co., Ltd., and Wangtun Fresh Vegetable Factory," dated June 28, 2004 (*Preliminary Results Analysis Memorandum*). With respect to the petitioners' other comments concerning the Department's FOP methodology, we continue to evaluate these comments and we will consider them further for the final results of this new shipper review. We invite the respondent to comment on the petitioners' June 4, 2004, submission in its case brief to the Department.

**Scope of the Order**

The products subject to the antidumping duty order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay.

The scope of this order does not include the following: (a) garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive. In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to U.S. Customs and Border Protection (CPB) to that effect.

**Verification**

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), we verified information provided by Wangtun and Shanyang using standard verification procedures, including on-site inspection of the producer's facilities, the examination of relevant

sales and financial records, and the selection of original documentation containing relevant information. Our verification results are outlined in the public version of the verification report dated June 28, 2004, which is on file in the Central Records Unit (CRU), Room B-099 of the main Department of Commerce building. See the memorandum to the File from Brian Ellman entitled "Verification of the Response of Jinxiang Shanyang Freezing Storage Co., Ltd., and Wangtun Fresh Vegetable Factory in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China," dated June 28, 2004 (*Verification Report*).

**Separate Rates**

The Department of Commerce (the Department) has treated the People's Republic of China (PRC) as a non-market-economy (NME) country in all past antidumping investigations (see, e.g., *Bulk Aspirin From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 65 FR 33805 (May 25, 2000), and *Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 19873 (April 13, 2000)) and in prior segments of this proceeding. A designation as an NME remains in effect until it is revoked by the Department. See section 771(18)(C) of the Act. Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate.

It is the Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in *Sparklers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified in *Silicon Carbide from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

Shanyang provided separate-rate information in its responses to our original and supplemental questionnaires. Accordingly, we performed a separate-rates analysis to

determine whether the exporter is independent from government control of their export and sales-related activities (see *Bicycles From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 61 FR 56570 (April 30, 1996)).

#### 1. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; (3) any other formal measures by the government decentralizing control of companies.

Shanyang has placed on the record a number of documents to demonstrate absence of *de jure* control including the "Foreign Trade Law of the People's Republic of China" and the "Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations." The Department has analyzed such PRC laws and found that they establish an absence of *de jure* control. See, e.g., *Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of New Shipper Review*, 66 FR 30695, 30696 (June 7, 2001). We have no information in this proceeding that would cause us to reconsider this determination.

#### 2. Absence of *De Facto* Control

Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. See *Silicon Carbide* at 22587.

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. See *Silicon Carbide* at 22586-22587. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject

to a degree of governmental control which would preclude the Department from assigning separate rates.

Shanyang reported that it is a limited-liability company owned by private investors. It has asserted the following: (1) There is no government participation in setting export prices; (2) sales managers and authorized employees have the authority to bind sales contracts; (3) it does not have to notify any government authorities of management selections; (4) there are no restrictions on the use of export revenue; (5) it is responsible for financing its own losses. Shanyang's questionnaire responses do not suggest that pricing is coordinated among exporters. During our analysis of the information on the record we found no information indicating the existence of government control. Consequently, we preliminarily determine that Shanyang has met the criteria for the application of a separate rate.

#### The Use of Facts Otherwise Available

Section 776(a)(2) of the Act provides that, if, in the course of an antidumping review, an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, (C) significantly impedes a proceeding under the antidumping statute, or (D) provides such information but the information cannot be verified, then the Department shall, subject to sections 782(d) and (e) of the Act, use the facts otherwise available in reaching the applicable determination.

As discussed in detail in the *Verification Report* and the *Preliminary Results Analysis Memorandum*, while reviewing the companies' attendance and payroll records in the context of verifying the reported labor factors, we found that both Shanyang and Wangtun did not include in the figures reported to the Department the hours worked by certain full-time employees whose roles had been identified as being related to the production of fresh garlic. See *Verification Report* at pages 25-27.

Despite our attempts to verify the information that was submitted on behalf of both companies (and which is necessary to the determination), we could not verify certain information pertaining to labor factors, as required under section 782(i) of the Act. Section 776(a)(2)(D) of the Act warrants the use of facts otherwise available in reaching a determination when information is provided by a respondent but that information cannot be verified. We determine that, in accordance with section 776(a)(2)(D) of the Act, the use

of facts available is appropriate for calculating the labor hours worked by Shanyang for processing activities (*i.e.*, unskilled processing labor) and by Wangtun for production activities (*i.e.*, indirect growing labor) because we were unable to verify the information submitted by the companies with respect to labor. Consequently, we have revised Shanyang's and Wangtun's reported labor factors to include the total hours worked by all employees whose roles have been identified as being related to the production of subject merchandise. For a detailed discussion and the revised calculation of Shanyang's and Wangtun's labor-usage factors of production, see the *Preliminary Results Analysis Memorandum* at Attachments 1 and 2.

#### Export Price

In accordance with section 772(a) of the Act, we have used the export-price methodology because the sale to the unaffiliated purchaser was made outside the United States prior to importation of the subject merchandise into the United States. We calculated the export price based on the price from Shanyang and Wangtun to the unaffiliated U.S. customer. We made deductions, where appropriate, from the gross unit price to account for inland freight and brokerage and handling. Because certain domestic charges, such as those for foreign inland freight, were provided by NME companies, we valued those charges based on surrogate rates from India. See the memorandum from Lyn Johnson to the File entitled "Factors Valuations for the Preliminary Results of Review for Jinxiang Shanyang Freezing Storage Co., Ltd.," dated June 28, 2004 (*FOP Memorandum*).

For a more detailed explanation of the company-specific adjustments that we made in the calculation of the dumping margin for these preliminary results, see the *Preliminary Results Analysis Memorandum*.

#### Normal Value

##### 1. Surrogate Country

When investigating imports from an NME country, section 773(c)(1) of the Act directs the Department to base normal value, in most circumstances, on the NME producer's factors of production valued in a surrogate market-economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall use, to the extent practicable, the prices or costs of factors of production in one or more market-economy

countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the "Factor Valuations" section below.

The Department has determined that India, Indonesia, Sri Lanka, the Philippines, Morocco, and Egypt are countries comparable to the PRC in terms of economic development. See the memorandum to Laurie Parkhill regarding the request for a list of surrogate countries dated May 19, 2004. In addition to being among the countries comparable to the PRC in economic development, India is a significant producer of the subject merchandise. We have used India as the surrogate country and, accordingly, have calculated normal value using Indian prices to value the PRC producer's factors of production, when available and appropriate. We have obtained and relied upon publicly available information. See the memorandum to the File regarding the selection of a surrogate country dated June 28, 2004.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of this new shipper review, interested parties may submit publicly available information to value the factors of production until twenty days following the date of publication of these preliminary results.

## 2. Factors of Production

Section 773(c)(1) of the Act provides that the Department shall determine the normal value using a factors-of-production methodology if (1) the merchandise is exported from an NME country and (2) the information does not permit the calculation of normal value using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Factors of production include the following elements: (1) hours of labor required, (2) quantities of raw materials employed, (3) amounts of energy and other utilities consumed, and (4) representative capital costs. We used factors of production reported by the producer or exporter for materials, energy, labor, and packing. We valued all the input factors using publicly available information, as discussed in the "Surrogate Country" and "Factor Valuations" sections of this notice.

## 3. Factor Valuations

In accordance with section 773(c) of the Act, we calculated normal value based on factors of production reported by the producer or exporter for the POR. To calculate normal value, we

multiplied the reported per-unit factor quantities by publicly available surrogate values from India. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs in order to make them delivered prices. We calculated the freight costs based on the shortest reported distance from the domestic supplier to the factory, in accordance with *Sigma Corporation v. United States*, 117 F. 3d 1401, 1407-08 (CAFC 1997). For a detailed description of the surrogate values selected for these preliminary results, see the *FOP Memorandum*.

For those Indian-rupee values not contemporaneous with the POR, we adjusted for inflation using wholesale price indices for India published in the International Monetary Fund's *International Financial Statistics*.

Except as specified below, we valued raw-material inputs using the weighted-average unit import values derived from the World Trade Atlas Trade Information System (Internet Version 4.3e) (*WTA*). The source of the *WTA* data for India is the Directorate General of Commercial Intelligence and Statistics of the Indian Ministry of Commerce and Industry. We selected *WTA* data contemporaneous to the POR. We valued garlic seed based on pricing data from the *NHRDF News Letter*, published by India's National Horticultural Research and Development Foundation. We valued diesel fuel based on data from the International Energy Agency's *Energy Prices & Taxes: Quarterly Statistics* (Third Quarter, 2003). We valued water using the averages of municipal water rates from Asian Development Bank's *Second Water Utilities Data Book: Asian and Pacific Region* (October 1997).

For labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rate that appears on the website for Import Administration (<http://ia.ita.doc.gov/wages/01wages/01wages.html>). The source of this wage-rate data is the International Labor Organization's *Yearbook of Labour Statistics 2002* (Geneva, 2002), chapter 5B: Wages in Manufacturing.

The respondent claimed an adjustment for revenue earned on the sale of garlic sprouts. We found that sprouts are a by-product of garlic and deducted an offset amount from normal value for this by-product. As a surrogate value for the sale of sprouts in the PRC, we used an average of Indian wholesale prices for green onions published by the

Azadpur Agricultural Produce Marketing Committee.

We valued the truck rate based on an average of truck rates that were published in the Indian publication, *Chemical Weekly*, during the POR. We valued foreign brokerage and handling charges based on a value calculated for the less-than-fair-value investigation of certain hot-rolled carbon steel flat products from India.

We used the financial information of the tea company, Parry Agro Industries Limited (Parry Agro). We found this company to be representative of the financial experiences of the producer and exporter because Parry Agro produced and processed a product that was not highly processed or preserved prior to its sale. Thus, in order to value factory overhead, selling, general and administrative expenses (SG&A), and profit, we used rates derived from Parry Agro's 2001/2002 financial statements. We examined the annual report of Parry Agro and were not able to determine whether Parry Agro performed packing activities associated with the tea it produced as its financial information does not indicate that it incurred any packing expenses. Furthermore, in the event Parry Agro did incur packing expenses, we do not know the extent to which such expenses are included in the values we obtained from its income statement for purposes of calculating the surrogate financial ratios because packing expenses are not included as a line item or distinguished or described in the income statement in any way. For the preliminary results of this review, in calculating the amount of overhead, SG&A, and profit included in the normal value, we have determined not to apply the surrogate financial ratios to production costs that include packing expenses. We have, however, calculated separate surrogate values for materials and labor associated directly with packing fresh garlic from the PRC and added these packing expenses to the calculation of normal value.

We have valued electricity consumption based on Wangtun's reported use of electricity unrelated to obtaining water (e.g., for cold storage located at the production/processing facility). We applied the usage figure reported by the respondent to a surrogate value for electricity that we obtained from the International Energy Agency's *Energy Prices & Taxes: Quarterly Statistics* (Third Quarter, 2003).

Because we are valuing electricity consumption in the manner described, we removed the line item for "Power and Fuel" costs from the numerator of the surrogate financial ratio for selling,



general, and administrative (SG&A) expenses. Further, in calculating the amount of overhead, SG&A expenses, and profit included in the normal value, we have not applied the surrogate financial ratios to production costs that include electricity costs.

In response to the petitioners' comments pertaining to the valuation of the cost of land, upon further analysis of this issue, we have determined that this factor is an important component in the cost build-up of normal value and is not reflected in the financial ratios calculated from Parry Agro's income statements. As such, we have valued the cost of land using information contained in a Notification of Policy for Land Revenue issued by the State of Rajasthan, India.

Based on all available information, we have determined that this land-lease rate serves as the most reliable surrogate value for calculating a cost for leasing the farmland used to grow the subject merchandise. We have converted the values provided by the Indian state government and calculated a per-mu annual land-lease cost. In our margin calculation, we have added the cost of leasing land to fixed overhead. See the *Preliminary Results Analysis Memorandum*.

#### Preliminary Results of the New Shipper Review

We preliminarily determine that the following dumping margin exists for the period November 1, 2002, through October 31, 2003:

Grower and Exporter Combination	Weighted-average percentage margin
Grown by Kaifeng Wangtun Fresh Vegetables Factory and Exported by Jinxiang Shanyang Freezing Storage Co., Ltd. ....	25.38

Case briefs or other written comments in at least six copies must be submitted to the Assistant Secretary for Import Administration no later than thirty days after the publication of these preliminary results. Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs are due no later than five days after the submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. In accordance with 19 CFR 351.310, we will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a

hearing is requested by an interested party. If we receive a request for a hearing, we plan to hold the hearing three days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within thirty days after the date of publication of the preliminary results of this review in the *Federal Register*. Requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

The Department will publish the final results of this new shipper review, including the results of its analysis of issues raised in any case or rebuttal briefs, within 90 days of publication of this notice. See 19 CFR 351.214(h)(1).

#### Assessment Rates

Upon completion of this new shipper review, the Department will determine, and CBP will assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP upon completion of this review. If these preliminary results are adopted in our final results of review, we will direct CBP to assess the antidumping duties applicable to sales of the subject merchandise on each of the entries of this exporter's importer/customer during the POR.

#### Cash-Deposit Requirements

The following cash-deposit requirements will be effective upon publication of the final results of the new shipper review for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for subject merchandise grown by Kaifeng Wangtun Fresh Vegetables Factory and exported by Jinxiang Shanyang Freezing Storage Co., Ltd., the cash-deposit rate will be that established in the final results of this review; (2) for all other subject merchandise exported by Jinxiang Shanyang Freezing Storage Co., Ltd., the cash-deposit rate will be the PRC-wide rate, which is 376.67 percent; (3) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate,

the cash-deposit rate will be the PRC-wide rate of 376.67 percent; and (4) for all non-PRC exporters of subject merchandise, the cash-deposit rate will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

#### Notification to Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the period of this review. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing the preliminary results of this new shipper review in accordance with sections 751(a)(2)(B)(iv) and 777(i) of the Act.

Dated: June 28, 2004.

Jeffrey May,

Acting Assistant Secretary for Import Administration.

[FR Doc. 04-15228 Filed 7-2-04; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-101]

#### Greige Polyester Cotton Printcloth From the People's Republic of China: Final Results of Expedited Sunset Review of Antidumping Duty Order

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

**ACTION:** Notice of final results of the second expedited sunset review of antidumping duty order on Greige Polyester Cotton Printcloth from the People's Republic of China.

**SUMMARY:** On March 1, 2004, the Department of Commerce ("the Department") published the notice of initiation of the second sunset review of the antidumping duty order on Greige Polyester Cotton Printcloth from the People's Republic of China pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). See *Initiation of Five Year ("Sunset") Reviews*, 69 FR 9585 (March 1, 2004). Because the Department did not receive any response from respondent interested

parties, we determined to conduct an expedited (120-day) sunset review. See 19 CFR 351.218(e)(1)(ii)(C)(2). As a result of this review, we find that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels listed below in the section entitled "Final Results of Review."

**EFFECTIVE DATE:** July 6, 2004.

**FOR FURTHER INFORMATION CONTACT:**

Hilary E. Sadler, Esq., Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 2837, Washington, DC 20230; telephone: (202) 482-4340.

**SUPPLEMENTARY INFORMATION:**

**Background**

On March 1, 2004, the Department published the notice of initiation of the second sunset review of the antidumping duty order on greige polyester cotton printcloth from the People's Republic of China pursuant to section 751(c) of the Act.<sup>1</sup> The Department received the Notice of Intent to Participate on behalf of Alice Manufacturing Company, Inc. and Mount Vernon Mills, Inc., the domestic interested parties, within the deadline specified in section 351.218(d)(1)(i) of the Department's Regulations ("Sunset Regulations"). The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as domestic producers of greige polyester cotton printcloth. We received complete substantive responses from all domestic interested parties within the 30-day deadline specified in the Sunset Regulations under section 351.218(d)(3)(i). We received nothing from respondent interested parties. As a result, pursuant to section 751(c)(5)(A) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120-day) sunset review of this finding.

**Scope of Review**

The scope remains unchanged from the Final Results of Expedited Sunset Review; Greige Polyester Cotton Printcloth from the People's Republic of China, 64 FR 13399 (March 18, 1999). The merchandise subject to this antidumping order is greige polyester cotton printcloth, other than 80 x 80 type. Greige polyester cotton printcloth is of chief weight cotton,<sup>2</sup> unbleached

<sup>1</sup> *Initiation of Five-Year (Sunset) Reviews*, 69 FR 9585 (March 1, 2004).

<sup>2</sup> In the scope from the original investigation, the Department defined the subject merchandise by chief value (*i.e.*, the subject merchandise was of

and uncolored printcloth. The term "printcloth" refers to plain woven fabric, not napped, not fancy or figured, of singles yarn, not combed, of average yarn number 43 to 68,<sup>3</sup> weighing not more than 6 ounces per square yard, of a total count of more than 85 yarns per square inch, of which the total count of the warp yarns per inch and the total count of the filling yarns per inch are each less than 62 percent of the total count of the warp and filling yarns per square inch. This merchandise is currently classifiable under Harmonized Tariff Schedule (HTSUS) item 5210.11.6060. The HTSUS item numbers are provided for convenience and U.S. Customs purposes. The written description remains dispositive.

**Analysis of Comments Received**

All issues raised in this case are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to Jeffrey A. May, Acting Assistant Secretary for Import Administration, dated June 29, 2004, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the finding were to be revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in room B-099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at <http://ia.ita.doc.gov/frn>, under the heading "July 2004." The paper copy and electronic version of the Decision Memo are identical in content.

**Final Results of Review**

We determine that revocation of the antidumping duty finding on Greige Polyester Cotton Printcloth from the

chief value cotton). For the purposes of this review, we have incorporated Custom's conversion to chief weight (*i.e.*, the subject merchandise is of chief weight cotton). See Memorandum, RE: Greige Polyester Cotton Printcloth-Scope, February 25, 1999.

<sup>3</sup> Under the English system, this average yarn number count translates to 26 to 40. The average yarn number counts reported in previous scope descriptions by the Department are based on the English system of yarn number counts. Per phone conversations with U.S. Customs and Border Protection ("Customs") officials, Customs now relies on the metric system to establish average yarn number counts. Thus, the 26 to 40 average yarn number count under the English system translates to a 43 to 68 average yarn number count under the metric system. See Memorandum, RE: Greige Polyester Cotton Printcloth-Scope, February 19, 1999.

People's Republic from China would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/Exporters/Producers	Weighted-average margin percent
China-wide .....	22.4

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: June 29, 2004.

**Jeffrey A. May,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 04-15229 Filed 7-2-04; 8:45 am]

BILLING CODE 3510-DS-P

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[A-570-855]

**Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China: Preliminary Results, Partial Rescission, and Partial Deferral of 2002-2003 Administrative Review**

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

**ACTION:** Notice of preliminary results, partial rescission, and partial deferral of 2002-2003 administrative review.

**SUMMARY:** The Department of Commerce is conducting the third administrative review of the antidumping duty order on non-frozen apple juice concentrate from the People's Republic of China covering the period June 1, 2002, through May 31, 2003.

The administrative review covers one exporter: Gansu Tongda Fruit Juice and Beverage Company. We preliminarily determine that sales of non-frozen apple juice concentrate from the People's Republic of China were made below

normal value during the period June 1, 2002, through May 31, 2003.

If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection to assess antidumping duties for Gansu Tongda Fruit Juice Beverage Company based on the differences between the export price and normal value on all appropriate entries.

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

**DATES:** Effective: July 6, 2004.

**FOR FURTHER INFORMATION CONTACT:** Audrey Twyman, Stephen Cho, or John Brinkmann, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3534, (202) 482-3798, or (202) 482-4126, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Period of Review

The period of review ("POR") is June 1, 2002, through May 31, 2003.

#### Background

On June 5, 2000, the Department of Commerce ("the Department") published in the *Federal Register* (65 FR 35606) the antidumping duty order on certain non-frozen apple juice concentrate from the People's Republic of China ("PRC"). On June 2, 2003, the Department notified interested parties of the opportunity to request an administrative review of this order (68 FR 32727). On June 27, 2003, Sanmenxia Lakeside Fruit Juice Co., Ltd. ("Lakeside") and Xian Yang Fuan Juice Co., Ltd. ("Xian Yang") requested an administrative review. On June 30, 2003, Xian Asia Qin Fruit Co., Ltd. ("Xian Asia"), Shaanxi Hengxing Fruit Juice Co., Ltd. ("Hengxing"), and Gansu Tongda Fruit Juice Beverage Company ("Gansu Tongda") requested an administrative review.

On June 30, 2003, Yantai Oriental Juice Co., Ltd. ("Oriental"), SDIC Zhonglu Fruit Juice Co., Ltd. ("Zhonglu"), and Shaanxi Haisheng Fresh Fruit Juice Co., Ltd. ("Haisheng") requested an administrative review for the period June 1, 2002, through May 31, 2003, but also requested that the review be deferred for one year pursuant to 19 CFR 351.213(c). In the same letter they also requested a revocation pursuant to 19 CFR 351.222(e). On July 9, 2003, Lakeside also submitted a letter requesting a one-year deferral of the

third administrative review. We note that Oriental, Zhonglu, Haisheng and Lakeside were subsequently excluded from the order pursuant to the February 13, 2004, *Notice of Amended Final Determination and Amended Order Pursuant to Final Court Decision*, (69 FR 7197).

On July 29, 2003, we published a notice of initiation of this antidumping duty administrative review (68 FR 44524) for Gansu Tongda, Hengxing, Xian Asia and Xian Yang. In the same notice we also deferred the administrative review for Zhonglu, Oriental, Lakeside and Haisheng.

On August 6, 2003, the Department sent questionnaires to the legal representatives of Gansu Tongda, Hengxing, Xian Asia and Xian Yang and a copy to the Embassy of the PRC in the United States.

On August 18, 2003, Xian Yang and Xian Asia requested that the Department rescind their administrative reviews. On August 26, 2003, Hengxing requested that the Department rescind its administrative review. Pursuant to 19 CFR 351.213(d)(1), because Xian Asia, Xian Yang, and Hengxing withdrew their requests for review within 90 days of the date of publication of the notice of initiation of this review and no other party requested a review of these companies, we are rescinding the administrative reviews of Xian Asia, Xian Yang, and Hengxing.

We received the Section A response from Gansu Tongda ("the respondent") on October 17, 2003, and the Sections C and D responses on November 14, 2003. We sent out a supplemental questionnaire on December 22, 2003, and received a response on January 12, 2004.

On January 6, 2004, the Department invited interested parties to comment on surrogate country selection and to provide publicly available information for valuing the factors of production. We received a response from Gansu Tongda on February 17, 2004.

On March 4, 2004, we published *Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China: Extension of Time Limit for the Preliminary Results of the 2002-2003 Antidumping Duty Administrative Review*, (69 FR 10204) and sent a supplemental questionnaire on March 4, 2004. We received the supplemental response on April 8, 2004. We sent a third supplemental questionnaire on April 20, 2004, and received a response on April 28, 2004.

#### Scope of the Order

The product covered by this order is certain non-frozen apple juice

concentrate ("AJC"). AJC is defined as all non-frozen concentrated apple juice with a Brix scale of 40 or greater, whether or not containing added sugar or other sweetening matter, and whether or not fortified with vitamins or minerals. Excluded from the scope of this order are: Frozen concentrated apple juice; non-frozen concentrated apple juice that has been fermented; and non-frozen concentrated apple juice to which spirits have been added.

The merchandise subject to this order is classified in the *Harmonized Tariff Schedule of the United States* ("HTSUS") at subheadings 2106.90.52.00, and 2009.70.00.20 before January 1, 2002, and 2009.79.00.20 after January 1, 2002. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

#### Separate Rates Determination

The Department has treated the PRC as a nonmarket economy ("NME") country in all previous antidumping cases. In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended ("the Act"), any determination that a foreign country is an NME shall remain in effect until revoked by the Department. None of the parties to this proceeding have contested such treatment in this review. Moreover, parties to this proceeding have not argued that the PRC AJC industry is a market-oriented industry. Therefore, we are treating the PRC as an NME country within the meaning of section 773(c) of the Act.

We allow companies in NME countries to receive separate antidumping duty rates for purposes of assessment and cash deposits when those companies can demonstrate an absence of government control, both in law and in fact, with respect to export activities.

To establish whether a company operating in an NME country is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("Sparklers"), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("Silicon Carbide"). Under the separate rates criteria, the Department assigns separate rates in NME cases only if a respondent can demonstrate the absence of both *de*

*jure* and *de facto* governmental control over export activities.

#### Absence of De Jure Control

Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. See *Sparklers*, 56 FR at 20589.

Gansu Tongda has placed documents on the record to demonstrate the absence of *de jure* government control. These documents include the "Foreign Trade Law of the People's Republic of China" ("Foreign Trade Law"), the "Company Law of the PRC" ("Company Law"), and the "Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations" ("Administrative Regulations"). The Foreign Trade Law grants autonomy to foreign trade operators in management decisions and establishes accountability for their own profits and losses. In prior cases, the Department has analyzed the Foreign Trade Law and found that it establishes an absence of *de jure* control. See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China*, 60 FR 29571 (June 5, 1995); *Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255 (December 31, 1998) ("*Mushrooms Final*"). We have no new information in this proceeding which would cause us to reconsider this determination.

The Company Law is designed to meet the PRC's needs of establishing a modern enterprise system, and to maintain social and economic order. The Department has noted that the Company Law supports an absence of *de jure* control because of its emphasis on the responsibility of each company for its own profits and losses, thereby decentralizing control of companies.

Like the Company Law, the Administrative Regulations safeguard social and economic order, as well as establish an administrative system for the registration of corporations. The Department has reviewed the Administrative Regulations and concluded that they show an absence of *de jure* control by requiring companies to bear civil liabilities independently,

thereby decentralizing control of companies.

According to the respondent, AJC exports are not affected by quota allocations or export license requirements. The Department has examined the record in this case and does not find any evidence that AJC exports are affected by quota allocations or export license requirements. By contrast, the evidence on the record demonstrates that producers/exporters have the autonomy to set the price at whatever level they wish through independent price negotiations with their foreign customers and without government interference.

Accordingly, we preliminarily determine that there is an absence of *de jure* government control over export pricing and marketing decisions of Gansu Tongda.

#### Absence of De Facto Control

*De facto* absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; (4) whether each exporter has autonomy from the government regarding the selection of management. See *Silicon Carbide*, 59 FR at 22587; *Sparklers*, 56 FR at 20589.

As stated in previous cases, there is evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. See *Mushrooms Final*, 63 FR at 72255. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The Department has reviewed the record in this case and notes that the respondent: (1) Establishes its own export prices; (2) negotiates contracts without guidance from any governmental entities or organizations; (3) makes its own personnel decisions; and (4) retains the proceeds from export sales and uses profits according to its business needs without any restrictions.

The information on the record supports a preliminary finding that there is an absence of *de facto* governmental control of the export functions of Gansu Tongda.

Consequently, we preliminarily determine that Gansu Tongda has met the criteria for the application of separate rates.

As described below, the Department has determined that Gansu Tongda is affiliated with two other producers of AJC, Tongda Fruit Juice and Beverage Liquan Co., Ltd. ("Liquan") and Tongda Fruit Juice & Beverage Binxian Co., Ltd. ("Binxian"), and has preliminarily treated them as a single company for purposes of its antidumping duty analysis. Accordingly, the Department will issue separate rates questionnaires to Binxian and Liquan before the publication of the final results, and analyze the combined entity's eligibility for a separate rate at that time.

#### Affiliation

Gansu Tongda exported AJC to the United States during the POR that it had produced itself. Gansu Tongda also purchased AJC from an affiliate, Liquan, which it then sold to the United States during the POR. Liquan did not make any sales of subject merchandise to the United States during the POR. Gansu Tongda is also affiliated with Binxian, another producer of subject merchandise. Binxian did not sell AJC to the United States during the POR, nor did Gansu Tongda purchase AJC from Binxian for sale to the United States during the POR.

Section 771(33)(E) of the Act provides that the Department will find parties to be affiliated if any person directly or indirectly owns, controls, or holds power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization. Section 771(33)(F) of the Act provides that parties are affiliated if two or more persons directly or indirectly control, or are controlled by, or under common control with any other person; and section 771(33)(G) of the Act provides that parties are affiliated if any person controls any other person. To the extent that section 771(33) of the Act does not conflict with the Department's application of separate rates and enforcement of the NME provision, section 773(c) of the Act, the Department will determine that exporters and/or producers are affiliated if the facts of the case support such a finding.

Gansu Tongda, Liquan and Binxian have two parent companies who share 100 percent control over the three companies and are legally in a position to exercise restraint or direction over all three companies. See page two and Exhibit 6 of Gansu Tongda's October 17, 2003, submission; and page 1 of Gansu Tongda's January 12, 2004, submission.

Furthermore, all three companies share the same board of directors, sales office staff, and legal representative. See page 2, Exhibit 3 and Exhibit 5 of Gansu Tongda's April 8, 2004, submission. For these reasons, the Department has determined that Gansu Tongda, Liquan and Binxian are affiliated in accordance with section 771(33) of the Act.

#### Collapsing

Based on the ownership ties described above, the Department requested Gansu Tongda to (1) report the factors of production data from each company listed above if it produced subject merchandise during the POR; and (2) provide information on the relationship between and among these companies for purposes of determining whether the Department should collapse any or all of them in the preliminary results (see March 4, 2004, supplemental questionnaire for details).

Pursuant to 19 CFR 351.401(f), the Department will collapse producers and treat them as a single entity where (1) those producers are affiliated, (2) the producers have production facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (3) there is a significant potential for manipulation of price or production. In determining whether a significant potential for manipulation exists, the regulation provides that the Department may consider various factors, including (1) the level of common ownership, (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm, and (3) whether the operations of the affiliated firms are intertwined. See *Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review*, 63 FR 12764, 12774 (March 16, 1998) and *Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan*, 62 FR 51427, 51436 (October 1, 1997). To the extent that this provision does not conflict with the Department's application of separate rates and enforcement of the NME provision, section 773(c) of the Act, the Department will collapse two or more affiliated entities in a case involving an NME country if the facts of the case warrant such treatment. See *Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of Sixth New Shipper Review and Preliminary Results and Partial Rescission of Fourth Antidumping Duty Administrative Review*, 69 FR 10410 (March 5, 2004) ("*Mushrooms Prelim*").

Furthermore, we note that the factors listed in 19 CFR 351.401(f)(2) are not exhaustive, and in the context of an NME investigation or administrative review, other factors unique to the relationship of business entities within the NME may lead the Department to determine that collapsing is either warranted or unwarranted, depending on the facts of the case. See *Hontex Enterprises, Inc. v. United States*, 248 F. Supp. 2d 1323, 1344 (CIT 2003) (noting that the application of collapsing in the NME context may differ from the standard factors listed in the regulation).

In summary, depending upon the facts of each investigation or administrative review, if there is evidence of significant ownership ties or control between or among producers which produce similar and/or identical merchandise, but may not all produce their product for sale to the United States, the Department may find such evidence sufficient to apply the collapsing criteria in an NME context in order to determine whether all or some of those affiliated producers should be treated as one entity, see *Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China, Preliminary Determination of Sales at Less Than Fair Value*, 66 FR 22183 (May 3, 2001).

Gansu Tongda has reported that Gansu Tongda, Liquan and Binxian all produced identical or similar merchandise during the POR. Therefore, we find that the first and second criteria for collapsing are met here because these companies are affiliated as explained above and all have production facilities for producing similar or identical products that would not require substantial retooling in order to restructure manufacturing priorities.

Finally, we find that the third collapsing criterion is met in this case because a significant potential for manipulation of price or production exists among Gansu Tongda, Liquan and Binxian for the following reasons. As explained above, there is a high level of common ownership between and among these companies. Second, also as discussed above, a significant level of common control exists among these companies. Third, Gansu Tongda's acquisition and sale of subject merchandise produced by Liquan indicates that the operations of these companies are intertwined, as does the fact that all three companies share the same sales office staff. Thus, we find that the operations of Gansu Tongda, Liquan and Binxian are sufficiently intertwined.

Therefore, based on the above-mentioned findings and following the

guidance of 19 CFR 351.401(f), we have preliminarily collapsed Gansu Tongda, Liquan and Binxian because there is a significant potential for manipulation between these affiliated parties. See *Mushrooms Prelim*.

#### Export Price

For sales made by Gansu Tongda we used export price ("EP"), in accordance with section 772(a) of the Act, because the subject merchandise was sold to unaffiliated purchasers in the United States prior to importation into the United States and because the constructed export price methodology was not warranted by other circumstances.

We calculated EP based on the prices to unaffiliated purchasers. In accordance with section 772(c) of the Act, we deducted from these prices, where appropriate, amounts for foreign inland freight, international freight, other U.S. transportation expense, and U.S. customs duty (including merchandise processing and harbor maintenance fees). We selected Poland as the surrogate country for the reasons explained in the "*Normal Value*" section of this notice, below. However, where we were unable to find Polish data to value particular factors of production, we have valued these inputs using public information on the record for India, one of the comparable economies identified in the August 4, 2003, Memorandum from Ron Lorentzen to Audrey Twyman, "Third Administrative Review of the Antidumping Duty Order on Non-Frozen Apple Juice Concentrate from the People's Republic of China (PRC): Request for a List of Surrogate Countries." We valued the deductions for foreign inland freight using Indian freight costs. Where, as here, a significant portion or all of a specific company's ocean freight was provided directly by market economy companies and paid for in a market economy currency, we use the reported market economy ocean freight values for all U.S. sales made by that company. See 19 CFR 351.408(c)(1) (regulation for the information used to value factors of production).

#### Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine normal value ("NV") using a factors-of-production methodology if: (1) The subject merchandise is exported from an NME country, and (2) the Department finds that the available information does not permit the calculation of NV under section 773(a) of the Act. We have no basis to determine that the available

information would permit the calculation of NV using PRC prices or costs. Therefore, we calculated NV based on factors data in accordance with section 773(c) of the Act and 19 CFR 351.408(c).

Under the factors-of-production methodology, we are required to value, to the extent possible, the NME producer's inputs in a market economy country that is at a comparable level of economic development and that is a significant producer of comparable merchandise.

We have followed the guidelines set out in policy bulletin number 04.1, "Non-Market Economy Surrogate Country Selection Process," dated March 1, 2004, to determine the appropriate surrogate country. See the June 29, 2004, Memorandum to Jeff May from Susan Kuhbach "Surrogate Selection and Valuation—Non-Frozen Apple Juice Concentrate from China," ("Surrogate Country Memo") for a further discussion of our surrogate selection, which is on file in the Department's Central Records Unit in Room B-099 of the main Department building ("CRU"). We chose Poland, a significant producer of the comparable merchandise apple juice concentrate, as the primary surrogate on the basis of the criteria set out in section 773(c)(4) of the Act, and in 19 CFR 351.408(b). Although Poland was not identified in the Department's list of most comparable economies (see August 4, 2003, Memorandum from Ron Lorentzen to Audrey Twyman, "Third Administrative Review of the Antidumping Duty Order on Non-Frozen Apple Juice Concentrate from the People's Republic of China (PRC): Request for a List of Surrogate Countries"), we were unable to establish that any of the listed comparable economies were significant producers of comparable merchandise.

We have applied surrogate values based on publicly available information from Poland for the major input, juice apples, as well as electricity, factory overhead, selling, general and administrative expenses ("SG&A"), and profit ratios. However, because we were unable to obtain Polish data to value the other, less significant factors of production, we have relied upon public information on the record for India and Indonesia, two of the comparable economies identified by the Department. For the by-product, pomace, we were able to find only a United States value and have used this for these preliminary results. Where these surrogate values were not contemporaneous with the POR, we inflated the data to the POR using the

wholesale price indices ("WPI") published by the International Monetary Fund, unless otherwise noted.

Pursuant to the Department's factors-of-production methodology as provided in section 773(c) of the Act and 19 CFR 351.408(c), we valued the respondent's reported factors of production by multiplying them by the values below. (For a complete description of the factor values used, see the Memorandum to Susan Kuhbach: "Factors of Production Values Used for the Preliminary Results," dated June 29, 2004, which is on file in the CRU.) The factors of production usage rates were calculated based on the weighted-average usage rates for Gansu Tongda, Liquan and Binxian.

**Juice Apples:** We have valued juice apples using prices of juice apples in Poland, covering 39 weeks of the POR, which were provided to the Department by the Foreign Agriculture Service ("FAS") at the U.S. Embassy in Warsaw, Poland. This pricing data was obtained by the FAS from the Polish Foreign Agricultural Markets Monitoring Unit/ Foundation for Aid Programs for Agriculture and the Institute of Agricultural Economics. The average value of these 39 prices is \$57.78 per metric ton.

**Processing Agents:** We valued pectinase enzyme, pectinase enzyme, amylase enzyme, and gelatin for the POR using the *World Trade Atlas* data for India which is based on data reported by the Directorate General of Commercial Intelligence & Statistics of the Ministry of Commerce, which also supplies the same data for the *Monthly Statistics of the Foreign Trade of India, Volume II: Imports* ("Indian import statistics").

**Labor:** Pursuant to § 351.408(c)(3) of the Department's regulations, we valued labor using the regression-based wage rate for the PRC published by Import Administration on its website.

**Electricity and Steam Coal:** To value electricity, we used Polish industrial electricity rate data from the *Energy Prices & Taxes—Quarterly Statistics (First Quarter 2003)* published by the International Energy Agency. We were unable to obtain Polish surrogate values for steam coal of the specific heat values reported by the PRC AJC producers. Therefore, we determined that the most contemporaneous and detailed information on the record for steam coal was derived from the *Energy Data Directory & Yearbook (2001/2002)* published by Tata Energy Research Institute in India. The data for the Indian domestic price of steam coal is contemporaneous with the POR and broken out by useful heat value. Thus,

we used the Indian figures to value the amount for steam coal.

**Factory Overhead, SG&A, and Profit:** We derived ratios for factory overhead, SG&A, and profit, using the 2002 financial statement of Agros Fortuna, a public company in Poland that produces products similar to the subject merchandise.

**Packing Materials:** We calculated values for aseptic bags, plastic liners, and labels using the *World Trade Atlas* data for India for the POR. We converted values from a per kilogram to a per piece basis, where necessary.

For steel drums, we could not find a reliable current Indian value. Therefore, we used a 1994 Indonesian price and inflated it using the Indonesian WPI.

**Inland Freight Rates:** To value truck freight rates, we used an April 2002 article from the *Iron and Steel Newsletter*, which quotes information derived from the website, [www.infreight.com](http://www.infreight.com). With regard to rail freight, we based our calculation on posted rail rates from the Indian Railways at [www.indianrailways.gov.in](http://www.indianrailways.gov.in). We calculated an average per kilometer per metric ton rate.

**By-products:** As the reported factors included pomace as a by-product resulting from production of AJC, we have made a deduction to the AJC surrogate value to account for the by-product. Because we were unable to find reliable Indian values for apple pomace, we used a U.S. price as the surrogate value because it is the only pomace value on the record of this proceeding. Apple pomace was valued using an April 2000 study published by the University of Georgia.

#### Preliminary Results of the Review

We preliminarily determine that the following dumping margin exists for the period June 1, 2002, through May 31, 2003:

Producer/exporter	Weighted-average margin percentage
Gansu Tongda Fruit Juice and Beverage Company .....	0.57

#### Assessment Rates

Pursuant to 19 CFR 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise for each respondent. Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (i.e., at or above 0.5 percent), the Department will issue appraisalment

instructions directly to U.S. Customs and Border Protection ("CBP") to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculate importer-specific assessment rates for the subject merchandise by aggregating the dumping duties due for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer.

All other entries of the subject merchandise during the POR will be liquidated at the antidumping duty rate in place at the time of entry except for Yantai Oriental Juice Co., Qingdao Nannan Foods Co., Sanmenxia Lakeside Fruit Juice Co. Ltd., Shaanxi Haisheng Fresh Fruit Juice Co., and SDIC Zhonglu Juice Group Co. which were recently excluded from the order on remand and whose entries will be liquidated without regard to antidumping duties.

The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of this review.

#### Cash Deposit Requirements

Should the final results of this administrative review not differ from these preliminary results, the following cash deposit requirements will be effective upon publication of the final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) For the PRC company named above, the cash deposit rate for exports to the United States by that company will be the rate established in the final results of this review, except that, for exporters with *de minimis* rates, *i.e.*, less than 0.50 percent, no deposit will be required; (2) for companies previously found to be entitled to a separate rate in a prior segment of the proceeding, and for which no review has been requested, the cash deposit rate will continue to be the rate established in the most recent review of that company (except for Xian Yang, which had a new cash deposit rate of 3.83 percent set effective December 12, 2003); (3) for all other PRC exporters, the cash deposit rate will be 51.74 percent, the PRC country-wide *ad-valorem* rate; and (4) for non-PRC exporters of subject merchandise from the PRC to the United States, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

#### Public Comment

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 30 days of the date of publication of this notice. Any hearing, if requested, will be held approximately 42 days after the publication of this notice, or the first workday thereafter. Issues raised in hearings will be limited to those raised in the case and rebuttal briefs. Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs within 30 days of the date of publication of this notice. Furthermore, as discussed in 19 CFR 351.309(d)(2), rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this review are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or hearing, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

#### Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1), and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: June 29, 2004.

Jeffrey A. May,  
Acting Assistant Secretary for Import Administration.  
[FR Doc. 04-15232 Filed 7-2-04; 8:45 am]  
BILLING CODE 3510-DS-P

#### DEPARTMENT OF COMMERCE

##### International Trade Administration

[A-405-803, A-201-834, A-421-811, A-401-808]

#### Notice of Initiation of Antidumping Duty Investigations: Purified Carboxymethylcellulose (CMC) From Finland, Mexico, the Netherlands, and Sweden

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

**ACTION:** Initiation of antidumping duty investigations.

**EFFECTIVE DATE:** July 6, 2004.

**FOR FURTHER INFORMATION CONTACT:** Brian J. Sheba (Finland) at 202-482-0145, Mark Flessner (Mexico) at 202-482-6312, John Drury (the Netherlands) at 202-482-0195, Patrick Edwards (Sweden) at 202-482-8029, Robert James at 202-482-0649, or Abdelali Elouraradia at 202-482-1374, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

#### Initiation of Investigations

##### *The Petition*

On June 9, 2004, the Department of Commerce (the Department) received an antidumping duty petition (Petition) filed in the proper form by Aqualon Company (Aqualon or petitioner), a division of Hercules Incorporated. Aqualon is a domestic producer of purified carboxymethylcellulose (CMC). On June 15, 2004, the Department requested clarification on a number of different issues raised by the Petition. On June 18, 2004, petitioner submitted information to supplement the Petition (Supplemental Petition). The Department requested additional revisions to the Petition on June 22, 2004, and June 25, 2004, to which petitioner responded on June 24, 2004 (Second Supplemental Petition) and June 28, 2004 (Third Supplemental Petition). In accordance with section 732(b) of the Act of 1930, as amended (the Act), petitioner alleges imports of CMC from Finland, Mexico, the Netherlands, and Sweden are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, the U.S. industry.

The Department finds that petitioner filed its Petition on behalf of the domestic industry because it is an

interested party as defined in section 771(9)(C) of the Act, and it has demonstrated sufficient industry support with respect to the investigations it is presently seeking. See *Determination of Industry Support for the Petition* section below.

#### Scope of the Investigations

For purposes of these investigations, the products covered are all purified carboxymethylcellulose (CMC), sometimes also referred to as purified sodium CMC, polyanionic cellulose, or cellulose gum, which is a white to off-white, non-toxic, odorless, biodegradable powder, comprising sodium carboxymethylcellulose that has been refined and purified to a minimum assay of 90 percent. Purified CMC does not include unpurified or crude CMC, CMC Fluidized Polymer Suspensions, and CMC that is cross-linked through heat treatment. Purified CMC is CMC that has undergone one or more purification operations which, at a minimum, reduce the remaining salt and other by-product portion of the product to less than ten percent.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 3912.31.00. This tariff classification is provided for convenience and Customs purposes; however, the written description of the scope of these investigations is dispositive.

During our review of the Petition, we discussed the scope with the petitioner to ensure that it accurately reflects the product for which the domestic industry is seeking relief. See Memorandum from Deborah Scott to the File, dated June 24, 2004. Moreover, as discussed in the preamble to the Department's regulations, we are setting aside a period for parties to raise issues regarding product coverage. See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (1997). The Department encourages all interested parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determinations.

#### Periods of Investigation

The anticipated period of investigation (POI) for Finland, Mexico, the Netherlands, and Sweden is April 1, 2003, through March 31, 2004. See 19 CFR 351.204(b).

#### Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made, before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. See *USEC, Inc. v.*

*United States*, 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 642-44 (CIT 1988).

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

With regard to the domestic like product, petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted in the Petition we have determined that there is a single domestic like product, purified CMC, which is defined further in the "Scope of the Investigations" section above, and we have analyzed industry support in terms of that domestic like product. For more information on our analysis and the data upon which we relied, see *Antidumping Duty Investigation Initiation Checklist (Initiation Checklist)*, dated June 29, 2004, Appendix II—Industry Support on file in the Central Record Unit (CRU) in room B-099 of the main Department of Commerce building.

In determining whether the domestic petitioner has standing, we considered the industry support data contained in the Petition with reference to the domestic like product as defined above in the "Scope of the Investigations" section. Petitioner is the sole manufacturer or producer of the domestic like product. See *IMR International Quarterly Review of Food Hydrocolloids* for the third quarter of 2003, Petition at page 2 and Exhibit 1-H, at 55.

Using the data described above, the share of total estimated U.S. production of CMC in year 2003 represented by petitioner equals over 50 percent of total domestic production. Therefore, the Department finds that the domestic producers who support the Petition account for at least 25 percent of the total production of the domestic like product. In addition, as no domestic producers have expressed opposition to the Petition, the Department also finds that the domestic producers who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.



Therefore, we find that petitioner has met the requirements of section 732(c)(4)(A) of the Act.

#### *Export Price and Normal Value*

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate these investigations. The source or sources of data for the adjustments relating to U.S. and foreign market prices have been accorded treatment as business proprietary information. Petitioner's sources and methodology are discussed in greater detail in the business proprietary version of the Petition and in our *Initiation Checklist*. We revised certain information contained in the Petition's margin calculations; these revisions are set forth in detail in the *Initiation Checklist*. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine this information and revise the margin calculations, if appropriate.

#### *Export and Normal Value Price for All Countries*

Petitioner has relied on prices in affidavits of Aqualon employees to establish U.S. and normal value (NV) prices. Petitioner computed the ex-factory export price in U.S. dollars by obtaining from members of its U.S. sales force information on selling price in the United States of CMC produced in the subject countries. Petitioner then deducted costs incident to transporting and selling the subject merchandise to customers in the United States based on information from its shipping/logistics department. Petitioner's adjustments to U.S. price also relied on costs more closely matched to the date of the U.S. price, rather than an average over the entire POI. See Petition at Exhibit 4 at 4-1. However, the Department has determined that foreign currency conversions should be based on averages for the entire POI. See *Initiation Checklist* at Attachment V. Petitioner did not include warehousing expenses as an adjustment to the U.S. sales price because petitioner did not know whether the price quotes obtained in the affidavit were warehoused by Noviant in the United States or shipped directly to the customer. See Petition at Exhibit 4 at 4-3, note 3. We have accepted this methodology for the purposes of initiation.

To calculate NV, petitioner obtained home market prices in the subject countries from members of its sales force located in these countries. Petitioner then made deductions

incident to transporting and selling the subject merchandise to arrive at NV. See Petition at Exhibit 4 at 4-2.

Petitioner did not make adjustments for imputed credit expenses for the U.S. or home market prices. Petitioner stated that neither payment terms nor interest rates are believed to be materially different for CMC in the United States and the home markets. Accordingly, petitioner did not make an imputed credit adjustment since such adjustment would not have a material effect on the dumping margins. See Petition at Exhibit 4 at 4-2, note 2. We have accepted this methodology for the purposes of initiation.

#### **Finland**

##### *Export Price*

To calculate export price (EP), petitioner obtained a price contemporaneous with the POI for subject merchandise sold to a potential U.S. customer for calendar year 2004 by Noviant, a producer of purified CMC in Finland, from its plant in Finland. See Petition at Exhibit 5. The price includes freight delivered to the customer's manufacturing sites in the United States. Petitioner then made adjustments for U.S. inland freight expense, ocean freight and marine insurance, documentation fees, port fees, U.S. customs duties, intra-European freight, and foreign inland freight expense.

Because Chicago is Noviant's Midwestern distribution point and Noviant's customer at issue is located in the Midwest, petitioner calculated U.S. inland freight on the basis of a New York to Chicago rail price quote obtained by a company official from independent shipping companies. See Petition at Exhibit 4 at 4-4 and Second Supplemental Response at Exhibit 4-B. Petitioner next calculated the per pound freight charge from this quote. See Petition at Exhibit 4-A.

Petitioner calculated ocean freight and marine insurance based on the difference between the CIF and FOB average unit value of CMC imports into the United States from the month most closely associated with the U.S. date of sale. For Finland, petitioner utilized U.S. Census data for December 2003. See Petition at Exhibit 4-D. The Department has determined that a POI-wide ocean unit freight value which excludes any shipment of CMC valued below \$0.80/lb or above \$2.75/lb is a more accurate representation of ocean freight expense for the subject merchandise. Accordingly, the Department requested that petitioner correct the ocean freight rates. The

correction has slightly changed petitioner's ocean freight expense. See Third Supplemental Petition and *Initiation Checklist*.

Petitioner obtained prices for an import documentation fee on a per container basis from a price quote from a logistics company. See Second Supplemental Response at Exhibit 4-B. Petitioner converted the container-based charge to a per pound basis. See Petition at Exhibit 4-A.

Harbor maintenance and merchandise processing fees at the port of importation were quoted to petitioner from an independent shipper. See Second Supplemental Response at Exhibit 4-B. These fees are, respectively, 0.125 percent and 0.21 percent of the entered value of imports. *Ad valorem* duties on imports of CMC for HTS heading 3912.31 are 6.4 percent of FOB value. See Petition at Exhibit 4-C.

Petitioner calculated foreign inland freight charges based on its knowledge of the location of the Noviant plant in Aankoski, Finland and the logistics for the lowest cost method of exporting CMC to the United States. See Second Supplemental Response at Exhibit 4-B. Petitioner assumes a shipment ex-works Aankoski to the port of Kotka, Finland and then by ocean freight to Hamburg, Germany. See Second Supplemental Response at Exhibit 4-B. Petitioner then converts the shipping charges to a per pound basis. See Petition Exhibit 4-A and *Initiation Checklist* at Attachment V.

##### *Normal Value*

To calculate home market NV, petitioner met with representatives of a Finnish customer during the POI. During the course of that meeting, the customer stated the current Noviant price on a delivered basis. Petitioner converted this price from Euros per kilogram to U.S. dollars per pound. See Petition at Exhibit 5-A and *Initiation Checklist* at Attachment V.

Petitioner's only adjustment to NV is foreign inland freight expense to account for the shipment of the subject merchandise from Noviant's plant in Aankoski, Finland to the customer's plant in Finland. Petitioner ascertained this freight expense through a price quote from an independent shipper. See Second Supplemental Petition at Exhibit 4-B. Petitioner then converted this freight expense to a U.S. dollar per pound basis. See Second Supplemental Petition at Exhibit 4-E and *Initiation Checklist* at Attachment V.

We have accepted this methodology for purposes of this initiation. The export price to normal value

comparison produced a dumping margin of 6.65 percent. *See Initiation Checklist* at Attachment V.

## Mexico

### Export Price

To calculate EP, petitioner obtained a price for the subject merchandise contemporaneous with the POI by Quimica Amtex, S.A. de C.V. (Amtex), a Mexican producer of CMC, from its plant in Mexico to a U.S.-based customer. *See Petition* at Exhibit 6. Petitioner then made adjustments for U.S. and foreign inland freight, insurance, and U.S. border crossing fees.

Petitioner calculated U.S. and foreign inland freight on the basis of a price quote obtained by a company official. This price quote encompasses a single cost for truck freight from Amtex's plant in Mexico to the customer in the United States. *See Second Supplemental Response* at Exhibit 4-B. Petitioner then calculated a per pound freight charge from this quote. *See Petition* at Exhibit 4-A.

To calculate insurance expenses petitioner relied on the difference between the CIF and FOB average unit value of purified CMC imports into the United States from Mexico. The U.S. Bureau of the Census served as the source of these data. *See Petition* at Exhibit 4-D and *Third Supplemental Petition*.

Petitioner computed U.S. border crossing fees based on a price quote from a company official. *See Second Supplemental Response* at Exhibit 4-B. Petitioner then converted this fee to a per pound basis. *See Petition* at Exhibit 6.

### Normal Value

To calculate NV, petitioner met with representatives of a Mexican customer during the POI. During the course of that meeting, the customer presented a price quote showing Amtex's current price to that customer on a delivered basis. *See Petition* at Exhibit 6.

Petitioner adjusted NV by deducting foreign inland freight expenses. Petitioner based this adjustment on a freight rate obtained by an employee for shipping CMC by truck from its plant to its customer in Mexico. *See Second Supplemental Response* at Exhibit 4-B and *Initiation Checklist* at Attachment V. Petitioner made no other deductions to NV.

We have accepted this methodology for purposes of this initiation. The export price to normal value comparison produced a dumping margin of 71.91 percent. *See Initiation Checklist* at Attachment V.

## The Netherlands

### U.S. Price

To calculate EP, petitioner obtained a price contemporaneous with the POI for subject merchandise sold to a customer in the United States for calendar year 2004 by Aqualon's competitor, Noviant, from its plant in the Netherlands. *See Petition* at Exhibit 7. The quoted price includes freight delivered to the customer's manufacturing site in the United States. Petitioner then made adjustments for U.S. inland freight expense, ocean freight and marine insurance, documentation fees, port fees, U.S. customs duties, and foreign inland freight expense.

Petitioner calculated U.S. inland freight on the basis of a truck rate quote from the port in Charleston, South Carolina to the customer's location obtained by a company official from independent shipping companies. *See Second Supplemental Response* at Exhibit 4-B. Petitioner next calculated the per pound freight charge from this quote. *See Petition* at Exhibit 4-A.

Petitioner calculated ocean freight and marine insurance based on the difference between the CIF and FOB average unit value of CMC imports into the United States in the month most closely associated with the U.S. date of sale. For the Netherlands, petitioner used U.S. Census data from March 2004. *See Petition* at Exhibit 4-D. The Department has determined that a POI-wide ocean unit freight value which excludes any shipment of CMC valued below \$0.80/lb or above \$2.75/lb is a more accurate representation of ocean freight expense for the subject merchandise. Accordingly, the Department requested that petitioner correct the ocean freight rates. The correction has slightly changed petitioner's ocean freight expense. *See Third Supplemental Petition and Initiation Checklist*.

Petitioner obtained prices for an import documentation fee on a per container basis from a price quote from a logistics company. *See Second Supplemental Response* at Exhibit 4-B. Petitioner converted the container-based charge to a per pound basis. *See Petition* at Exhibit 4-A.

Harbor maintenance and merchandise processing fees at the port of importation were quoted to petitioner from an independent shipper. *See Second Supplemental Response* at Exhibit 4-B. These fees are, respectively, 0.125 percent and 0.21 percent of the entered value of imports. *Ad valorem* duties on imports of CMC for HTS heading 3912.31 are 6.4 percent

of FOB value. *See Petition* at Exhibit 4-C.

Petitioner calculated foreign inland freight charges based on its knowledge of the location of the Noviant plant in Nijmegen, the Netherlands and the logistics for the lowest cost method of exporting CMC to the United States. *See Second Supplemental Response* at Exhibit 4-B. Petitioner assumes a shipment ex-works Nijmegen to the port of Rotterdam, the Netherlands. *See Second Supplemental Response* at Exhibit 4-B. Petitioner then converted the shipping charges to a per pound basis. *See Petition* Exhibit 4-A and *Initiation Checklist* at Attachment V.

### Normal Value

To calculate home market NV, petitioner spoke with a Dutch customer. During the course of that conversation, the customer gave petitioner a purchase price for CMC from a producer of CMC in the Netherlands. *See Petition* at Exhibit 7 and *Initiation Checklist* at Attachment V.

Petitioner's only adjustment to NV is foreign inland freight expense to account for the shipment of the subject merchandise from Zaandam, the Netherlands to the customer's plant in the Netherlands. Petitioner ascertained this freight expense through a price quote from an independent shipper. *See Second Supplemental Petition* at Exhibit 4-B. Petitioner then converted this freight expense to a U.S. dollar per pound basis. *See Second Supplemental Petition* at Exhibit 4-E and *Initiation Checklist* at Attachment V.

We have accepted this methodology for purposes of this initiation. The export price to normal value comparison produced a dumping margin of 39.46 percent. *See Initiation Checklist* at Attachment V.

## Sweden

### Export Price

To calculate export price, petitioner obtained a price quote from a U.S. consumer of CMC contemporaneous with the POI for subject merchandise from Noviant, a producer of CMC in Sweden, from its plant in Sweden. *See Petition* at Exhibit 8 and *Second Supplemental Petition* at Exhibit 8. Petitioner made adjustments for U.S. inland freight expense, ocean freight and insurance, documentation and port fees, U.S. customs duties, intra-European freight expense and foreign inland freight expense.

Petitioner calculated U.S. inland freight on the basis of a rail quote from an independent shipping company. The rail quote is from Charleston, South

Carolina to the U.S. customer's manufacturing site in the United States. See Second Supplemental Petition at Exhibit 4-B and Third Supplemental Petition. Petitioner next calculated the per pound freight charge from this quote. See Petition at Exhibit 4-A for methodology and Second Supplemental Petition Exhibit 8.

Petitioner calculated ocean freight and insurance to the United States based on the difference between CIF and FOB average unit values of imports in the month most closely corresponding with the U.S. date of sale. For Sweden, petitioner used U.S. Census data from March 2004. See Petition at Exhibit 4 at 4-6 and Exhibits 4-A and 4-D. The Department has determined that a POI-wide ocean unit freight value which excludes any shipment of CMC valued below \$0.80/lb or above \$2.75/lb is a more accurate representation of ocean freight expense for the subject merchandise. Accordingly, the Department requested that petitioner correct the ocean freight rates. The correction has slightly changed petitioner's ocean freight expense. See Third Supplemental Petition and *Initiation Checklist*.

Documentation fees were based upon a per container price quote obtained from its in-house logistics company. See Second Supplemental Response at Exhibit 4-B. Petitioner converted this price to a dollar per pound basis for its margin calculation. See Petition at Exhibit 4-A. Harbor maintenance and merchandise processing fees at the port of importation were quoted to petitioner from an independent shipper. See Second Supplemental Response at Exhibit 4-B. These fees are, respectively, 0.125 percent and 0.21 percent of the entered value of imports. *Ad valorem* duties on imports under HTS heading 3912.31 are 6.4 percent of FOB value. See Petition at Exhibit 4 at 4-4 to 4-5 and Exhibit 4-C.

Petitioner calculated foreign inland freight expense based on its knowledge of the distance from Noviant AB's production facility in Skoghal, Sweden and the logistics for the lowest cost method of exporting subject merchandise to the United States. See Second Supplemental Response at 4-B. Petitioner assumes a shipment ex-works by truck or rail from Skoghal to the port of Göteborg, Sweden and then by ocean freight to either Hamburg or Bremerhaven, both in Germany. See Second Supplemental Response at Exhibit 4-B and Supplemental Petition at 16. All shipping charges are converted to a per pound basis. See Petition at Exhibit 4-A and *Initiation Checklist* at Attachment V.

#### *Normal Value*

To calculate home market NV, petitioner conducted sales calls with representatives of two Swedish purchasers of the subject merchandise. The calls were made contemporaneous within the anticipated POI. During these two separate telephone conversations, the potential customers indicated to petitioner the current price being offered by Noviant for a particular grade of the subject merchandise. Petitioner converted this price to establish the U.S. dollar price per pound. See Petition at Exhibit 8-A and *Initiation Checklist* at Attachment V.

Petitioner's only adjustment to NV is foreign inland freight expense to account for the shipment of the subject merchandise from Noviant's plant in Skoghal, Sweden to its customer in Sweden. Petitioner ascertained this freight expense through a price quote from an independent shipper. See Second Supplemental Petition at Exhibit 4-B. Petitioner then converted this freight expense to a U.S. dollar per pound basis. See Second Supplemental Petition at Exhibit 4-E and *Initiation Checklist* at Attachment V.

We have accepted this methodology for purposes of this initiation. The export price to normal value comparison produced a dumping margin of 25.29 percent. See *Initiation Checklist* at Attachment V.

#### *Fair Value Comparisons*

Based on the data provided by petitioner, there is reason to believe imports of purified CMC from Finland, Mexico, the Netherlands, and Sweden are being, or are likely to be, sold at less than fair value.

#### *Allegations and Evidence of Material Injury and Causation*

With respect to Finland, Mexico, the Netherlands, and Sweden, petitioner alleges the U.S. industry producing the domestic like product is being materially injured, or threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV.

Petitioner contends that the industry's injured condition is evident in examining net operating income, profit, net sales volumes, production employment, as well as inventory levels, and reduced capacity utilization. See Petition at pages 26-27 and Petition Exhibit 10. Petitioner asserts its share of the market has declined from 2001 to 2003. See Petition at pages 19-20 and Petition Exhibit 11. For a full discussion of the allegations and evidence of material injury, See *Initiation Checklist*.

#### *Initiation of Antidumping Investigations*

Based on our examination of the Petition covering purified CMC, we find it meets the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of purified CMC from Finland, Mexico, the Netherlands, and Sweden are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended pursuant to section 733(b)(1)(A) of the Act, we will make our preliminary determinations no later than 140 days after the date of this initiation, or November 16, 2004.

#### *Distribution of Copies of the Petition*

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the Petition has been provided to representatives of the governments of Finland, Mexico, the Netherlands, and Sweden. We will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided in section 19 CFR 351.203(c)(2).

#### *International Trade Commission Notification*

The ITC will preliminarily determine on July 23, 2004, whether there is reasonable indication that imports of purified CMC from Finland, Mexico, the Netherlands, and Sweden are causing, or threatening, material injury to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: June 29, 2004.

Jeffrey May,

Acting Assistant Secretary for Import Administration.

[FR Doc. 04-15227 Filed 7-2-04; 8:45 am]

BILLING CODE 3510-DS-P

#### DEPARTMENT OF COMMERCE

##### International Trade Administration

##### Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

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

**ACTION:** Publication of quarterly update to annual listing of foreign government

subsidies on articles of cheese subject to an in-quota rate of duty.

**SUMMARY:** The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared its quarterly update to the annual list of foreign government subsidies on articles of cheese subject to an in-quota rate of duty during the period January 1, 2004, through March 31, 2004. We are publishing the current listing of those subsidies that we have determined exist.

**EFFECTIVE DATE:** July 6, 2004.

**FOR FURTHER INFORMATION CONTACT:**

Alicia Kinsey, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, telephone: (202) 482-2786.

**SUPPLEMENTARY INFORMATION:** Section 702 of the Trade Agreements Act of 1979 (as amended) ("the Act") requires

the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(h) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies. We hereby provide the Department's quarterly update of subsidies on articles of cheese that were imported during the period January 1, 2004, through March 31, 2004.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net

amounts of each subsidy for which information is currently available. The Department will incorporate additional programs which are found to constitute subsidies and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: June 30, 2004.

Jeffrey May,

Acting Assistant Secretary for Import Administration.

APPENDIX—SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY

Country	Program(s)	Gross <sup>1</sup> subsidy (\$/lb)	Net subsidy <sup>2</sup> (\$/lb)
Austria	European Union Restitution Payments	\$0.08	\$0.08
Belgium	EU Restitution Payments	0.06	0.06
Canada	Export Assistance on Certain Types of Cheese	0.26	0.26
Denmark	EU Restitution Payments	0.06	0.06
Finland	EU Restitution Payments	0.14	0.14
France	EU Restitution Payments	0.12	0.12
Germany	EU Restitution Payments	0.03	0.03
Greece	EU Restitution Payments	0.04	0.04
Ireland	EU Restitution Payments	0.05	0.05
Italy	EU Restitution Payments	0.06	0.06
Luxembourg	EU Restitution Payments	0.07	0.07
Netherlands	EU Restitution Payments	0.05	0.05
Norway	Indirect (Milk) Subsidy Consumer Subsidy	0.36	0.36
		0.16	0.16
		0.52	0.52
Portugal	EU Restitution Payments	0.06	0.06
Spain	EU Restitution Payments	0.07	0.07
Switzerland	Deficiency Payments	0.05	0.05
U.K.	EU Restitution Payments	0.05	0.05

<sup>1</sup> Defined in 19 U.S.C. 1677(5).

<sup>2</sup> Defined in 19 U.S.C. 1677(6).

[FR Doc. 04-15236 Filed 7-2-04; 8:45 am]

BILLING CODE 3510-DS-P

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**International Buyer Program Support for Domestic Trade Shows**

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

**ACTION:** Notice and call for applications for the FY 2006 International Buyer Program.

**SUMMARY:** This notice sets forth objectives, procedures and application review criteria associated with the International Buyer Program (IBP) of the U.S. Department of Commerce (DOC), to support domestic trade shows. Selection is for the International Buyer Program for Fiscal Year 2006 (October 1, 2005 through September 30, 2006).

The IBP was established to bring international buyers together with U.S. firms by promoting leading U.S. trade shows in industries with high export potential. The IBP emphasizes cooperation between the DOC and trade show organizers to benefit U.S. firms exhibiting at selected events and

provides practical, hands-on assistance such as export counseling and market analysis to U.S. companies interested in exporting. The assistance provided to show organizers includes worldwide overseas promotion of selected shows to potential international buyers, end-users, representatives and distributors. The worldwide promotion is executed through the offices of the DOC United States and Foreign Commercial Service (hereinafter referred to as the Commercial Service) in approximately 74 countries representing America's major trading partners, and also in U.S. Embassies in countries where the

Commercial Service does not maintain offices. The Department expects to select approximately 36 shows for FY2006 from among applicants to the program. Shows selected for the IBP will provide a venue for U.S. companies interested in expanding their sales into international markets.

**DATES:** Applications must be received by September 6, 2004. Contributions (discussed below) are for shows selected and promoted during the period between October 1, 2005, and September 30, 2006.

**ADDRESSES:** Export Promotion Services/ International Buyer Program, Commercial Service, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Avenue, NW., H2107, Washington, DC 20230. Telephone: (202) 482-0146 (For deadline purposes, facsimile or e-mail applications will be accepted as interim applications, to be followed by signed original applications).

**FOR FURTHER INFORMATION CONTACT:** Jim Boney, Manager, International Buyer Program, Room 2107, Export Promotion Services, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Avenue, NW., Washington, DC 20230. Telephone: (202) 482-0146; Fax: (202) 482-0115; E-mail: [Jim.Boney@mail.doc.gov](mailto:Jim.Boney@mail.doc.gov).

**SUPPLEMENTARY INFORMATION:** The Commercial Service is accepting applications for the International Buyer Program (IBP) for events taking place between October 1, 2005, and September 30, 2006. A contribution of \$8,000 for shows of five days or less is required. For shows requiring more than one International Business Center, a contribution of \$12,000 is required.

Under the IBP, the Commercial Service seeks to bring together international buyers with U.S. firms by selecting and promoting, in international markets, U.S. domestic trade shows covering industries with high export potential. Selection of a trade show for the IBP is valid for one event, *i.e.*, a tradeshow organizer seeking selection for a recurring event must submit a new IBP application to be considered for each occurrence of the event. Even if the event occurs more than once in the 12-month period covering this announcement, the trade show organizer must submit a separate application for each event.

The Commercial Service will select approximately 36 events to support between October 1, 2005, through September 30, 2006. The Commercial Service will select those events that, in

its judgment, most clearly meet the Commercial Service's statutory mandate to promote U.S. exports, especially those of small and medium size enterprises and that best meet the selection criteria articulated below.

Successful show organizer applicants will be required to enter into a Memorandum of Understanding (MoU) with the DOC. The MoU constitutes an agreement between the DOC and the show organizer specifying which responsibilities are to be undertaken by DOC as part of the IBP and, in turn, which responsibilities are to be undertaken by the show organizer. Anyone who requests information regarding applying will be sent a copy of the MoU along with the application package. The responsibilities to be undertaken by DOC will be carried out by the Commercial Service.

The Department selects trade shows to be IBP partners that it determines to be leading international trade shows appropriate for participation by U.S. exporting firms and for promotion in overseas markets by U.S. Embassies and Consulates. Selection as an IBP partner does not constitute a guarantee by the U.S. Government of the show's success. IBP partnership status is not an endorsement of the show organizer except as to its international buyer activities. Non-selection should not be viewed as a finding that the event will not be successful in the promotion of U.S. exports.

**Exclusions:** Trade shows that are either first-time or horizontal (non-industry specific) events will not be considered.

**General Selection Criteria:** The Department will select shows to be IBP partners that, in the judgment of the Department, best meet the following criteria:

(a) **Export Potential:** The trade show promotes products and services from U.S. industries that have high export potential, as determined by DOC sources, *e.g.*, Commercial Service best prospects lists and U.S. export statistics (certain industries are rated as priorities by our domestic and international commercial officers in their Country Commercial Guides).

(b) **International Interest:** The trade show meets the needs of a significant number of overseas markets and corresponds to marketing opportunities as identified by the posts in their Country Commercial Guides (*e.g.*, best prospect lists). Previous international attendance at the show may be used as an indicator.

(c) **U.S. Content of Show Exhibitors:** Trade shows with exhibitors featuring a high percentage of U.S. products or

products with a high degree of U.S. content will be preferred. To be considered "U.S.," products and services to be exhibited must be produced or manufactured in the U.S., or if produced or manufactured outside of the U.S., the products or services must contain at least 51% U.S. content and must be marketed under the name of a U.S. firm.

(d) **Stature of the show:** The trade show is clearly recognized by the industry it covers as a leading event for the promotion of that industry's products and services, both domestically and internationally, and as a showplace for the latest technology or services in that industry or sector.

(e) **Exhibitor Interest:** There is demonstrated interest on the part of U.S. exhibitors in receiving international business visitors during the trade show. A significant number of U.S. exhibitors should be new-to-export or seeking to expand sales into additional international markets.

(f) **Overseas Marketing:** There has been a demonstrated effort to market prior shows overseas. In addition, the applicant should describe in detail the international marketing program to be conducted for the event, explaining how efforts should increase individual and group international attendance. Planned cooperation with Visit USA Committees overseas is desirable.

(g) **Logistics:** The tradeshow site, facilities, transportation services, and availability of accommodations are in the stature of an international-class trade show.

(h) **Cooperation:** The applicant demonstrates a willingness to cooperate with the Commercial Service to fulfill the program's goals and to adhere to target dates set out in the MoU and the event timetable, both of which are available from the program office (see **FOR FURTHER INFORMATION CONTACT** section above on when, where, and how to apply). Past experience in the IBP will be taken into account in evaluating current applications to the program.

**Legal Authority:** The Commercial Service has the legal authority to enter into MoUs with for-profit show organizers and other groups (partners) under the provisions of the Mutual Educational and Cultural Exchange Act of 1961 ((MECEA), as amended (22 U.S.C. Section 2455(f)) MECEA allows the Commercial Service to accept contribution of funds and services from firms for the purposes of furthering its mission. The statutory program authority for the Commercial Service to conduct the International Buyer Program is 15 U.S.C. 4724.

The Office of Management and Budget (OMB) has approved the information collection requirements of the application to this program under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3512 *et seq.*) (OMB Control No. 0625-0151). Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

Dated: June 30, 2004.

**Donald Businger,**

*Director, Office of Trade Event Programs, U.S. and Foreign Commercial Service, International Trade Administration, Department of Commerce.*

[FR Doc. 04-15193 Filed 7-2-04; 8:45 am]

BILLING CODE 3510-DR-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Environmental Technologies Trade Mission

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

**ACTION:** Notice to announce environmental technologies trade mission to China and Hong Kong, October 26–November 2, 2004.

**SUMMARY:** The United States Department of Commerce, International Trade Administration, U.S. Commercial Service is organizing an Environmental Technologies Trade Mission to Hong Kong and Beijing and Shanghai, China on October 26–November 2, 2004. This event offers a timely opportunity for U.S. firms to tap into some of the world's fastest growing markets for U.S. environmental equipment and technology.

**CONTACT:** Office of Business Liaison; Room 5062; Department of Commerce; Washington, DC 20230; Tel: (202) 482-1360; Fax: (202) 482-4054.

**SUPPLEMENTARY INFORMATION:** Environmental Technologies Trade Mission Hong Kong and Beijing and Shanghai, China October 26–November 2, 2004.

#### Mission Statement

##### *I. Description of the Mission*

The United States Department of Commerce, International Trade Administration, U.S. Commercial

Service is organizing an Environmental Technologies Trade Mission to Hong Kong and Beijing and Shanghai, China on October 26–November 2, 2004. This event offers a timely opportunity for U.S. firms to tap into some of the world's fastest growing markets for U.S. environmental equipment and technology. Target subsectors with best prospects for U.S. exporters to China and Hong Kong include solid waste (medical and hazardous) treatment, wastewater (municipal and industrial) treatment, and air pollution control equipment. Mission participants will benefit from country briefings; one-to-one appointments with prospective business contacts; high-level meetings with government officials; and site visits. In addition, the mission is strategically timed to facilitate attendance at Pollutec China 2004, November 3–5, 2004, in Shanghai. Offered this year for the first time in China, Pollutec will build on its 20-year success in France, where more than 2,200 exhibitors from 32 countries and 63,000 trade visitors do business annually. Pollutec China 2004 is a U.S. Department of Commerce Certified Trade Fair.

##### *II. Commercial Setting for the Mission*

China is expected to spend \$84 billion (1.2% of GDP) on environmental protection to meet the goals of the 10th five-year plan (2001–2005). During this 5-year period, the central government is expected to make 11.4% (\$9.7 billion) of the investment, while 34% will come from provincial and local governments and the remaining 55% from business enterprises. Beijing alone is projected to spend at least \$5.4 billion on environmental clean-up in preparation for the 2008 Olympics.

China and its foreign lenders still spend far more on the water sector than on air and solid waste, especially on the clean-up of priority river basins and lakes, thus offering the best opportunities for U.S. exporters. In November 2000, the State Council issued a notice requiring all cities with populations over 100,000 to build wastewater treatment facilities by 2005. To meet funding demands, water tariffs have been on the rise in most major cities in the last few years, and cities are starting to levy increased wastewater surcharges. Among the water pollution issues, groundwater contamination is a serious problem. Industrial factories are top groundwater polluters. Local environmental protection bureaus are responsible for inspection and investigation of groundwater pollution emergencies, and urge polluters to complement clean-up of the pollution. Best water and wastewater export

opportunities to China include those related to river basin management and flood control, water reuse, and sludge treatment and disposal. Specific products in strong demand include water monitoring instruments, drinking water purification products, and industrial wastewater treatment equipment.

Solid waste treatment, predominately through incineration and landfill, is expanding as China is slowly beginning to enforce its comprehensive solid and hazardous waste law. At present, China plans to allocate \$1.8 billion for the implementation of this plan, which includes construction of 31 hazardous waste treatment centers and 300 centralized medical waste treatment facilities; reconstruction, expansion and establishment of 31 warehouses for radioactive waste at the provincial level; and the establishment of 31 hazardous waste registration centers at the provincial level. The State Environmental Protection Administration is now in the process of identifying advanced hazardous waste treatment technologies suitable for China's situation. U.S. companies offering hazardous waste solutions hold strong potential in the China market.

In the air pollution control subsector, current focuses in China include SO<sub>2</sub> and acid rain control, as well as curbing vehicle emissions. The most recent regulatory requirements mandate that China observe an emissions standard equivalent to Europe II by the end of 2004. It is also reported that China is going to further raise the emissions standard to Europe III equivalent around the year 2008. In addition, China requires that all coal-fired power plants install desulfurization equipment by the year 2010. Air pollution control products that enjoy the best sales prospects in China include low-cost flue gas desulfurization and de-NO<sub>x</sub> systems, air monitoring instruments, and vehicle emissions control and inspection devices.

The Hong Kong Government has made water pollution control and solid waste treatment top priorities. While Hong Kong is a service-oriented economy and its industrial pollution is insignificant, cross-border pollution remains a big concern. For water and solid waste, the Hong Kong Government is formulating plans to resolve the problems internally. In 2002, total government expenditure devoted to environmental protection work amounted to approximately US\$825 million, including US\$190 million for sewage services (planning, design and construction of sewage systems, and sewage treatment and disposal

facilities); US\$580 million for drainage and water works, improvement of air quality, prevention of noise problems, and solid waste treatment; and \$55 million for environmental assessment and planning. The Hong Kong Government has earmarked some US\$775 million annually for environmental infrastructure improvement during the past two years.

Best prospects for U.S. environmental exports to Hong Kong include analytical instruments, vehicle emission particulate reduction devices, water filtration equipment (such as biological filtration), disinfection technologies (UV, membrane and ozonation), analytical instruments, mechanical waste sorting and separation, composting, incineration, and waste-to-energy technologies.

### III. Goals for the Mission

The goal of the China/Hong Kong Trade Mission is to enable trade mission participants to gain first-hand market exposure to government decision makers and private sector potential agents, distributors and business partners so they can be positioned to take advantage of the strong environmental business opportunities in China and Hong Kong.

### IV. Scenario for the Mission

The Environmental Trade Mission will include three stops: Hong Kong, Beijing and Shanghai. In each city, trade mission participants will benefit from country briefings and one-on-one business meetings with prospective agents, distributors, partners, and end users. In Shanghai and Beijing companies will also hold high-level meetings with government officials regarding regulatory and project opportunities, as well as visit environmental projects holding business potential. After the close of the trade mission, from November 3-5, mission participants can opt to remain in Shanghai to visit or exhibit on their own at Pollutec China 2004. As an added bonus to trade mission companies, their product literature will be displayed in the USA Pavilion at Pollutec.

### Timetable

Timetable for the trade mission will be as follows:

#### Hong Kong:

Tuesday, Oct. 26—Late Afternoon Briefing.

Wednesday, Oct. 27—One-on-one meetings; Early evening travel to Beijing.

#### Beijing:

Thursday, Oct. 28—Briefing; Meetings with Federal and State government

regulatory and project administration agencies; Site visit. Friday, Oct. 29—One-on-one meetings.

#### Shanghai:

Monday, Nov. 1—Briefing; Shanghai Government meetings; Site visit.

Tuesday, Nov. 2—One-on-one meetings; Conclusion.

Wed/Thurs, Nov. 3-5—Optional participation in Pollutec China 04.

### V. Criteria for Participant Selection

- Relevance of a company's business line to mission goals.
- Timeliness of company's signed application and participation agreement (including a participation fee of \$3,400).
- Potential for business in China and Hong Kong for the company.
- Minimum of eight and maximum of twelve participating companies in the mission.
- Provision of adequate information on company's products and/or services, and company's primary market objectives, in order to facilitate appropriate matching with potential business partners.
- Certification that the company meets Departmental guidelines for participation. A company's products or services must be either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least 51 percent U.S. content of the value of the finished product or service.

Any partisan political activities (including political contributions) of an applicant are entirely irrelevant to the selection process.

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar—<http://www.ita.doc.gov/doctm/tmcal.html>—and other Internet Web sites, press releases to the general and trade media, direct mail and broadcast fax, notices by industry trade associations and other multiplier groups, and at industry meetings, symposia, conferences, trade shows.

Recruitment for the mission will begin in June 2004 and conclude no later than September 15, 2004. The mission will target 8-12 companies. The participation fee for the event will be \$3,400 per company. The participation fee does not include travel and lodging costs. Applications received after the closing date will be considered only if space and scheduling constraints permit.

### U.S. Contact Information

Julia Rauner Guerrero, Environmental Technologies Team, San Diego U.S.

Export Assistance Center, Phone: (619) 557-2963, E-mail:

[julia.rauner.guerrero@mail.doc.gov](mailto:julia.rauner.guerrero@mail.doc.gov).

Yvonne Jackson, Export Promotion Services, Washington, DC, Phone: (202) 482-2675, E-mail:

[yvonne.jackson@mail.doc.gov](mailto:yvonne.jackson@mail.doc.gov).

Sue Simon, Trade Development, Washington, DC, Phone: 202-482-0713, E-mail: [susan\\_simon@ita.doc.gov](mailto:susan_simon@ita.doc.gov).

Dated: June 24, 2004.

**John Klingelhut,**

Senior Advisor, Export Promotion Services.

[FR Doc. 04-15225 Filed 7-2-04; 8:45 am]

BILLING CODE 3510-DR-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 062904D]

### Pacific Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** NOAA Fisheries and the Pacific Fishery Management Council will hold a workshop, which is open to the public. The workshop is being held to discuss and review data, data sources, and analytical methodology that will be used in the 2005 stock assessments of West Coast Groundfish.

**DATES:** The workshop will be held on Monday, July 26, 2004, from 12:30 p.m. to 5:30 p.m., and Tuesday, July 27 through Friday, July 30, from 8:30 a.m. until business for the day is completed.

**ADDRESSES:** The workshop will be held at the NOAA Western Regional Center (WRC), Building 9 Auditorium, 7600 Sand Point Way NE, Seattle, WA 98115; telephone: (206) 526-6150.

*Council address:* Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220-1384.

**FOR FURTHER INFORMATION CONTACT:** Ms. Stacey Miller, Northwest Fisheries Science Center (NWFSC); telephone: (206) 860-3480; or Mr. John DeVore, Pacific Fishery Management Council; telephone: (503) 820-2280.

**SUPPLEMENTARY INFORMATION:** The purpose of the West Coast Groundfish Data workshop is to identify data and data sources that will be used in conducting the 2005 West Coast groundfish stock assessments, discuss and review methods for converting raw data into model inputs, and explore the

potential use of additional data sources in future stock assessments.

Although non-emergency issues not contained in the meeting agenda may come before the workshop participants for discussion, those issues may not be the subject of formal workshop action during this meeting. Workshop action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the workshop participants' intent to take final action to address the emergency.

#### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820-2280 at least 5 days prior to the meeting date.

Entry to the NOAA WRC requires visitors to show a valid picture ID and register with security every morning. A visitor's badge, which must be worn while at the NOAA Facility, will be issued to non-Federal employees participating in the meeting.

Dated: June 30, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4-1473 Filed 7-2-04; 8:45 am]

BILLING CODE 3510-22-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 062904B]

#### South Atlantic Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public hearings.

**SUMMARY:** The South Atlantic Fishery Management Council (Council) will convene public hearings regarding the proposed Amendment 6 to the Shrimp Fishery Management Plan (FMP). The plan amendment addresses the following: The requirements for a Federal penaeid (white, pink and brown) shrimp permit in order to fish for or possess penaeid shrimp in the South Atlantic Exclusive Economic Zone (EEZ); minimizing bycatch in the rock shrimp fishery to the extent

practicable; Revising, establishing, and/or retaining status determination criteria for penaeid and rock shrimp stocks; Amendment of the Bycatch Reduction Device (BRD) Testing Protocol system; adjusting the criteria certification of new BRDs; and establishing of a method to monitor and assess bycatch in the South Atlantic rock and penaeid shrimp fisheries.

**DATES:** The public hearings will be held July 26 - August 10, 2004. See

**SUPPLEMENTARY INFORMATION** for the specific dates and times of the public hearings. Written comments must be received in the Council office by August 13, 2004.

**ADDRESSES:** Written comments should be sent to Bob Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407-4699, or via email to [shrimppcomments@safmc.net](mailto:shrimppcomments@safmc.net). Copies of the Public Hearing Document are available from Kim Iverson, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407-4699; telephone: 843-571-4366 or toll free at 866/SAFMC-10.

**FOR FURTHER INFORMATION CONTACT:** Kim Iverson, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407-4699; telephone: 843-571-4366; fax: 843-769-4520; email address: [kim.iverson@safmc.net](mailto:kim.iverson@safmc.net).

#### SUPPLEMENTARY INFORMATION:

##### Meeting Dates and Locations

All meetings are scheduled to begin at 6 p.m. Public hearings will be held at the following locations:

1. Tuesday, July 26, 2004, Town & Country Inn, 2008 Savannah Highway, Charleston, SC 29407; telephone: (843) 571-1000;
2. Monday, August 2, 2004, Richmond Hill City Hall, 40 Richard R. Davis Drive, Richmond Hill, GA 31324; telephone: (912) 756-3354;
3. Tuesday, August 3, 2004, Radisson Resort at the Port, 8701 Astronaut Blvd., Cape Canaveral, FL 34949; telephone: (321) 784-0000;
4. Thursday, August 5, 2004, Crown Plaza La Concha, 430 Duval Street, Key West, FL 33040; telephone: (305) 296-2991;
5. Monday, August 9, 2004, Cooperative Extension, 25 Referendum Road, Bldg. N, Bolivia, NC 28422; telephone: (910) 253-2610; and
6. Tuesday, August 10, 2004, DENR Regional Office, 943 Washington Square Mall, Washington, NC 27889; telephone: (252) 946-6481.

#### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by July 23, 2004.

Dated: June 30, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4-1474 Filed 7-2-04; 8:45 am]

BILLING CODE 3510-22-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 010803B]

#### Issuance of Permits

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

**ACTION:** Issuance of Permits 1400, 1407, 1414, 1431, 1467, and Modification 1 to Permit 1288.

**SUMMARY:** NMFS has issued Permit 1400 to Wildlands, Inc., Permit 1407 to California Department of Fish and Game, Permit 1414 to East Bay Municipal Utility District, Permit 1431 to California Department of Water Resources, Permit 1467 to Dr. Peter Klimley, and Modification 1 to Permit 1288 to Dynamac, Inc./U.S. Environmental Protection Agency.

**ADDRESSES:** Copies of the permit may be obtained from the Protected Resources Division, NMFS, 650 Capitol Mall, Suite 8-300, Sacramento, CA 95814, or e-mail your request to:

[FRNpermits.sac@noaa.gov](mailto:FRNpermits.sac@noaa.gov). Comments may also be submitted electronically through the Federal e-Rulemaking Portal: <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Rosalie del Rosario at phone number 916-930-3614, or e-mail: [Rosalie.delRosario@noaa.gov](mailto:Rosalie.delRosario@noaa.gov).

**SUPPLEMENTARY INFORMATION:** This notice is relevant to federally endangered Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*), threatened Central Valley spring-run Chinook salmon (*O. tshawytscha*), and/or threatened Central Valley steelhead (*O. mykiss*).

#### Permits

Permit 1400 was issued to Wildlands, Inc. on March 14, 2004, authorizing capture (by beach seine, nets) and



release of ESA-listed juvenile and adult Sacramento River winter-run Chinook salmon, Central Valley spring-run Chinook salmon, and Central Valley steelhead from waters within the restored wetlands complex on Kimball Island in the Sacramento-San Joaquin Delta. Permit 1400 authorizes unintentional mortality associated with research activities not to exceed 3 percent of the captured ESA-listed fish. The results of this study will provide fish and habitat data to develop conceptual models relating fish usage to habitat type by species, life stage, and native/non-native status. Permit 1400 expires January 1, 2009.

Permit 1407 was issued to California Department of Fish and Game on April 13, 2004, authorizing capture and release of juvenile Sacramento River winter-run Chinook salmon from a rotary screw trap located within the Sutter Bypass portion of lower Butte Creek. Lethal take of the fish associated with the study is not to exceed 2 percent of captured winter-run Chinook salmon fish. The purpose of the project is to study the life history of Central Valley spring-run Chinook salmon in Butte and Big Chico Creeks (under an existing permit), and may subsequently capture juvenile winter-run Chinook salmon. Permit 1407 expires June 30, 2009.

Permit 1414 was issued to East Bay Municipal Utility District on April 13, 2004, authorizing capture (by trapping, electrofishing) and release of adult and juvenile Central Valley steelhead associated with monitoring fish populations to measure the success of the Lower Mokelumne River Restoration Program. Permit 1414 authorizes lethal take of up to 5 adult and 45 juvenile Central Valley steelhead. Permit 1414 expires June 30, 2008.

Permit 1431 was issued to California Department of Water Resources on June 21, 2004, authorizing capture (by angling, trapping, tagging, electrofishing) and release of Central Valley spring-run Chinook salmon and Central Valley steelhead associated with research evaluating the effects of the Oroville-Thermalito Complex operation on anadromous fishes in the lower Feather River. Lethal take is not to exceed five adult Central Valley spring-run Chinook salmon, and five adult and 25 juvenile Central Valley steelhead. Permit 1431 expires June 30, 2009.

Permit 1467 was issued to Dr. Peter Klimley of the University of California at Davis on April 6, 2004, authorizing unintentional capture (by nets) and release of Sacramento River winter-run Chinook salmon, Central Valley spring-run Chinook salmon, and Central Valley steelhead associated with research

involving capture of green sturgeon (*Acipenser medirostris*) in the San Francisco Estuary and upper Sacramento River. Permit 1467 authorizes unintentional mortality of up to two adult winter-run Chinook salmon, five adult spring-run Chinook salmon, and one adult steelhead. Permit 1467 expires June 30, 2008.

Modification 1 to Permit 1288 was issued to Dynamac Corporation/U.S. Environmental Protection Agency on May 26, 2004, authorizing unintentional capture (by electrofishing) and release of Sacramento River winter-run Chinook salmon, Central Valley spring-run Chinook salmon, and Central Valley steelhead associated with biological assessments of the Sacramento, Mokelumne, and San Joaquin Rivers. Modification 1 to Permit 1288 authorizes unintentional mortality of up to one juvenile Sacramento River winter-run Chinook salmon, one juvenile Central Valley spring-run Chinook salmon, and three juvenile and one adult Central Valley steelhead. Modification 1 to Permit 1288 expires November 30, 2004.

NMFS has determined that take levels authorized in the permits will not jeopardize listed salmon and steelhead nor result in the destruction or adverse modification of critical habitat where described.

NMFS' conditions in the permit will ensure that the take of ESA-listed anadromous fish will not jeopardize the continued existence of the listed species. Issuance of this permit, as required by the ESA, was based on a finding that the permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of the listed species which are the subject of the permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA. This permit was issued in accordance with, and is subject to, 50 CFR part 222, the NMFS regulations governing listed species permits.

Dated: June 28, 2004.

**Phil Williams,**

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04-15182 Filed 7-2-04; 8:45 am]

BILLING CODE 3510-22-S

**DEPARTMENT OF DEFENSE**

**Uniformed Services University of the Health Sciences**

**Sunshine Act Notice**

**AGENCY HOLDING THE MEETING:**

Uniformed Services University of the Health Sciences.

**TIME AND DATE:** 8 a.m. to 4 p.m., August 3, 2004.

**PLACE:** Uniformed Services University of the Health Sciences, Board of Regents Conference Room (D3001), 4391 Jones Bridge Road, Bethesda, MD 20814-4799.

**STATUS:** Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

**MATTERS TO BE CONSIDERED:** 8 a.m.

Meeting—Board of Regents:

(1) Approval of Minutes—May 14, 2004.

(2) Faculty Matters.

(3) Departmental Reports.

(4) Financial Report.

(5) Report—President, USUHS.

(6) Report—Dean, School of Medicine.

(7) Report—Dean, Graduate School of Nursing.

(8) Approval of Degrees—School of Medicine, Graduate School of Nursing.

(9) Comments—Chairman, Board of Regents.

(10) New Business.

**FOR FURTHER INFORMATION CONTACT:** Dr. Barry Wolcott, Executive Secretary, Board of Regents, (301) 295-3981.

Dated: June 30, 2004.

**L.M. Bynum,**

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04-15430 Filed 7-1-04; 3:19 am]

BILLING CODE 5001-06-M

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**Sunshine Act Meeting Notice**

June 30, 2004.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94-409), 5 U.S.C 552b:

**AGENCY HOLDING MEETING:** Federal Energy Regulatory Commission.

**DATE AND TIME:** July 7, 2004, 10 a.m.

**PLACE:** Room 2C, 888 First Street, NE., Washington, DC 20426.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda.

\*Note:—Items listed on the Agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:** Magalie R. Salas, Secretary, Telephone

(202) 502-8400. For a recording listing items stricken from or added to the meeting, call (202) 502-8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the Agenda; however, all public documents may be examined in the Reference and Information Center.

#### 864th Meeting July 7, 2004

Regular Meeting, 10 a.m.

#### Administrative Agenda

A-1.

DOCKET# AD02-1, 000, AGENCY ADMINISTRATIVE MATTERS

A-2.

DOCKET# AD02-7, 000, CUSTOMER MATTERS, RELIABILITY, SECURITY AND MARKET OPERATIONS

#### Markets, Tariffs and Rates—Electric

E-1.

DOCKET# ER96-2495, 018, AEP POWER MARKETING, INC., AEP SERVICE CORPORATION, CSW POWER MARKETING, INC., CSW ENERGY SERVICES, INC., AND CENTRAL AND SOUTH WEST SERVICES, INC.

OTHER#S ER97-1238, 013, AEP POWER MARKETING, INC., AEP SERVICE CORPORATION, CSW POWER MARKETING, INC., CSW ENERGY SERVICES, INC., AND CENTRAL AND SOUTH WEST SERVICES, INC.

ER97-4143, 006, AEP POWER MARKETING, INC., AEP SERVICE CORPORATION, CSW POWER MARKETING, INC., CSW ENERGY SERVICES, INC., AND CENTRAL AND SOUTH WEST SERVICES, INC.

ER98-542, 008, AEP POWER MARKETING, INC., AEP SERVICE CORPORATION, CSW POWER MARKETING, INC., CSW ENERGY SERVICES, INC., AND CENTRAL AND SOUTH WEST SERVICES, INC.

ER98-2075, 012, AEP POWER MARKETING, INC., AEP SERVICE CORPORATION, CSW POWER MARKETING, INC., CSW ENERGY SERVICES, INC., AND CENTRAL AND SOUTH WEST SERVICES, INC.

ER91-569, 021, ENTERGY SERVICES, INC.

ER97-4166, 013, SOUTHERN COMPANY ENERGY MARKETING L.P.

PL02-8, 001, CONFERENCE ON SUPPLY MARGIN ASSESSMENT

E-2.

OMITTED

E-3.

DOCKET# ER04-835, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

E-4.

DOCKET# ER04-830, 000, ENTERGY SERVICES, INC.  
ER04-699, 000, ENTERGY SERVICES, INC.  
ER96-719, 000, MIDAMERICAN ENERGY COMPANY

E-5.

DOCKET# ER04-833, 000, SOUTHWEST POWER POOL, INC.

E-6.

DOCKET# ER04-828, 000, PACIFIC GAS AND ELECTRIC COMPANY

E-7.

DOCKET# QF95-328, 006, ECOELECTRICA, L.P.

E-8.

DOCKET# ER04-457, 000, PJM INTERCONNECTION L.L.C.

E-9.

OMITTED

E-10.

DOCKET# ER04-763, 000, ENTERGY SERVICES, INC.  
OTHER#S ER04-763, 001, ENTERGY SERVICES, INC.

E-11.

DOCKET# ER04-458, 000, MIDWEST INDEPENDENT TRANSMISSION SYSTEM OPERATOR, INC.  
OTHER#S ER04-458, 001, MIDWEST INDEPENDENT TRANSMISSION SYSTEM OPERATOR, INC.

E-12.

DOCKET# ER04-764, 000, SOUTH CAROLINA ELECTRIC & GAS COMPANY  
OTHER#S ER04-764, 001, SOUTH CAROLINA ELECTRIC & GAS COMPANY

E-13.

DOCKET# NJ04-3, 000, SOUTH CAROLINA PUBLIC SERVICE AUTHORITY

E-14.

DOCKET# ER04-841, 000, USGEN NEW ENGLAND, INC.

E-15.

DOCKET# ER03-1272, 002, ENTERGY SERVICES, INC.

E-16.

DOCKET# ER03-1086, 001, PJM INTERCONNECTION L.L.C.  
OTHER#S ER03-1086, 002, PJM INTERCONNECTION L.L.C.  
ER03-1086, 003, PJM INTERCONNECTION L.L.C.

E-17.

DOCKET# ER03-854, 002, ISO NEW ENGLAND, INC.

E-18.

OMITTED

E-19.

OMITTED

E-20.

OMITTED

E-21.

OMITTED

E-22.

DOCKET# EL02-77, 001, PUGET SOUND ENERGY, INC.

E-23.

DOCKET# EL98-6, 002, OLD DOMINION ELECTRIC COOPERATIVE V. PUBLIC SERVICE ELECTRIC AND GAS COMPANY

E-24.

OMITTED

E-25.

DOCKET# OA97-261, 008, PENNSYLVANIA-NEW JERSEY-MARYLAND INTERCONNECTION  
OTHER#S EC96-28, 008, ATLANTIC CITY ELECTRIC COMPANY, BALTIMORE GAS AND ELECTRIC COMPANY, DELMARVA POWER & LIGHT

COMPANY, JERSEY CENTRAL POWER & LIGHT COMPANY, METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY, PENNSYLVANIA POWER & LIGHT COMPANY, POTOMAC ELECTRIC POWER COMPANY AND PUBLIC SERVICE ELECTRIC AND GAS COMPANY

EC96-29, 008, PECO ENERGY COMPANY  
EL96-69, 008, ATLANTIC CITY ELECTRIC COMPANY, BALTIMORE GAS AND ELECTRIC COMPANY, DELMARVA POWER & LIGHT COMPANY, JERSEY CENTRAL POWER & LIGHT COMPANY, METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY, PENNSYLVANIA POWER & LIGHT COMPANY, POTOMAC ELECTRIC POWER COMPANY AND PUBLIC SERVICE ELECTRIC AND GAS COMPANY

ER96-2516, 009, ATLANTIC CITY ELECTRIC COMPANY, BALTIMORE GAS AND ELECTRIC COMPANY, DELMARVA POWER & LIGHT COMPANY, JERSEY CENTRAL POWER & LIGHT COMPANY, METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY, PENNSYLVANIA POWER & LIGHT COMPANY, POTOMAC ELECTRIC POWER COMPANY AND PUBLIC SERVICE ELECTRIC AND GAS COMPANY

ER96-2668, 008, PECO ENERGY COMPANY

EC97-38, 006, PENNSYLVANIA ELECTRIC COMPANY, PENNSYLVANIA POWER & LIGHT COMPANY, POTOMAC ELECTRIC POWER COMPANY, PUBLIC SERVICE ELECTRIC AND GAS COMPANY, ATLANTIC CITY ELECTRIC COMPANY, BALTIMORE GAS AND ELECTRIC COMPANY, DELMARVA POWER & LIGHT COMPANY, JERSEY CENTRAL POWER & LIGHT COMPANY, JERSEY CENTRAL POWER & LIGHT COMPANY AND METROPOLITAN EDISON COMPANY

EL97-44, 006, PENNSYLVANIA-NEW JERSEY-MARYLAND INTERCONNECTION RESTRUCTURING  
ER97-1082, 009, PENNSYLVANIA-NEW JERSEY-MARYLAND INTERCONNECTION

ER97-3189, 035, ATLANTIC CITY ELECTRIC COMPANY, BALTIMORE GAS AND ELECTRIC COMPANY, DELMARVA POWER & LIGHT COMPANY, JERSEY CENTRAL POWER & LIGHT COMPANY AND METROPOLITAN EDISON COMPANY  
ER97-3273, 006, PENNSYLVANIA ELECTRIC COMPANY, PENNSYLVANIA POWER & LIGHT COMPANY, POTOMAC ELECTRIC POWER COMPANY, PUBLIC SERVICE ELECTRIC AND GAS COMPANY AND PENNSYLVANIA-NEW JERSEY-MARYLAND INTERCONNECTION RESTRUCTURING  
OA97-678, 006, PJM INTERCONNECTION, L.L.C.

E-26.

- DOCKET# EL02-129, 001, SOUTHERN CALIFORNIA WATER COMPANY
- E-27. OMITTED
- E-28. OMITTED
- E-29. DOCKET# EL04-36, 000, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., CONSOLIDATED EDISON SOLUTIONS, INC., KEYSpan ENERGY SERVICES, INC., CONSTELLATION NEW-ENERGY, STRATEGIC ENERGY, NEW YORK ENERGY BUYERS FORUM AND CONSUMER POWER ADVOCATES v. NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
- E-30. DOCKET# EL04-103, 000, PACIFIC GAS & ELECTRIC COMPANY v. CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION  
OTHER#S ER04-835, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
- E-31. OMITTED
- E-32. OMITTED
- E-33. DOCKET# ER03-1328, 000, SIERRA PACIFIC RESOURCES OPERATING COMPANIES
- E-34. DOCKET# ER04-383, 000 SOUTHERN CALIFORNIA EDISON COMPANY  
OTHER#S ER04-384, 000, SOUTHERN CALIFORNIA EDISON COMPANY  
ER04-384, 001, SOUTHERN CALIFORNIA EDISON COMPANY  
ER04-385, 000, SOUTHERN CALIFORNIA EDISON COMPANY  
ER04-386, 000, SOUTHERN CALIFORNIA EDISON COMPANY
- E-35. DOCKET# ER03-1318, 002, NEW ENGLAND POWER POOL AND ISO-NEW ENGLAND INC.  
OTHER#S ER03-1318, 003, NEW ENGLAND POWER POOL AND ISO-NEW ENGLAND INC.
- E-36. DOCKET# EL02-23, 000, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. v. PUBLIC SERVICE ELECTRIC AND GAS COMPANY, PJM INTERCONNECTION, L.L.C., AND NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
- E-37. DOCKET# OA97-261, 009, PENNSYLVANIA-NEW JERSEY-MARYLAND INTERCONNECTION  
OTHER#S EC96-28, 009, ATLANTIC CITY ELECTRIC COMPANY, BALTIMORE GAS AND ELECTRIC COMPANY, DELMARVA POWER & LIGHT COMPANY, JERSEY CENTRAL POWER & LIGHT COMPANY, METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY, PENNSYLVANIA POWER & LIGHT COMPANY, POTOMAC ELECTRIC POWER COMPANY AND PUBLIC SERVICE ELECTRIC AND GAS COMPANY
- EC96-29, 009, PECO ENERGY COMPANY
- EL96-69, 009, ATLANTIC CITY ELECTRIC COMPANY, BALTIMORE GAS AND ELECTRIC COMPANY, DELMARVA POWER & LIGHT COMPANY, JERSEY CENTRAL POWER & LIGHT COMPANY, METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY, PENNSYLVANIA POWER & LIGHT COMPANY, POTOMAC ELECTRIC POWER COMPANY AND PUBLIC SERVICE ELECTRIC AND GAS COMPANY
- ER96-2516, 010, ATLANTIC CITY ELECTRIC COMPANY, BALTIMORE GAS AND ELECTRIC COMPANY, DELMARVA POWER & LIGHT COMPANY, JERSEY CENTRAL POWER & LIGHT COMPANY, METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY, PENNSYLVANIA POWER & LIGHT COMPANY, POTOMAC ELECTRIC POWER COMPANY AND PUBLIC SERVICE ELECTRIC AND GAS COMPANY
- ER96-2668, 009, PECO ENERGY COMPANY
- EC97-38, 007, PENNSYLVANIA ELECTRIC COMPANY, PENNSYLVANIA POWER & LIGHT COMPANY, POTOMAC ELECTRIC POWER COMPANY, PUBLIC SERVICE ELECTRIC AND GAS COMPANY, ATLANTIC CITY ELECTRIC COMPANY, BALTIMORE GAS AND ELECTRIC COMPANY, DELMARVA POWER & LIGHT COMPANY, JERSEY CENTRAL POWER & LIGHT COMPANY, JERSEY CENTRAL POWER & LIGHT COMPANY AND METROPOLITAN EDISON COMPANY
- EL97-44, 007, PENNSYLVANIA-NEW JERSEY-MARYLAND INTERCONNECTION RESTRUCTURING
- ER97-1082, 010, PENNSYLVANIA-NEW JERSEY-MARYLAND INTERCONNECTION
- ER97-3189, 036, ATLANTIC CITY ELECTRIC COMPANY, BALTIMORE GAS AND ELECTRIC COMPANY, DELMARVA POWER & LIGHT COMPANY, JERSEY CENTRAL POWER & LIGHT COMPANY AND METROPOLITAN EDISON COMPANY
- ER97-3273, 007, PENNSYLVANIA ELECTRIC COMPANY, PENNSYLVANIA POWER & LIGHT COMPANY, POTOMAC ELECTRIC POWER COMPANY, PUBLIC SERVICE ELECTRIC AND GAS COMPANY AND PENNSYLVANIA-NEW JERSEY-MARYLAND INTERCONNECTION RESTRUCTURING
- OA97-678, 007, PJM INTERCONNECTION, L.L.C.
- E-38. OMITTED
- E-39. DOCKET# ER03-358, 000, PACIFIC GAS AND ELECTRIC COMPANY
- E-40. DOCKET# ER03-989, 000, NIAGARA MOHAWK POWER CORPORATION  
OTHER#S ER03-989, 001, NIAGARA MOHAWK POWER CORPORATION
- ER03-990, 000, NIAGARA MOHAWK POWER CORPORATION
- ER03-990, 001, NIAGARA MOHAWK POWER CORPORATION
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- ER03-992, 001, NIAGARA MOHAWK POWER CORPORATION
- E-41. DOCKET# EL04-106, 000, MIDAMERICAN ENERGY COMPANY  
OTHER#S ER96-719, 000, MIDAMERICAN ENERGY COMPANY
- Miscellaneous Agenda**
- M-1. DOCKET# RM01-5, 000, ELECTRONIC TARIFF FILINGS—GAS, OIL AND ELECTRIC
- Markets, Tariffs and Rates—Gas**
- G-1. DOCKET# TS04-51, 000, BEAR CREEK STORAGE COMPANY  
OTHER#S TS04-4, 000, KB PIPELINE COMPANY AND NORTHWEST NATURAL GAS COMPANY  
TS04-5, 000, HAMPSHIRE GAS COMPANY  
TS04-97, 000, TOTAL PEAKING SERVICES, LLP  
TS04-213, 000, TUSCARORA GAS TRANSMISSION COMPANY  
TS04-256, 000, MIGC, INC.  
TS04-259, 000, MISSOURI INTERSTATE GAS, LLC  
TS04-266, 000, MIGC, INC.
- G-2. DOCKET# RP04-325, 000, MIDWESTERN GAS TRANSMISSION COMPANY
- G-3. DOCKET# RP96-200, 123, CENTERPOINT ENERGY GAS TRANSMISSION COMPANY
- G-4. DOCKET# RP04-328, 000, EL PASO NATURAL GAS COMPANY
- G-5. DOCKET# PR04-8, 000, ARKANSAS OKLAHOMA GAS CORPORATION
- G-6. OMITTED
- G-7. DOCKET# RP04-155, 001, NORTHERN NATURAL GAS COMPANY
- G-8. DOCKET# RP04-201, 001, ANR PIPELINE COMPANY
- G-9. DOCKET# RP98-40, 035, PANHANDLE EASTERN PIPE LINE COMPANY, LLC
- G-10. DOCKET# RP03-162, 011, TRAILBLAZER PIPELINE COMPANY
- G-11. DOCKET# RP04-237, 001, TRAILBLAZER PIPELINE COMPANY
- G-12. DOCKET# RP00-404, 008, NORTHERN NATURAL GAS COMPANY  
OTHER#S RP00-404, 009, NORTHERN NATURAL GAS COMPANY

RP00-404, 010, NORTHERN NATURAL GAS COMPANY  
 RP00-404, 011, NORTHERN NATURAL GAS COMPANY  
 RP00-404, 012, NORTHERN NATURAL GAS COMPANY  
 RP00-404, 013, NORTHERN NATURAL GAS COMPANY  
 RP03-398, 006, NORTHERN NATURAL GAS COMPANY

G-13.  
 OMITTED

G-14.  
 OMITTED

G-15.  
 DOCKET# RP04-34, 001, EL PASO NATURAL GAS COMPANY

G-16.  
 DOCKET# RP04-233, 002, TENNESSEE GAS PIPELINE COMPANY  
 OTHER#S RP04-233, 001, TENNESSEE GAS PIPELINE COMPANY

G-17.  
 OMITTED

G-18.  
 OMITTED

G-19.  
 DOCKET# RM93-11, 002, REVISIONS TO OIL PIPELINE REGULATIONS PURSUANT TO THE ENERGY POLICY ACT OF 1992

G-20.  
 DOCKET# RP04-327, 000, ANR PIPELINE COMPANY

#### Energy Projects—Hydro

H-1.  
 OMITTED

H-2.  
 OMITTED

H-3.  
 DOCKET# P-2016, 071, CITY OF TACOMA, WASHINGTON

H-4.  
 DOCKET# P-5018, 004, WELLESLEY ROSEWOOD MAYNARD MILLS, L.P.

H-5.  
 DOCKET# P-516, 379, SOUTH CAROLINA ELECTRIC & GAS COMPANY

H-6.  
 DOCKET# P-516, 380, SOUTH CAROLINA ELECTRIC & GAS COMPANY

H-7.  
 DOCKET# P-1971, 088, IDAHO POWER COMPANY

#### Energy Projects—Certificates

C-1.  
 DOCKET# CP04-51, 000, ANR PIPELINE COMPANY

C-2.  
 DOCKET# CP02-229, 001, SG RESOURCES MISSISSIPPI, L.L.C.

C-3.  
 DOCKET# CP04-149, 000, STINGRAY PIPELINE COMPANY, L.L.C.

C-4.  
 DOCKET# CP04-80, 000, WPS-ESI GAS STORAGE, LLC

C-5.  
 DOCKET# CP03-302, 003, CHEYENNE PLAINS GAS PIPELINE COMPANY, L.L.C.

C-6.  
 DOCKET# CP03-342, 002, DISCOVERY GAS TRANSMISSION LLC

OTHER#S CP03-343, 002, DISCOVERY PRODUCER SERVICES LLC  
 CP04-50, 001, TEXAS EASTERN TRANSMISSION, LP

C-7.  
 DOCKET# CP03-350, 001, GEORGIA STRAIT CROSSING PIPELINE LP

The Capitol Connection offers the opportunity for remote listening and viewing of the meeting. It is available for a fee, live over the Internet, via C-Band Satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703-993-3100) as soon as possible or visit the Capitol Connection Web site at <http://www.capitolconnection.gmu.edu> and click on "FERC".

Magalie R. Salas,

Secretary.

[FR Doc. 04-15434 Filed 7-1-04; 3:53 pm]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons To Attend

June 30, 2004.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94-409), 5 U.S.C. 552b:

*Agency Holding Meeting:* Federal Energy Regulatory Commission.

*Date and Time:* July 7, 2004. (Within a relatively short time after the Commission's open meeting on July 7).

*Place:* Room 3M 4A/B, 888 First Street, NE., Washington, DC 20426.

*Status:* Closed.

*Matters To Be Considered:* Non-Public Investigations and Inquiries, Enforcement Related Matters, and Security of Regulated Facilities.

*Contact Person for More Information:* Magalie R. Salas, Secretary, Telephone (202) 502-8400.

Chairman Wood and Commissioners Brownell, Kelliher, and Kelly voted to hold a closed meeting on July 7, 2004. The certification of the General Counsel explaining the action closing the meeting is available for public inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington, DC 20426.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of her staff, and a stenographer

are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

Magalie R. Salas,

Secretary.

[FR Doc. 04-15435 Filed 7-1-04; 3:53 pm]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER02-2001-003 et al.]

#### Electric Quarterly Reports Intent To Revoke Market-Based Rate Authority

Issued: June 23, 2004.

Before Commissioners: Pat Wood, III, Chairman; Nora Mead Brownell, and Joseph T. Kelliher. ER98-4240-002, ER00-2363-001, ER00-1975-001, ER97-360-013, ER97-1428-006, ER97-3788-010, ER97-2604-007, ER97-1643-001, ER96-659-017, ER97-1630-004, ER96-1283-008, ER00-741-002, ER95-964-011, ER99-3005-003, ER97-2792-010, ER01-1279-002, ER96-1798-006, ER01-2656-001, ER97-4427-004, ER97-4173-001, ER94-1580-022, ER00-2248-001, ER96-280-016, ER98-1622-008, ER96-3086-011, ER01-1897-002, ER98-1486-004, ER00-1453-001, ER97-2413-012, ER98-3393-006, ER99-3142-001, ER96-795-011, ER97-3416-006, ER98-2535-004, ER01-1760-002, ER97-4787-001, ER96-2583-002, ER95-257-020, ER98-4264-001, ER96-594-006, ER96-2435-001, ER98-3433-005, ER95-792-014, ER98-1148-006, ER96-1119-008, ER99-505-005, ER97-135-001, ER98-174-007, ER99-1184-002, ER96-203-004, ER97-778-004, ER98-3344-001, ER98-1824-009, ER98-1953-006, ER98-1421-006, ER95-914-013, ER96-1930-011, ER97-3187-002, ER96-1754-001, ER96-332-008, ER94-931-016, ER96-1-018, ER95-1234-017, ER95-473-012, ER96-947-015, ER01-40-001, ER97-3056-004, ER98-3012-002, ER98-3261-003, ER97-765-008, ER95-1047-011, ER96-2882-014, ER98-2175-008, ER99-4044-001, ER96-1724-010, ER98-3526-007, ER95-385-010, ER01-1496-001, ER96-906-009, ER94-1676-017, ER92-429-020, ER97-2900-002, ER02-517-003, ER01-36-002, ER97-3306-003, ER00-1408-001, ER98-1829-009, ER97-2426-004, ER96-525-012, ER95-1855-012, ER97-1248-005, ER96-1150-003, ER97-3526-006, ER96-2914-007, ER97-2517-009, ER98-1823-005, Electric Quarterly Reports, Abacus Group, Ltd., Allied Companies, LLC, American Energy Savings, Inc., American Energy Trading, Inc., American Power Reserve Marketing, Anker Power Services, Inc., Applied Resources Integrated Services, Inc., APRA Energy Group, Inc., Bonneville Fuels Management Corp., Brennan Power, Inc., BTU Power Corporation, Canal Emirates Power International, Inc., CNB/Olympic Gas Services, Coast Energy Group, Community Electric Power Corporation, Connecticut

Energy Cooperative, Inc., CPS Capital, Limited, Credit Suisse First Boston International, Electric Lite, Inc., Electrical Associates Power Marketing, Inc., Energy Resource Marketing, Inc., Energy Trading Company, Inc., Energy Transfer Group, LLC, Energy Unlimited, Inc., Energy2, Inc., EOPT Power Group Nevada, Inc., Equinox Energy, LLC, Essential Utility Resources, LLC, FINA Energy Services Company, Fortistar Power Marketing, LLC, FPH Electric, LLC, Gateway Energy Marketing, Global Energy & Technology, Inc., Hafslund Energy Trading, LLC, Haleywest, LLC, High Island Marketing, Inc., Hubbard Power & Light, Inc., Industrial Gas & Electric Services Co., International Energy Ventures, Inc., International Utility Consultants Inc., J.D. Enterprises, JMF Power Marketing, K Power Company, Inc., Kamps Propane, Inc., Kibler Energy Ltd, Lakeside Energy Services, LLC, Manner Technologies, LLC, Millennium Energy Corporation, Minnesota Agri-Power, LLC, Multi-Energies USA, Inc., NXIS, LLC, Omni Energy, Pacific Energy & Development Corp., PG Energy PowerPlus, Polaris Electric Power Company, Inc., Power Clearinghouse, Inc., Power Fuels, Inc., Power Systems Group Inc., Powerline Controls, Inc., PowerMark, LLC, PowerNet G.P., Powertec International, LLC, Prairie Winds Energy, Inc., Proven Alternatives, Inc., Quantum Energy Resources, Inc., Quinnipiac Energy, LLC, R. Hadler and Company, Inc., Rainbow Power USA LLC, Reliable Energy, Inc., Revelation Energy Resources Corporation, Ruffin Energy Services, Inc., Russell Energy Services Company, Salem Electric, Inc., Sandia Resources Corporation, SDS Petroleum Products, Inc., Shamrock Trading, LLC, Southeastern Energy Resources, Inc., Sundance Energy, SuperSystems, Inc., Texas-Ohio Power Marketing, Inc., Torco Energy Marketing, Inc., United Regional Energy, L.L.C., US Gas & Electric, USPower Energy, LLC, UTIL Power Marketing Inc., Utilimax.com, Inc., UtiliSource Corporation, UtiliSys Corporation, Utility Management & Consulting, Inc., VTEC Energy Inc., Wasatch Energy Corporation, Wheelled Electric Power Co., Woodruff Energy, Working Assets Green Power, Inc., Xenergy, Inc., XERXE Group, Inc.

1. Section 205 of the Federal Power Act (FPA), 16 U.S.C. 824d (2000), accord 18 CFR part 35 (2003), requires that all rates, terms and conditions of jurisdictional services be filed with the Commission. In Order No. 2001,<sup>1</sup> a final rule establishing revised public utility filing requirements for rates, terms and conditions of jurisdictional services,<sup>2</sup> the Commission required public utilities, including power marketers, to file, among other things, Electric

Quarterly Reports summarizing the contractual terms and conditions in their agreements for all jurisdictional services (including market-based power sales, cost-based power sales, and transmission service) and transaction information (including rates) for short-term and long-term market-based power sales and cost-based power sales during the most recent calendar quarter. In Order No. 2001-C,<sup>3</sup> the Commission required public utilities to file their Electric Quarterly Reports using software provided by the Commission. Commission staff review of the Electric Quarterly Report submittals has revealed that a number of public utilities that previously had been granted authority to sell power at market-based rates have failed to file Electric Quarterly Reports. Accordingly, this order notifies those public utilities that their market-based rate authorizations will be revoked unless they comply with the Commission's requirements.

2. In Order No. 2001, the Commission stated that,

[i]f a public utility fails to file a[n] Electric Quarterly Report (without an appropriate request for extension), or fails to report an agreement in a report, that public utility may forfeit its market-based rate authority and may be required to file a new application for market-based rate authority if it wishes to resume making sales at market-based rates.<sup>4</sup>

3. The Commission further stated that,

[t]he Electric Quarterly Reports are designed to satisfy the FPA section 205(c) requirements. For power marketers, the Electric Quarterly Report is intended to replace the current filing of Quarterly Transaction Reports summarizing their market-based rate transactions and the filing of long-term agreements. Electric Quarterly Reports are also intended to replace the Quarterly Transaction Reports and rate filings required of traditional utilities with market-based rate authority. Once this rule becomes effective, the requirement to comply with this rule will supersede the conditions in public utilities' market-based rate authorizations and failure to comply with the requirements of this rule will subject public utilities to the same consequences they would face for not satisfying the conditions in their rate authorizations, including possible revocation of their authority to make wholesale power sales at market-based rates.<sup>5</sup>

4. Commission staff has determined that a number of public utilities that had been granted market-based rate authority have failed to file their

Electric Quarterly Reports.<sup>6</sup> Commission staff has made a concerted effort to contact all of the non-filing utilities listed in the caption by letter, by e-mail and by telephone to inform them of their regulatory obligation. On April 24, 2003, the Secretary of the Commission sent letters to 423 companies reminding them that they were required to file the Electric Quarterly Report. The letters stated:

[w]ithin thirty (30) days of the date of this letter, your company utility must file Electric Quarterly Reports for the 2nd, 3rd, and 4th Quarters of 2002 and the 1st Quarter of 2003. Failure to do so may result in the Commission's revocation of your market-based rate authority in accordance with Order No. 2001. \* \* \* Please provide your immediate attention to this important compliance matter.<sup>7</sup>

5. Most of the public utilities listed in the caption of this order were sent this letter. In some cases, the letters were returned unopened. Commission staff called the power marketer contacts on file and searched Commission records and the Internet to identify alternate addresses and contacts. Where an alternate address or contact could be identified, a second letter and/or an e-mail was sent, or phone calls were made. Most of these inquiries also received no response. Notwithstanding efforts to find the non-filing public utilities listed in the caption of this order to remind them of their filing obligations, they have not complied with the requirement to file Electric Quarterly Reports.

6. Accordingly, the market-based rate authorizations for those public utilities identified in the caption of this order will be revoked unless they comply with the Commission's requirements.

*The Commission orders:*

(A) Within 30 days of the date of issuance of this order, each public utility listed in the caption of this order shall file its Electric Quarterly Reports for the 2nd, 3rd, and 4th Quarters of 2002, the 1st, 2nd, 3rd, and 4th Quarters of 2003 and the 1st and 2nd Quarters of 2004. If a public utility fails to make this filing, the Commission will revoke that public utility's authority to sell power at market-based rates and terminate its electric market-based rate tariff. Upon expiration of the filing deadline in this order, the Secretary shall promptly issue a notice, effective on the date of

<sup>1</sup> Revised Public Utility Filing Requirements, Order No. 2001, 67 FR 31043, FERC Stats. & Regs. ¶ 31,127 (April 25, 2002), *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reconsideration and clarification denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filings*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002).

<sup>2</sup> Order No. 2001, FERC Stats. & Regs. ¶ 31,127 at P 11-12, 18-21.

<sup>3</sup> Order No. 2001-C, 101 FERC ¶ 61,314 at P 9.

<sup>4</sup> Order No. 2001, FERC Stats. & Regs. ¶ 31,127 at P 222.

<sup>5</sup> *Id.* at P 223.

<sup>6</sup> In many cases, the utilities had previously failed to file Power Marketer Quarterly Reports (the predecessor to the Electric Quarterly Reports).

<sup>7</sup> Letter informing Abacus Group Ltd, *et al.*, that to date their Electric Quarterly Reports had not been filed and requesting that the reports for the 2nd, 3rd, and 4th quarters of 2002, *et al.*, be filed within 30 days (April 24, 2003).

issuance, listing the public utilities whose tariffs have been terminated.

(B) The Secretary is hereby directed to publish this order in the **Federal Register**.

By the Commission. Commissioner Kelly not participating.

Linda Mitry,

Acting Secretary.

[FR Doc. 04-15153 Filed 7-2-04; 8:45 am]

BILLING CODE 6717-01-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-7782-3]

### Air Quality Criteria for Particulate Matter (External Review Draft)

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

**ACTION:** Notice; extension of public comment period.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is extending the public comment period on the revised drafts of Chapters 7, 8, and 9 of EPA's document, *Air Quality Criteria for Particulate Matter*, to July 30, 2004. In a previous **Federal Register** notice (69 FR 35028, June 23, 2004), the National Center for Environmental Assessment (NCEA), within EPA's Office of Research and Development, announced the availability for public review and comment of revised drafts of Chapters 7, 8, and 9 of EPA's document *Air Quality Criteria for Particulate Matter*, which incorporate revisions made in response to earlier external review of those chapters. The June 23, 2004, notice announced that the public comment period closed on July 20, in preparation for review by the EPA Science Advisory Board's Clean Air Act Scientific Advisory Committee (CASAC) on July 20 and 21, 2004. The date and arrangements for the CASAC meeting were announced in the **Federal Register** on June 9, 2004 (69 FR 32344).

**DATES:** Comments on the draft chapters must be submitted in writing no later than July 30, 2004. Send the written comments to the Project Manager for Particulate Matter, National Center for Environmental Assessment (B243-01), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

**ADDRESSES:** The revised Chapters 7, 8, and 9 of the Air Quality Criteria for

Particulate Matter are available on CD ROM from NCEA. Contact Ms. Diane Ray by phone (919-541-3637), fax (919-541-1818), or e-mail ([ray.diane@epa.gov](mailto:ray.diane@epa.gov)) to request these chapters. Please provide the document's title, *Air Quality Criteria for Particulate Matter*, and the EPA numbers for each of the three revised chapters (EPA/600/P-99/002aE, EPA/600/P-99/002bE), as well as your name and address, to properly process your request. The draft chapters are also available on the NCEA Web site at <http://www.epa.gov/ncea>. Hard copies of the revised chapters can also be made available upon request.

**FOR FURTHER INFORMATION CONTACT:** Dr. Robert Elias, National Center for Environmental Assessment (B243-01), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone: 919-541-4167; fax: 919-541-1818; e-mail: [elias.robert@epa.gov](mailto:elias.robert@epa.gov).

Dated: June 30, 2004.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. 04-15196 Filed 6-30-04; 1:52 pm]

BILLING CODE 6560-50-P

## FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC-03-58-A (Auction No. 58); DA 04-1639]

### Broadband PCS Spectrum Auction Scheduled for January 12, 2005; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the auction of 234 broadband Personal Communications Service (PCS) licenses scheduled to commence on January 12, 2005 (Auction No. 58). This document also seeks comment on reserve prices or minimum opening bids and other auction procedures for Auction No. 58.

**DATES:** Comments are due on or before July 8, 2004, and reply comments are due on or before July 15, 2004.

**ADDRESSES:** Comments and reply comments must be sent by electronic mail to the following address: [auction58@fcc.gov](mailto:auction58@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** For legal questions: Audrey Bashkin (202) 418-0660. For general auction questions: Jeff Crooks (202) 418-0660 or Lisa Stover (717) 338-2888. For service rule questions, contact the Mobility Division, Wireless Telecommunications Bureau, as follows: Erin McGrath, (202) 418-0620; JoAnn Epps, (202) 418-1342; or Dwain Livingston, (202) 418-1338.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Auction No. 58 Comment Public Notice* released on June 18, 2004. The complete text of the *Auction No. 58 Comment Public Notice*, including attachments and of related Commission documents is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The Auction No. 58 Comment Public Notice and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. ("BCPI"), Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone: (202) 488-5300, facsimile: (202) 488-5563, or you may contact BCPI at its Web site: <http://www.BCPIWEB.com>. When ordering documents from BCPI, please provide the appropriate FCC document number (for example, FCC 00-313 for the C/F Block Sixth Report and Order). The *Auction No. 58 Comment Public Notice* and related documents are also available on the Internet at the Commission's Web site: <http://wireless.fcc.gov/auctions/58/>.

### I. General Information

1. By the *Auction No. 58 Comment Public Notice*, the Wireless Telecommunications Bureau ("Bureau") announces the auction of 234 broadband Personal Communications Service ("PCS") licenses, scheduled to commence on January 12, 2005 (Auction No. 58). The spectrum to be auctioned has been offered previously in other auctions but was returned to the Commission as a result of license cancellation or termination. A complete list of licenses available for Auction No. 58 is included as Attachment A of *Auction No. 58 Comment Public Notice*.

2. The following table contains the block/eligibility status/frequency cross-reference list for Auction No. 58:

Frequency block	Eligibility status		Bandwidth (MHz) (unless otherwise noted in attachment A)	Frequency (MHz) (unless otherwise noted in attachment A)
	Tier 1	Tier 2		
A .....	n/a .....	n/a .....	30	1850-1865, 1930-1945
C1 .....	Open .....	Closed .....	15	1902.5-1910, 1982.5-1990
C2 .....	Open .....	Closed .....	15	1895-1902.5, 1975-1982.5
C3 .....	Closed .....	Closed .....	10	1895-1900, 1975-1980
C4 .....	Open .....	Closed .....	10	1900-1905, 1980-1985
C5 .....	Open .....	Open .....	10	1905-1910, 1985-1990
D .....	n/a .....	n/a .....	10	1865-1870, 1945-1950
E .....	n/a .....	n/a .....	10	1885-1890, 1965-1970
F .....	Open .....	Open .....	10	1890-1895, 1970-1975

3. In some cases, licenses are available for only part of a market or may not include all of the spectrum associated with a particular frequency block in Auction No. 58. Bold type indicates that no license of the particular tier/frequency block combination will be available in Auction No. 58. See Attachment A of *Auction No. 58 Comment Public Notice* to determine which licenses will be offered.

4. For the C and F block licenses, Basic Trading Areas ("BTAs") are divided into two tiers according to the population size, with Tier 1 comprising markets with population at or above 2.5 million, based on 2000 census figures, and Tier 2 comprising the remaining markets. Some licenses are available to all bidders in "open" bidding, while other licenses are available only to entrepreneurs in "closed" bidding. In order to qualify as an "entrepreneur," an applicant, including attributable investors and affiliates, must have had gross revenues of less than \$125 million in each of the last two years and must have less than \$500 million in total assets. All of the licenses available in "closed" bidding are C block licenses. The A, B, E, and F block licenses, as well as certain C block licenses, are available in "open" bidding. The entrepreneur eligibility restriction does not apply to licenses that were available but not won in any auction beginning on or after March 23, 1999. C block licenses for BTA215, BTA330, and BTA470 were available but not won in Auction No. 22. Accordingly, even though licenses in the C3 and C4 frequency blocks in Tier 2 generally are designated as subject to closed bidding, CW-BTA215-C3, CW-BTA330-C3, and CW-BTA470-C4 will be offered in open bidding in Auction No. 58. CW-BTA215-C3, CW-BTA330-C3, and CW-BTA470-C4 were offered in open bidding and won in Auction No. 35; however, because the winners defaulted on their payment obligations, the licenses were never awarded. Size-based bidding credits are not available for C

block licenses won in "closed" bidding or for licenses in the A, D, or E blocks.

5. The Balanced Budget Act of 1997 requires the Commission to "ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed \* \* \* before issuance of bidding rules, to permit notice and comment on proposed auction procedures. \* \* \*" Consistent with the provisions of the Balanced Budget Act and to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, the Commission directed the Bureau, under its existing delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of each auction. The Bureau therefore seeks comment on the following issues relating to Auction No. 58.

## II. Auction Structure

### A. Simultaneous Multiple-Round Auction Design

6. The Bureau proposes to award all licenses included in Auction No. 58 in a simultaneous multiple-round auction. As described further below, this methodology offers every license for bid at the same time with successive bidding rounds in which bidders may place bids. The Bureau seeks comment on this proposal.

### B. Upfront Payments and Bidding Eligibility

7. The Bureau has delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned, taking into account such factors as the population in each geographic license area and the value of similar spectrum. As described further below, the upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on licenses. Upfront payments protect against frivolous or insincere bidding and provide the Commission with a source

of funds from which to collect payments owed at the close of the auction. With these guidelines in mind for Auction No. 58, the Bureau proposes to calculate upfront payments on a license-by-license basis using a formula based on bandwidth and license area population: \$0.05 \* MHz \* License Area Population

8. The specific proposed upfront payment for each license available in Auction No. 58 is set forth in Attachment A of the *Auction No. 58 Comment Public Notice*. The Bureau seeks comment on this proposal.

9. The Bureau further proposes that the amount of the upfront payment submitted by a bidder will determine the maximum number of bidding units on which a bidder may place bids. This limit is a bidder's initial eligibility. Each license is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 58 Comment Public Notice*, on a bidding unit per dollar basis. This number does not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific licenses. Rather, a bidder may place bids on any combination of licenses as long as the total number of bidding units associated with those licenses does not exceed its current eligibility. Eligibility cannot be increased during the auction. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on (or hold high bids on) in any single round, and submit an upfront payment covering that number of bidding units. The Bureau proposes comment on this proposal.

### C. Activity Rules

10. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively on a percentage of their current bidding eligibility during each round of the auction rather than waiting until the end to participate. A bidder that does not satisfy the activity rule

will either lose bidding eligibility in the next round or must use an activity rule waiver (if any remain).

11. The Bureau proposes to divide the auction into two stages, each characterized by an increased activity requirement. The auction will start in Stage One. The Bureau proposes that the auction generally will advance from Stage One to Stage Two when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is approximately twenty percent or below for three consecutive rounds of bidding. However, the Bureau further proposes that it retain the discretion to change stages unilaterally by announcement during the auction. In exercising this discretion, the Bureau will consider a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentage of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Bureau seeks comment on these proposals.

12. For Auction No. 58, the Bureau proposes the following activity requirements:

*Stage One:* In each round of the first stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on licenses representing at least 80 percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the current round activity by five-fourths (5/4).

*Stage Two:* In each round of the second stage, a bidder desiring to maintain its current eligibility is required to be active on 95 percent of its current bidding eligibility. In this final stage, reduced eligibility for the next round will be calculated by multiplying the current round activity by twenty/nineteenths (20/19).

13. The Bureau seeks comment on these proposals. Commenters that believe these activity rules should be modified should explain their reasoning and comment on the desirability of an alternative approach. Commenters are advised to support their claims with analyses and suggested alternative activity rules.

#### *D. Activity Rule Waivers and Reducing Eligibility*

14. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity

in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license. Activity rule waivers can be either proactive or automatic and are principally a mechanism for auction participants to avoid the loss of auction eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

**Note:** Once a proactive waiver is submitted, that waiver cannot be unsubmitted, even if the round has not yet closed.

15. The FCC Automated Auction System assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any bidding period where a bidder's activity level is below the minimum required unless: (i) there are no activity rule waivers available; or (ii) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

**Note:** If a bidder has no waivers remaining and does not satisfy the required activity level, its current eligibility will be permanently reduced, possibly eliminating the bidder from the auction.

16. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding period by using the "reduce eligibility" function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described above. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

17. A bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding system) during a bidding period in which no bids or withdrawals are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids or withdrawals will not keep the auction open.

18. The Bureau proposes that each bidder in Auction No. 58 be provided with three activity rule waivers that may be used at the bidder's discretion during the course of the auction as set forth

above. The Bureau seeks comment on this proposal.

#### *E. Information Relating to Auction Delay, Suspension, or Cancellation*

19. For Auction No. 58, the Bureau proposes that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, or administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasizes that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. The Bureau seeks comment on this proposal.

### **III. Bidding Procedures**

#### *A. Round Structure*

20. The Commission will conduct Auction No. 58 over the Internet. Telephonic bidding will also be available. As a contingency plan, the FCC Wide Area Network will be available as well. The telephone number through which the backup FCC Wide Area Network may be accessed will be announced in a later public notice. Full information regarding how to establish such a connection will be provided in the public notice announcing details of auction procedures.

21. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction, and will be included in the registration mailings. The simultaneous multiple-round format will consist of sequential bidding rounds, each followed by the release of round results. Details regarding the location and format of round results will be included in the same public notice.

22. The Bureau has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding



activity level and other factors. The Bureau seeks comment on this proposal.

#### B. Reserve Price or Minimum Opening Bid

23. The Balanced Budget Act calls upon the Commission to prescribe methods for establishing a reasonable reserve price or a minimum opening bid when FCC licenses are subject to auction, unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission has directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction.

24. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted. It is generally used to accelerate the competitive bidding process. Also, the auctioneer often has the discretion to lower the minimum opening bid amount later in the auction. It is also possible for the minimum opening bid and the reserve price to be the same amount.

25. In light of the Balanced Budget Act's requirements, the Bureau proposes to establish minimum opening bids for Auction No. 58 based on factors that could have an impact on the value of the spectrum. The Bureau believes a minimum opening bid, which has been used in other auctions, is an effective bidding tool. With these guidelines in mind for Auction No. 58, the Bureau proposes to calculate minimum opening bids on a license-by-license basis using formulas based on bandwidth and license area population. Furthermore, the Bureau proposes to differentiate these formulas based on the population of each license area.

Population  $\geq$  2,000,000: \$0.50 \* MHz\*

License Area Population

Population  $\geq$  500,000: \$0.25 \* MHz\*

License Area Population

Population < 500,000: \$0.15 \* MHz\*

License Area Population

26. The specific minimum opening bid for each license available in Auction No. 58 is set forth in Attachment A of the *Auction No. 58 Comment Public Notice*. The Bureau seeks comment on this proposal.

27. If commenters believe that these minimum opening bids will result in substantial numbers of "unwon" licenses, or are not reasonable amounts,

or should instead operate as reserve prices, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid levels or formulas. In establishing the minimum opening bids, the Bureau particularly seeks comment on such factors as the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of these PCS licenses. The Bureau also seeks comment on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

#### C. Minimum Acceptable Bids and Bid Increments

28. In each round, eligible bidders will be able to place bids on a given license in any of nine different amounts. The FCC Automated Auction System interface will list the nine acceptable bid amounts for each license. Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. In the rounds after a bid is placed on a license, the minimum acceptable bid for that license will be equal to the standing high bid plus the defined increment.

29. Once there is a standing high bid on a license, the FCC Automated Auction System will calculate a minimum acceptable bid for that license for the following round, as described below. The difference between the minimum acceptable bid and the standing high bid for each license will define the bid increment. The nine acceptable bid amounts for each license consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, etc.).

30. Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. The additional bid amounts for licenses that have not yet received a bid will be calculated differently, as explained below.

31. For Auction No. 58, the Bureau proposes to calculate minimum acceptable bids by using a smoothing

methodology, as the Bureau has done in several other auctions. The smoothing formula calculates minimum acceptable bids by first calculating a percentage increment, not to be confused with the bid increment. The percentage increment for each license is based on bidding activity on that license in all prior rounds; therefore, a license that has received many bids throughout the auction will have a higher percentage increment than a license that has received few bids.

32. The calculation of the percentage increment used to determine the minimum acceptable bids for each license for the next round is made at the end of each round. The computation is based on an activity index, which is a weighted average of the number of bids in that round and the activity index from the prior round. The current activity index is equal to a weighting factor times the number of new bids received on the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The activity index is then used to calculate a percentage increment by multiplying a minimum percentage increment by one plus the activity index with that result being subject to a maximum percentage increment. The Commission will initially set the weighting factor at 0.5, the minimum percentage increment at 0.1 (10%), and the maximum percentage increment at 0.3 (30%). Hence, at these initial settings, the percentage increment will fluctuate between 10% and 30% depending upon the number of bids for the license.

#### Equations

$$A_i = (C * B_i) + ((1 - C) * A_{i-1})$$

$$I_{i+1} = \text{smaller of } ((1 + A_i) * N) \text{ and } M$$

$$X_{i+1} = I_{i+1} * Y_i$$

where,

$A_i$  = activity index for the current round (round  $i$ )

$C$  = activity weight factor

$B_i$  = number of bids in the current round (round  $i$ )

$A_{i-1}$  = activity index from previous round (round  $i-1$ ),  $A_0$  is 0

$X_{i+1}$  = percentage increment for the next round (round  $i+1$ )

$N$  = minimum percentage increment or percentage increment floor

$M$  = maximum percentage increment or percentage increment ceiling

$X_{i+1}$  = dollar amount associated with the percentage increment

$Y_i$  = high bid from the current round

33. Under the smoothing methodology, once a bid has been

received on a license, the minimum acceptable bid for that license in the following round will be the high bid from the current round plus the dollar amount associated with the percentage increment, with the result rounded to the nearest thousand if it is over ten thousand or to the nearest hundred if it is under ten thousand.

#### Examples

##### License 1

$$C = 0.5, N = 0.1, M = 0.3$$

Round 1 (2 new bids, high bid = \$1,000,000)

- i. Calculation of percentage increment for round 2 using the smoothing formula:

$$A_1 = (0.5 * 2) + (0.5 * 0) = 1$$

$$I_2 = \text{The smaller of } ((1 + 1) * 0.1) = 0.2 \text{ or } 0.3 \text{ (the maximum percentage increment).}$$

- ii. Calculation of dollar amount associated with the percentage increment for round 2 (using  $I_2$  from above):

$$X_2 = 0.2 * \$1,000,000 = \$200,000$$

- iii. Minimum acceptable bid for round 2 = \$1,200,000.

Round 2 (3 new bids, high bid = \$2,000,000)

- i. Calculation of percentage increment for round 3 using the smoothing formula:

$$A_2 = (0.5 * 3) + (0.5 * 1) = 2$$

$$I_3 = \text{The smaller of } ((1 + 2) * 0.1) = 0.3 \text{ or } 0.3 \text{ (the maximum percentage increment).}$$

- ii. Calculation of dollar amount associated with the percentage increment for round 3 (using  $I_3$  from above):

$$X_3 = 0.3 * \$2,000,000 = \$600,000.$$

- iii. Minimum acceptable bid for round 3 = \$2,600,000.

Round 3 (1 new bid, high bid = \$2,600,000)

- i. Calculation of percentage increment for round 4 using the smoothing formula:

$$A_3 = (0.5 * 1) + (0.5 * 2) = 1.5$$

$$I_4 = \text{The smaller of } ((1 + 1.5) * 0.1) = 0.25 \text{ or } 0.3 \text{ (the maximum percentage increment).}$$

- ii. Calculation of dollar amount associated with the percentage increment for round 4 (using  $I_4$  from above):

$$X_4 = 0.25 * \$2,600,000 = \$650,000.$$

- iii. Minimum acceptable bid for round 4 = \$3,250,000.

34. As stated above, until a bid has been placed on a license, the minimum

acceptable bid for that license will be equal to its minimum opening bid. The additional bid amounts are calculated using the difference between the minimum opening bid times one plus the minimum percentage increment, rounded as described above, and the minimum opening bid. That is,  $I = (\text{minimum opening bid})(1 + N)\{\text{rounded}\} - (\text{minimum opening bid})$ . Therefore, when  $N$  equals 0.1, the first additional bid amount will be approximately ten percent higher than the minimum opening bid; the second, twenty percent; the third, thirty percent; etc.

35. In the case of a license for which the standing high bid has been withdrawn, the minimum acceptable bid will equal the second highest bid received for the license. The additional bid amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid.

36. The Bureau retains the discretion to change the minimum acceptable bids and bid increments if it determines that circumstances so dictate. The Bureau will do so by announcement in the FCC Automated Auction System. The Bureau seeks comment on these proposals.

#### D. High Bids

37. At the end of a bidding round, a high bid for each license will be determined based on the highest gross bid amount received for the license. In the event of identical high bids on a license in a given round (*i.e.*, tied bids), the Bureau proposes to use a random number generator to select a single high bid from among the tied bids. If the auction were to end with no higher bids being placed for that license, the winning bidder would be the one that placed the selected high bid. However, the remaining bidders, as well as the high bidder, can submit higher bids in subsequent rounds. If any bids are received on the license in a subsequent round, the high bid again will be determined by the highest gross bid amount received for the license. The Bureau seeks comment on this proposal.

38. A high bid will remain the high bid until there is a higher bid on the same license at the close of a subsequent round. A high bid from a previous round is sometimes referred to as a "standing high bid." Bidders are reminded that standing high bids count towards bidding activity.

#### E. Information Regarding Bid Withdrawal and Bid Removal

39. For Auction No. 58, the Bureau proposes the following bid removal and

bid withdrawal procedures. Before the close of a bidding period, a bidder has the option of removing any bid placed in that round. By removing selected bids in the bidding system, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid.

40. A high bidder may withdraw its standing high bids from previous rounds using the withdraw function in the bidding system. A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payment provisions of the Commission rules. The Bureau seeks comment on these bid removal and bid withdrawal procedures.

41. In the *Part 1 Third Report and Order*, 63 FR 770, January 7, 1998, the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of efficient backup strategies as information becomes available during the course of an auction. The Commission noted, however, that, in some instances, bidders may seek to withdraw bids for improper reasons. The Bureau, therefore, has discretion, in managing the auction, to limit the number of withdrawals to prevent any bidding abuses. The Commission stated that the Bureau should assertively exercise its discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular market if the Bureau finds that a bidder is abusing the Commission's bid withdrawal procedures.

42. Applying this reasoning, the Bureau proposes to limit each bidder in Auction No. 58 to withdrawing standing high bids in no more than two rounds during the course of the auction. To permit a bidder to withdraw bids in more than two rounds would likely encourage insincere bidding or the use of withdrawals for anti-competitive purposes. The two rounds in which withdrawals are utilized will be at the bidder's discretion; withdrawals otherwise must be in accordance with the Commission's rules. There is no limit on the number of standing high bids that may be withdrawn in either of the rounds in which withdrawals are utilized. Withdrawals will remain subject to the bid withdrawal payment provisions specified in the Commission's rules. The Bureau seeks comment on this proposal.

#### F. Stopping Rule

43. The Bureau has discretion "to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time." For Auction No. 58, the Bureau proposes to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all licenses remain available for bidding until bidding closes simultaneously on all licenses.

44. Bidding will close simultaneously on all licenses after the first round in which no new bids, proactive waivers, or withdrawals are received. Thus, unless circumstances dictate otherwise, bidding will remain open on all licenses until bidding stops on every license.

45. However, the Bureau proposes to retain the discretion to exercise any of the following options during Auction No. 58:

i. Utilize a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this modified stopping rule. The Bureau further seeks comment on whether this modified stopping rule should be used at any time or only in stage two of the auction.

ii. Keep the auction open even if no new bids or proactive waivers are submitted and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. The activity rule, therefore, will apply as usual and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver.

iii. Declare that the auction will end after a specified number of additional rounds ("special stopping rule"). If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s) only for licenses on which the high bid increased in at least one of a specified preceding number of rounds.

46. The Bureau proposes to exercise these options only in certain circumstances, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising these options, the Bureau is likely to attempt to increase

the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of licenses where there is still a high level of bidding activity. The Bureau seeks comment on these proposals.

#### IV. Conclusion

47. Comments are due on or before July 8, 2004, and reply comments are due on or before July 15, 2004. Because of the disruption of regular mail and other deliveries in Washington, DC, the Bureau requires that all comments and reply comments be filed electronically. Comments and reply comments must be sent by electronic mail to the following address: [auction58@fcc.gov](mailto:auction58@fcc.gov). The electronic mail containing the comments or reply comments must include a subject or caption referring to Auction No. 58 Comments and the name of the commenting party. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Copies of comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Information Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554.

In addition, the Bureau requests that commenters fax a courtesy copy of their comments and reply comments to the attention of Kathryn Garland at (717) 338-2850.

48. This proceeding has been designated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules.

Federal Communications Commission.

**Gary Michaels,**

*Deputy Chief, Auctions and Spectrum Access Division, WTB.*

[FR Doc. 04-15239 Filed 7-2-04; 8:45 am]

BILLING CODE 6712-01-P

#### FEDERAL COMMUNICATIONS COMMISSION

[DA 04-1763]

#### Third Meeting of the Advisory Committee for the 2007 World Radiocommunication Conference (WRC-07 Advisory Committee)

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the third meeting of the WRC-07 Advisory Committee will be held on September 27, 2004, at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 2007 World Radiocommunication Conference. The Advisory Committee will consider any preliminary views and/or proposals introduced by the Advisory Committee's Informal Working Groups.

**DATES:** September 27, 2004; 10 a.m.-12 noon.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Room TW-C305, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Alexander Roytblat, FCC International Bureau, Strategic Analysis and Negotiations Division, at (202) 418-7501.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Public Notice, DA 04-1763, released June 23, 2004. The Federal Communications Commission (FCC) established the WRC-07 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2007 World Radiocommunication Conference (WRC-07).

In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, this notice advises interested persons of the third meeting of the WRC-07 Advisory Committee. The WRC-07 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. The proposed agenda for the third meeting is as follows:

**Agenda**

*Third Meeting of the WRC-07 Advisory Committee, Federal Communications Commission, 445 12th Street, SW., Room TW-C305, Washington, DC 20554; September 27, 2004; 10 a.m.-12 noon*

1. Opening Remarks.
2. Approval of Agenda.
3. Approval of the Minutes of the Second Meeting.
4. Reports on Recent WRC-07 Preparatory Meetings.
5. NTIA Draft Preliminary Views and Proposals.
6. Informal Working Group Reports and Documents relating to:
  - a. Consensus Views and Issues Papers.
  - b. Draft Proposals.
7. Future meetings.
8. Other Business.

Federal Communications Commission.

**Don Abelson,**

*Chief, International Bureau.*

[FR Doc. 04-15238 Filed 7-2-04; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### Technological Advisory Council

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, this notice advises interested persons of the sixth meeting of the Technological Advisory Council ("Council") under its charter renewed as of November 25, 2002. The meeting will be held at the Federal Communications Commission in Washington, DC.

**DATES:** July 28, 2004, beginning at 10 a.m. and concluding at 3 p.m.

**ADDRESSES:** Federal Communications Commission, 445 12th St., SW., Room TW-C305 Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Jeffery Goldthorp, (202) 418-1096.

**SUPPLEMENTARY INFORMATION:**

Continuously accelerating technological changes in telecommunications design, manufacturing, and deployment require that the Commission be promptly informed of those changes to fulfill its statutory mandate effectively. The Council was established by the Federal Communications Commission to provide a means by which a diverse array of recognized technical experts from different areas such as manufacturing, academia,

communications services providers, the research community, etc., can provide advice to the FCC on innovation in the communications industry. At this sixth meeting under the Council's new charter, the Council will discuss findings on the cost of interference, the current state of the cable industry with respect to telephony, and invited speakers' presentations on licensed broadband. The Federal Communications Commission will attempt to accommodate as many persons as possible. Admittance, however, will be limited to the seating available. Unless so requested by the Council's Chair, there will be no public oral participation, but the public may submit written comments to Jeffery Goldthorp, the Federal Communications Commission's Designated Federal Officer for the Technological Advisory Council, before the meeting. Mr. Goldthorp's e-mail address is [Jeffery.Goldthorp@fcc.gov](mailto:Jeffery.Goldthorp@fcc.gov). Mail delivery address is: Federal Communications Commission, 445 12th Street, SW., Room 7-A325, Washington, DC 20554.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 04-15241 Filed 7-2-04; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2661]

### Petitions for Reconsideration of Action in Rulemaking Proceedings

June 23, 2004.

Petitions for Reconsideration have been filed in the Commission's Rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying Room CY-B402 12th Street, SW., Washington, DC, or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1-800-378-3160). Oppositions to these petitions must be filed by July 21, 2004. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

**Subject:** Amendment of the FM Table of Allotments (Vinton, Louisiana, Crystal Beach, Lumberton, and Winnie, Texas) (MM Docket No. 02-212, RM-10516, RM-10618).

**Number of Petitions Filed:** 1.

**Subject:** Amendment of the FM Table of Allotments (Russellville and

Littleville, Alabama) (MB Docket No. 04-12, RM-10834).

**Number of Petitions Filed:** 1.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 04-15242 Filed 7-2-04; 8:45 am]

BILLING CODE 6712-01-M

## 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/](http://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 July 30, 2004.

**A. Federal Reserve Bank of Atlanta**  
(Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. *Gulf Atlantic Financial Group, Inc.*, Tallahassee, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank, Tarpon Springs, Florida.

**B. Federal Reserve Bank of Dallas**  
(W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Texas Country Bancshares, Inc.*, Brady, Texas; to acquire 100 percent of the voting shares of Clarity Holdings, Inc., Uvalde, Texas, and thereby indirectly acquire voting shares of National American Bank, Uvalde, Texas.

Board of Governors of the Federal Reserve System, June 29, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04-15164 Filed 7-2-04; 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/](http://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 July 30, 2004.

**A. Federal Reserve Bank of Dallas**  
(W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Texas United Nevada, Inc.*, Carson City, Nevada, and Texas United Bancshares, Inc., LaGrange, Texas; to merge with GNB Bancshares, Inc., Gainesville, Texas, and thereby

indirectly acquire voting shares of Guaranty National Bancshares, Inc., Wilmington, Delaware, and GNB Financial, N.A., Gainesville, Texas.

Board of Governors of the Federal Reserve System, June 30, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04-15261 Filed 7-2-04; 8:45 am]

BILLING CODE 6210-01-S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Advisory Committee to the Director, Centers for Disease Control and Prevention

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following Advisory Committee meeting.

*Name:* Advisory Committee to the Director, CDC.

*Time and Date:* 8:30 a.m.—4 p.m., August 5, 2004.

*Place:* Holiday Inn Select/Decatur, 130 Clairemont Avenue, Decatur, GA 30030.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

*Purpose:* The committee will provide advice to the CDC Director on strategic and other broad issues facing CDC.

*Matters To Be Discussed:* Agenda items will include discussion of the CDC Futures Initiative and updates on CDC priorities with discussions of program activities including updates on CDC scientific and programmatic activities.

Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Robert Delaney, Executive Secretary, Advisory Committee to the Director, CDC, 1600 Clifton Road, NE., M/S D-14, Atlanta, Georgia 30333. Telephone 404/639-7000.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 29, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04-15223 Filed 7-2-04; 8:45 am]

BILLING CODE 4163-19-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 2004N-0033]

#### Establishing a Docket for the Factor VIII Inhibitor Public Workshop; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the opening of a docket to receive information and comments on the November 21, 2003, public workshop entitled "Factor VIII Inhibitors" (the workshop). We are opening the docket because there was insufficient time available during the workshop for a full discussion of the many important topics covered at the workshop.

**DATES:** Submit written or electronic comments on the workshop, related regulatory and scientific issues, and comments on information submitted to the docket by other interested parties by January 6, 2006.

**ADDRESSES:** Submit written comments and information related to the workshop to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852-1448. Submit electronic comments or information to <http://www.fda.gov/dockets/ecomments>. See the **SUPPLEMENTARY INFORMATION** section for electronic and other access to the slide presentations and transcript from the workshop.

**FOR FURTHER INFORMATION CONTACT:** Sharon Carayiannis, Center for Biologics Evaluation and Research (HFM-17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301-827-6210.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In the **Federal Register** of October 20, 2003 (68 FR 59942), we published a notice to announce a public workshop entitled "Factor VIII Inhibitors." On November 21, 2003, we, in cosponsorship with the International Association for Biologicals, held the workshop to address regulatory and scientific concerns about inhibitors to Factor VIII induced by Antihemophilic Factor (Factor VIII) products. These inhibitors arise in a significant minority of patients with hemophilia and make replacement therapy problematic. The workshop covered a broad range of

topics. The workshop provided valuable information, but additional time was needed at the close of the meeting for continued dialogue on important topics. At the end of the workshop, we invited written comments to provide an opportunity for a full discussion of issues.

We have established this docket to encourage interested parties to continue to provide information about Factor VIII inhibitors, comments on the workshop, and comments on information submitted to the docket by other interested parties. We also request that those who have already submitted written comments and information to FDA resubmit the same comments to the docket to ensure their adequate consideration since this information was not previously submitted to the docket. We also posted this request for comments and information at <http://www.fda.gov/cber/meetings/fctrvIII112103L.htm>.

Comments submitted to the docket will assist us in determining the need for and feasibility of establishing new inhibitor assay standards and methodologies, stakeholders' opinions about current upper and lower limits of acceptable inhibitor formation in clinical trials, and the use of plasma-derived versus recombinant Factor VIII controls in pharmacokinetic trials, among other issues. We may also consider the information in preparing any future guidance on clinical trials to evaluate potential inhibitor formation from Factor VIII products.

## II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the workshop. 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. A copy of this notice, the slide presentations and transcript from the workshop, and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

## III. Electronic Access

Persons with access to the Internet may obtain the slide presentations at <http://www.fda.gov/cber/summaries.htm> and the transcript of the workshop at <http://www.fda.gov/cber/minutes/workshop-min.htm>.

Dated: June 24, 2004.  
Jeffery Shuren,  
Assistant Commissioner for Policy.  
[FR Doc. 04-15135 Filed 7-2-04; 8:45 am]  
BILLING CODE 4160-01-S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 1981N-0033P]

#### Over-the-Counter Drug Products; Safety and Efficacy Review; Additional Antigingivitis/Antiplaque Ingredient

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of eligibility; request for data and information.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing a call-for-data for safety and effectiveness information on the following condition as part of FDA's ongoing review of over-the-counter (OTC) drug products: Triclosan, 0.3 percent maximum, as an antigingivitis ingredient in dental pastes and oral rinses. FDA has reviewed a time and extent application (TEA) for this condition and determined that it is eligible for consideration in its OTC drug monograph system. FDA will evaluate the submitted data and information to determine whether this condition can be generally recognized as safe and effective (GRAS/E) for its proposed OTC use.

**DATES:** Submit data, information, and general comments by October 4, 2004.

**ADDRESSES:** Submit written comments, data, and information to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments, data, and information to <http://www.fda.gov/dockets/ecomments>.

**FOR FURTHER INFORMATION CONTACT:** Michael L. Koenig, Center for Drug Evaluation and Research (HFD-560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-2222.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In the Federal Register of January 23, 2002 (67 FR 3060), FDA published a final rule establishing criteria and procedures for additional conditions to become eligible for consideration in the OTC drug monograph system. These criteria and procedures, codified in § 330.14 (21 CFR 330.14), permit OTC drugs initially marketed in the United

States after the OTC drug review began in 1972 and OTC drugs without any marketing experience in the United States to become eligible for FDA's OTC drug monograph system. The term "condition" means an active ingredient or botanical drug substance (or a combination of active ingredients or botanical drug substances), dosage form, dosage strength, or route of administration, marketed for a specific OTC use (§ 330.14(a)). The criteria and procedures also permit conditions that are regulated as cosmetics or dietary supplements in foreign countries but that would be regulated as OTC drugs in the United States to become eligible for the OTC drug monograph system.

Sponsors must provide specific data and information in a TEA to demonstrate that the condition has been marketed for a material time and to a material extent to become eligible for consideration in the OTC drug monograph system. When the condition is found eligible, FDA publishes a notice of eligibility and request for safety and effectiveness data for the proposed OTC use. The TEA that the agency reviewed (Ref. 1) and FDA's evaluation of the TEA (Ref. 2) have been placed on public display in the Division of Dockets Management (see **ADDRESSES**) under the docket number found in brackets in the heading of this document. Information deemed confidential under 18 U.S.C. 1905, 5 U.S.C. 552(b), or 21 U.S.C. 331(j) was deleted from the TEA before it was placed on public display.

##### II. Request for Data and Information

The condition triclosan, 0.3 percent maximum, as an antigingivitis ingredient in dental pastes and oral rinses will be evaluated for inclusion in the monograph being developed for OTC oral health care drug products (21 CFR part 356). FDA will include this condition in its review of antigingivitis/antiplaque drug products. FDA published the advance notice of proposed rulemaking for these products in the Federal Register of May 29, 2003 (68 FR 32232). FDA invites all interested persons to submit data and information, as described in § 330.14(f), on the safety and effectiveness of this active ingredient for this use, so that FDA can determine whether it can be GRAS/E and not misbranded under recommended conditions of OTC use.

Interested persons should, on or before 90 days after the date of publication in the Federal Register, submit comments, data, and information to the Division of Dockets Management (see **ADDRESSES**). Three copies of all comments, data, and information are to

be submitted. Individuals submitting written information or anyone submitting electronic comments may submit one copy. Submissions are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by supporting information. Received submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. Information submitted after the closing date will not be considered except by petition under 21 CFR 10.30.

### III. Marketing Policy

Under § 330.14(h), any product containing the condition for which data and information are requested may not be marketed as an OTC drug in the United States at this time unless it is the subject of an approved new drug application or abbreviated new drug application.

### IV. References

The following references are on display in the Division of Dockets Management (see ADDRESSES) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. TEA for triclosan as an antigingivitis active ingredient submitted by CIBA Specialty Chemicals Corp. on November 25, 2003.

2. FDA's evaluation and comments on the TEA for triclosan.

Dated: June 24, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04-15136 Filed 7-2-04; 8:45 am]

BILLING CODE 4160-01-S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

#### Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) published in the *Federal Register* on April 11, 1988 (53 FR 11970), and

revised in the *Federal Register* on June 9, 1994 (59 FR 29908) and on September 30, 1997 (62 FR 51118). A notice listing all currently certified laboratories is published in the *Federal Register* during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from HHS' National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at <http://workplace.samhsa.gov> and <http://www.drugfreeworkplace.gov>.  
**FOR FURTHER INFORMATION CONTACT:** Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2, Room 815, Rockville, Maryland 20857; 301-443-6014 (voice), 301-443-3031 (fax).

**SUPPLEMENTARY INFORMATION:** The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Public Law 100-71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards that laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification, a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines, the following laboratories meet the minimum standards set forth in the Mandatory Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414-328-7840 / 800-877-7016 (Formerly: Bayshore Clinical Laboratory);  
ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585-429-2264;  
Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis,

TN 38118, 901-794-5770 / 888-290-1150;

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615-255-2400;

Baptist Medical Center-Toxicology Laboratory, 9601 I-630, Exit 7, Little Rock, AR 72205-7299, 501-202-2783 (Formerly: Forensic Toxicology Laboratory Baptist Medical Center);  
Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215-2802, 800-445-6917;

Diagnostic Services Inc., dba DSI, 12700 Westlinks Dr., Fort Myers, FL 33913, 239-561-8200 / 800-735-5416;

Doctors Laboratory, Inc., \*\* 2906 Julia Drive, Valdosta, GA 31602, 229-671-2281;

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206-386-2661 / 800-898-0180 (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.);

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215-674-9310;

Dynacare Kasper Medical Laboratories,\* 10150-102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2, 780-451-3702 / 800-661-9876;

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 662-236-2609;

Express Analytical Labs, 3405 7th Ave., Suite 106, Marion, IA 52302, 319-377-0500;

Gamma-Dynacare Medical Laboratories,\* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ONT, Canada N6A 1P4, 519-679-1630.

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608-267-6225;

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504-361-8989 / 800-433-3823 (Formerly: Laboratory Specialists, Inc.);

LabOne, Inc., 10101 Reñner Blvd., Lenexa, KS 66219, 913-888-3927 / 800-873-8845 (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.);

Laboratory Corporation of America Holdings, 7207 N. Gessner Rd., Houston, TX 77040, 713-856-8288 / 800-800-2387;

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908-526-2400 / 800-437-4986 (Formerly: Roche Biomedical Laboratories, Inc.);

Laboratory Corporation of America Holdings, 1904 Alexander Dr.,

Research Triangle Park, NC 27709, 919-572-6900 / 800-833-3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group); Laboratory Corporation of America Holdings, 10788 Roselle St., San Diego, CA 92121, 800-882-7272 (Formerly: Poisonlab, Inc.); Laboratory Corporation of America Holdings, 1120 Stateline Rd. West, Southaven, MS 38671, 866-827-8042 / 800-233-6339 (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center); Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715-389-3734 / 800-331-3734; MAXXAM Analytics Inc.,\* 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905-890-2555 (Formerly: NOVAMANN (Ontario) Inc.); MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651-636-7466 / 800-832-3244; MetroLab-Legacy Laboratory Services, 1225 NE, 2nd Ave., Portland, OR 97232, 503-413-5295 / 800-950-5295; Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Dr., Minneapolis, MN 55417, 612-725-2088; National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661-322-4250 / 800-350-3515; Northwest Drug Testing, a division of NWT Inc., 1141 E. 3900 S., Salt Lake

City, UT 84124, 801-293-2300 / 800-322-3361 (Formerly: NWT Drug Testing, NorthWest Toxicology, Inc.); One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888-747-3774 (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory); Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440-0972, 541-687-2134; Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800-328-6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory); Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509-755-8991 / 800-541-7897x7; PharmChem Laboratories, Inc., 4600 N. Beach, Haltom City, TX 76137, 817-605-5300 (Formerly: PharmChem Laboratories, Inc., Texas Division; Harris Medical Laboratory); Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913-339-0372 / 800-821-3627; Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770-452-1590 / 800-729-6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories); Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800-824-6152 (Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories); Quest Diagnostics Incorporated, 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119-5412, 702-733-7866 / 800-433-2750 (Formerly: Associated Pathologists Laboratories, Inc.); Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610-631-4600 / 877-642-2216 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories); Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800-669-6995 / 847-885-2010 (Formerly: SmithKline Beecham Clinical Laboratories; International Toxicology Laboratories); Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818-989-2520 / 800-877-2520 (Formerly: SmithKline Beecham Clinical Laboratories); Scientific Testing Laboratories, Inc., 450 Southlake Blvd., Richmond, VA 23236, 804-378-9130.

Sciteck Clinical Laboratories, Inc., 317 Rutledge Rd., Fletcher, NC 28732, 828-650-0409. S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505-727-6300 / 800-999-5227; South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574-234-4176 x276; Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602-438-8507 / 800-279-0027; Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517-377-0520 (Formerly: St. Lawrence Hospital & Healthcare System); St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405-272-7052; Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573-882-1273; Toxicology Testing Service, Inc., 5426 NW. 79th Ave., Miami, FL 33166, 305-593-2260; US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755-5235, 301-677-7085.

\*The following laboratory had its suspension lifted on June 23, 2004: Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229-671-2281.

Anna Marsh,

Executive Officer, SAMHSA.

[FR Doc. 04-15220 Filed 7-2-04; 8:45 am]

BILLING CODE 4160-20-P

## DEPARTMENT OF HOMELAND SECURITY

### Bureau of Citizenship and Immigration Services

[CIS No. 2314-04]

### Termination of the Designation of Montserrat Under the Temporary Protected Status Program; Extension of Employment Authorization Documentation

AGENCY: Bureau of Citizenship and Immigration Services, DHS.

ACTION: Notice.

SUMMARY: The designation of Montserrat under the Temporary Protected Status (TPS) Program will expire on August 27, 2004. After reviewing country conditions and consulting with the appropriate Government agencies, the

\*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (Federal Register, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the Federal Register on June 9, 1994 (59 FR 29908) and on September 30, 1997 (62 FR 51118). After receiving DOT certification, the laboratory will be included in the monthly list of HHS certified laboratories and participate in the NLCP certification maintenance program.



Secretary of the Department of Homeland Security (DHS) has determined that conditions in Montserrat no longer support the TPS designation and is therefore terminating the TPS designation of Montserrat. This termination is effective February 27, 2005, six months from the end of the current extension. To provide for an orderly transition, nationals of Montserrat (and aliens having no nationality who last habitually resided in Montserrat) who have been granted TPS will automatically retain their TPS and have their current Employment Authorization Documents (EADs) extended until the effective termination date. However, an individual's TPS shall be withdrawn because of ineligibility for TPS, prior failure to timely re-register if there was not good cause for such failure, or failure to maintain continuous physical presence in the United States. On February 27, 2005, nationals of Montserrat (and aliens having no nationality who last habitually resided in Montserrat) who have been granted TPS will no longer have TPS.

**EFFECTIVE DATE:** The TPS designation of Montserrat is terminated effective February 27, 2005.

**FOR FURTHER INFORMATION CONTACT:** Colleen Cook, Residence and Status Services, Office of Program and Regulations Development, Bureau of Citizenship and Immigration Services, Department of Homeland Security, 425 "I" Street, NW., ULLICO Building, Third Floor, Washington, DC 20536, telephone (202) 514-4754.

**SUPPLEMENTARY INFORMATION:** What Authority Does the Secretary of DHS Have to Terminate the Designation of Montserrat Under the TPS Program?

On March 1, 2003, the functions of the Immigration and Naturalization Service (Service) transferred from the Department of Justice to DHS pursuant to the Homeland Security Act of 2002, Public Law 107-296. The responsibilities for administering the TPS program held by the Service were transferred to the Bureau of Citizenship and Immigration Services (BCIS).

Under section 244 of the Immigration and Nationality Act (Act), 8 U.S.C. 1254a, the Secretary of DHS, after consultation with appropriate agencies of the Government, is authorized to designate a foreign state (or part thereof) for TPS. The Secretary of DHS may then grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state).

Section 244(b) (3)(A) of the Act requires the Secretary of DHS to review,

at least 60 days before the end of the TPS designation or any extension thereof, the conditions in a foreign state designated under the TPS program to determine whether the conditions for a TPS designation continue to be met and, if so, the length of an extension of TPS. 8 U.S.C. 1254a(b)(3)(A). If the Secretary of DHS determines that the foreign state no longer meets the conditions for the TPS designation, he shall terminate the designation, but such termination may not take effect earlier than 60 days after the date the **Federal Register** notice of termination is published. 8 U.S.C. 1254a(b)(3)(B). The Secretary of DHS may determine the appropriate effective date of the termination for the purpose of providing an orderly transition. 8 U.S.C. 1254a(d)(3).

Why Did the Secretary of DHS Decide to Terminate the TPS Designation for Montserrat as of February 27, 2005?

On August 28, 1997, the Attorney General published a notice in the **Federal Register** designating Montserrat under the TPS program based upon volcanic eruptions causing a substantial, but temporary, disruption to living conditions that rendered Montserrat unable, temporarily, to adequately handle the return of its nationals. 62 FR 45685, 45686 (August 28, 1997). The Attorney General also designated Montserrat for TPS due to extraordinary and temporary conditions that prevented Montserratians from safely returning to Montserrat. *Id.* Since then, the TPS designation of Montserrat has been extended six times, in each instance based upon a determination that the conditions warranting the designation continued to be met. *See* 68 FR 39106 (July 1, 2003); 67 FR 47002 (July 17, 2002); 66 FR 40834 (August 3, 2001); 65 FR 58806 (October 2, 2000); 64 FR 48190 (September 2, 1999); 63 FR 45864 (August 27, 1998).

Since the date of the most recent extension, DHS and the Department of State (DOS) have continued to review conditions in Montserrat. In particular, DHS examined whether the conditions remain "temporary" as required in sections 244(b)(1)(B) and (C) of the Act. 8 U.S.C. 1254a(b)(1)(B) and (C). Under general rules of statutory construction, it is assumed that the legislative intent of Congress is expressed by the ordinary or plain meaning of a word. *See, e.g., INS v. Cardoza-Fonseca*, 480 U.S. 421, 431 (1987); *INS v. Phinpathya*, 464 U.S. 183, 189 (1984). The plain meaning of "temporary" is "lasting for a time only; existing or continuing for a limited time; not permanent." Webster's Revised Unabridged Dictionary (1998).

In making a determination, the Secretary of DHS considered country

condition information provided by DOS and the BCIS Resource Information Center (RIC). Although the conditions in Montserrat continue to warrant concern, the Secretary has determined that the volcanic eruptions can no longer be considered temporary in nature. Scientists say that eruptions of the type that have occurred at Soufriere Hills generally last 20 years, but the volcano could continue to erupt sporadically for decades. RIC Report (May 2004).

According to the RIC, the July 2003 eruption was the largest eruption since the volcano emerged from dormancy in 1995. *Id.* In addition to affecting electricity supplies and telephone service, this eruption extensively damaged the island's water supply, agricultural sector, and fishery sector. *Id.* In March 2004, another major eruption sent a massive cloud of ash into the air and pyroclastic flows down the eastern flank of the Soufriere Hills volcano. *Id.* Volcanic ash settled on the ground up to four inches in places and left coatings of grit on surrounding Caribbean islands. *Id.* At present, fishing boats and other marine vessels are barred from entering an international maritime exclusion zone that covers a significant portion of the coastline. *Id.*

The island remains divided into a northern "safe zone" and a southern "exclusion zone." *Id.* The exclusion zone, which is closed to the public, covers more than half of Montserrat. *Id.* As a result, many nationals of Montserrat remain unable to return to their homes in the southern part of the island. DOS Recommendation (June 8, 2004).

In addition to the prospect of volcanic destruction, returning residents possibly would be subject to contracting the lung disease silicosis and other health risks caused by ash that periodically covers much of the island. *Id.*

The RIC notes that, according to one study, eruptions of the type that have occurred at Soufriere Hills generally last 20 years, but the volcano could continue to erupt sporadically for decades. *RIC Report.* According to another study conducted by the Scientific Advisory Committee on Montserrat Volcanic Activity, there is only a 3.2% chance that this period of volcanic activity will stop within the next six months. *Id.* There is a 50% probability that the volcanic activity will last another 14-15 years, and a 5% chance that the volcanic activity will continue for over 180 years. *Id.*

Based upon this review, the Secretary of DHS, after consultation with appropriate government agencies, finds that Montserrat no longer continues to

meet the conditions for designation under the TPS program. 8 U.S.C. 1254a(b)(3)(A). Because the volcanic eruptions are unlikely to cease in the foreseeable future, they can no longer be considered "temporary" as required by Congress when it enacted the TPS statute. 8 U.S.C. 1254a(b)(1)(B) and (C). Therefore, the Secretary of DHS is terminating the TPS designation for Montserrat effective February 27, 2005. 8 U.S.C. 1254a(b)(3)(B).

To provide for an orderly transition, nationals of Montserrat (and aliens having no nationality who last habitually resided in Montserrat) who have been granted TPS will automatically retain TPS and have their current EADs extended until the termination date. 8 U.S.C. 1254a(a)(2) and (d)(3). These persons are urged to use the time before termination of their TPS to prepare for and arrange their departure from the United States or, in the alternative, apply for other immigration benefits for which they are eligible.

**If I Currently Have TPS Through the Montserrat TPS Program, do I Need to Re-Register to Keep my TPS until February 27, 2005, the Termination Date?**

No. If you already have been granted TPS benefits through the Montserrat TPS program, you do not have to re-register to keep your TPS benefits. You will automatically retain TPS until the termination date. However, your TPS status shall be withdrawn pursuant to section 244(c)(3) of the Act because of ineligibility for TPS, prior failure to timely re-register if there was not good cause for such failure, or failure to maintain continuous physical presence in the United States. 8 U.S.C. 1254a(c)(3), 8 CFR 244.14. When termination occurs on February 27, 2005, you will no longer have TPS.

**Why is the Secretary of DHS Automatically Extending the Validity of EADs From August 27, 2004 to February 27, 2005?**

The Secretary of DHS has decided to extend automatically the validity of EADs to provide for an orderly transition leading up to the effective date for the termination of the Montserrat TPS designation. Therefore, the validity of the applicable EADs is automatically extended for a period of six months, to February 27, 2005. 8 U.S.C. 1254a(a)(2) and (d)(3).

**Who Is Eligible to Receive an Automatic Extension of His or Her EAD?**

To receive an automatic extension of his or her EAD, an individual must be a national of Montserrat (or an alien having no nationality who last habitually resided in Montserrat) who has applied for and received an EAD under the TPS designation of Montserrat. This automatic extension is limited to EADs issued on either Form I-766, Employment Authorization Document, or Form I-688B, Employment Authorization Card, bearing an expiration date of August 27, 2004. The EAD must also be either (1) a Form I-766 bearing the notation "A-12" or "C-19" on the face of the card under "Category," or (2) a Form I-688B bearing the notation "274A.12(A)(12)" or "274A.12(C)(19)" on the face of the card under "Provision of Law."

**Must Qualified Individuals Apply for the Automatic Extension of Their TPS-Related EADs Until February 27, 2005?**

No. Qualified individuals do not have to apply for this extension of their TPS-related EADs to February 27, 2005 because it is automatic.

**What Documents may a Qualified Individual Show to his or her Employer as Proof of Employment Authorization and Identity When Completing Form I-9, Employment Eligibility Verification?**

For completion of the Form I-9 at the time of hire or re-verification, qualified individuals who have received an extension of their EADs by virtue of this Federal Register notice may present to their employer a TPS-related EAD as proof of identity and employment authorization until February 27, 2005. To minimize confusion over this extension at the time of hire or re-verification, qualified individuals may also present to their employer a copy of this Federal Register notice regarding the automatic extension of employment authorization documentation to February 27, 2005. In the alternative, any legally acceptable document or combination of documents listed in List A, List B, or List C of the Form I-9 may be presented as proof of identity and employment eligibility; it is the choice of the employee.

**How may Employers Determine Whether an EAD has been Automatically Extended Through February 27, 2005 and is Therefore Acceptable for Completion of the Form I-9?**

For purposes of verifying identity and employment eligibility or re-verifying employment eligibility on the Form I-9

until February 27, 2005, employers of Montserrat TPS class members whose EADs have been automatically extended by this notice must accept such EAD if presented. An EAD that has been automatically extended by this notice will contain an expiration date of February 27, 2005, and must be either (1) a Form I-766 bearing the notation "A-12" or "C-19" on the face of the card under "Category," or (2) a Form I-688B bearing the notation "274A.12(A)(12)" or "274A.12(C)(19)" on the face of the card under "Provision of Law." New EADs or extension stickers showing the February 27, 2005 expiration date will not be issued.

Employers should not request proof of Montserratian citizenship. Employers presented with an EAD that this Federal Register notice has extended automatically which appears to be genuine, and appears to relate to the employee, should accept the EAD as a valid "List A" document and should not ask for additional Form I-9 documentation. This action by the Secretary of the DHS through this Federal Register notice does not affect the right of an employee to present any legally acceptable document as proof of identity and eligibility for employment.

Employers are reminded that the laws prohibiting unfair immigration-related employment practices remain in full force. For questions, employers may call the BCIS Office of Business Liaison Employer Hotline at 1-800-357-2099 to speak to a BCIS representative. Also, employers may call the U.S. Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) Employer Hotline at 1-800-255-8155 or 1-800-362-2735 (Telecommunications Device for the Deaf or "TDD"). Employees or applicants may call the OSC Employee Hotline at 1-800-255-7688 or 1-800-237-2515 (TDD) for information regarding the automatic extension. Additional information is available on the OSC Web site at <http://www.usdoj.gov/crt/osc/index.html>.

**What may I do if Returning to Montserrat is not Possible or Preferable for me?**

This notice terminates the designation of Montserrat for TPS. Nationals of Montserrat (and aliens having no nationality who last habitually resided in Montserrat) in the United States who believe returning to Montserrat is not possible or not preferable for them may be eligible to apply for another immigration status, such as Lawful Permanent Resident (LPR) or a non-immigrant classification. Eligibility for these and other immigration benefits is

determined individually on a case-by-case basis. For information on eligibility and how to apply, visit the BCIS web site at <http://uscis.gov> or call the BCIS National Customer Service Center at 1-800-375-5283.

In addition, nationals of Montserrat are eligible to apply for British citizenship based upon their status as British Overseas Territory Citizens (BOTCs). As such, nationals of Montserrat have a claim to British citizenship, as do all Overseas Territory inhabitants. However, unlike all other BOTCs, as of August 28, 1996, the British government waived the requirement that nationals of Montserrat wait three years after establishing residence in the United Kingdom before becoming eligible for social benefits or treatment by the National Health Service. This provision is scheduled to remain in place through 2005, at which time it is slated for review.

#### How Does the Termination of TPS Affect Nationals of Montserrat who Currently Receive TPS Benefits?

After the termination of the TPS designation of Montserrat becomes effective on February 27, 2005, these TPS beneficiaries will maintain the same immigration status they held prior to TPS (unless that status has since expired or been terminated) or any other status they may have acquired while registered for TPS. Accordingly, if an alien held no lawful immigration status prior to being granted TPS and did not obtain any other status during the TPS period, he or she will revert to unlawful status upon the termination of the TPS designation.

Former TPS beneficiaries will no longer be eligible for a stay of removal or an EAD pursuant to TPS. TPS-related EADs will expire on February 27, 2005, and will not be renewed.

Termination of the TPS designation for Montserrat does not necessarily affect pending applications for other forms of immigration relief or protection, though former TPS beneficiaries will begin to accrue unlawful presence as of February 27, 2005 if they have not been granted any other immigration status or protection or if they have no pending application for certain benefits.

#### Notice of Termination of Designation of Montserrat Under the TPS Program

By the authority vested DHS under section 244(b)(3) of the Act, DHS has consulted with the appropriate Government agencies concerning conditions in Montserrat. 8 U.S.C. 1254a(b)(3)(A). Based on these consultations, DHS has determined that

Montserrat no longer meets the conditions for designation of TPS under section 244(b)(1)(B) and 244(b)(1)(C) of the Act. 8 U.S.C. 1254a(b)(1)(B) and 8 U.S.C. 1254a(b)(1)(C).

Accordingly, DHS orders as follows:  
(1) Pursuant to sections 244(b)(1)(B) and 244(b)(1)(C) of the Act, the TPS designation of Montserrat will terminate effective February 27, 2005, six months after the end of the current extension.

(2) DHS estimates that there are approximately 292 nationals of Montserrat (and aliens having no nationality who last habitually resided in Montserrat) who currently receive TPS benefits.

(3) To provide for an orderly transition, nationals of Montserrat (and aliens having no nationality who last habitually resided in Montserrat) who have been granted TPS under the Montserrat designation will automatically retain TPS until the February 27, 2005 termination date. However, an individual's TPS shall be withdrawn pursuant to section 244(c)(3) of the Immigration and Nationality Act and 8 CFR 244.14 because of ineligibility for TPS, prior failure to timely re-register if there was not good cause for such failure, or failure to maintain continuous physical presence in the United States.

(4) TPS-related Employment Authorization Documents that expire on August 27, 2004, are extended automatically until February 27, 2005 for qualified nationals of Montserrat (and aliens having no nationality who last habitually resided in Montserrat).

(5) Information concerning the termination of TPS for nationals of Montserrat (and aliens having no nationality who last habitually resided in Montserrat) will be available at local BCIS offices upon publication of this notice and through the BCIS National Customer Service Center at 1-800-375-5283. This information will also be published on the BCIS Web site at <http://uscis.gov>.

Dated: June 25, 2004.

**Tom Ridge,**

*Secretary of Homeland Security.*

[FR Doc. 04-15243 Filed 7-2-04; 8:45 am]

BILLING CODE 4410-10-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Choctaw National Wildlife Refuge

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent to prepare a Comprehensive Conservation Plan and

Environmental Assessment for Choctaw National Wildlife Refuge located in Monroe, Sumter, and Conecuh Counties, Alabama

**SUMMARY:** The Fish and Wildlife Service, Southeast Region, intends to gather information necessary to prepare a comprehensive conservation plan and environmental assessment pursuant to the National Environmental Policy Act and its implementing regulations. The Service is furnishing this notice in compliance with the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd *et seq.*), to achieve the following:

(1) Advise other agencies and the public of our intentions, and  
(2) Obtain suggestions and information on the scope of issues to include in the environmental document.

Special mailings, newspaper articles, and other media announcements will be used to inform the public and State and local government agencies of the opportunities for input throughout the planning process. An open house style meeting will be held during the scoping phase of the comprehensive conservation plan development process.

**DATES:** To ensure consideration, we must receive written comments on or before August 20, 2004.

**ADDRESSES:** Address comments, questions, and requests for more information to Mike Dawson, Refuge Planner, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite B, Jackson, Mississippi 39213.

**SUPPLEMENTARY INFORMATION:** By Federal law, all lands within the National Wildlife Refuge System are to be managed in accordance with an approved comprehensive conservation plan. This plan guides management decisions and identifies the goals, long-range objectives, and strategies for achieving refuge purposes. The planning process will consider many elements, including wildlife and habitat management, public recreational activities, and cultural resource protection. Public input into this planning process is essential.

Choctaw National Wildlife Refuge was established in 1964 on lands acquired by the Corps of Engineers in conjunction with the Coffeeville Lock and Dam project. The refuge is located 10 miles northwest of Coffeeville, Alabama, across the Tombigbee River, and north of Highway 84 in southwest Alabama, approximately 80 miles north of Mobile. The 4,218-acre refuge encompasses approximately 1,802 acres of lakes, sloughs, and creeks; 2,265 acres of bottomland hardwoods; and 151 acres

of croplands and moist-soil units. Access to this bottomland hardwood refuge is sometimes only possible by boat in the spring. Road access is limited due to frequent flooding and storms.

The primary purpose of the refuge is to provide wood duck brood habitat and serve as a protected wintering area for waterfowl. Up to 200 broods of wood ducks are produced annually in the refuge's artificial nest boxes, and wintering waterfowl numbers can exceed 10,000. Following a successful bald eagle hacking program in the early 1990s, the refuge has played host to a nesting pair of eagles each winter.

**FOR FURTHER INFORMATION CONTACT:** Refuge Planner, U.S. Fish and Wildlife Service, Jackson, Mississippi Field Office, telephone: (601) 965-4903; fax: (601) 965-4010; e-mail [mike\\_dawson@fws.gov](mailto:mike_dawson@fws.gov); or mail (write to Refuge Planner at address in ADDRESSES section).

**Authority:** This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1977, Public Law 105-57.

Dated: May 18, 2004.

J. Mitch King,

Acting Regional Director.

[FR Doc. 04-15222 Filed 7-2-04; 8:45 am]

BILLING CODE 4310-55-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Indian Gaming

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of extension to Class III Gaming Compact.

**SUMMARY:** This notice publishes the extension to an approved Class III Gaming Compact between the Assiniboine and Sioux Tribes of the Fort Peck Reservation and the State of Montana. Under the Indian Gaming Regulatory Act of 1988, the Secretary of the Interior is required to publish notice in the *Federal Register* approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands.

**EFFECTIVE DATE:** July 6, 2004.

**FOR FURTHER INFORMATION CONTACT:** George T. Skibine, Director, Office of Indian Gaming Management, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219-4066.

**SUPPLEMENTARY INFORMATION:** Under Section 11 of the Indian Gaming

Regulatory Act of 1988 (IGRA) Public Law 100-497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the *Federal Register* notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands.

The Assiniboine and Sioux Tribes of the Fort Peck Reservation and the State of Montana have agreed to an extension of the existing agreement and will extend the compact until July 1, 2005. The Principal Deputy Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, is publishing notice that the Extension of Agreement for Class III gaming between the Assiniboine and Sioux Tribes of the Fort Peck Reservation and the State of Montana is in effect.

Dated: June 22, 2004.

Aurene M. Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 04-15194 Filed 7-2-04; 8:45 am]

BILLING CODE 4310-4N-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

## DEPARTMENT OF AGRICULTURE

### Forest Service

[WO-310-1310-02-PB 24 1A]

#### Extension of Approved Information Collection; OMB Control No. 1004-0162

**AGENCY:** Bureau of Land Management, Interior and Forest Service Agriculture.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) requests the Office of Management and Budget (OMB) to extend an existing approval to collect information from entities who conduct geophysical operations on public lands.

**DATES:** You must submit your comments to BLM at the address below on or before September 7, 2004. BLM will not necessarily consider any comments received after the above date.

**ADDRESSES:** You may mail comments to: Bureau of Land Management, (WO-630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: [WOCComments@blm.gov](mailto:WOCComments@blm.gov). Please include (attn: 1004-0162) and your name and address with your comments.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** You may contact Barbara Gamble, Fluid Minerals Group, at (202) 452-0338 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1-800-877-8330, 24 hours a day, seven days a week, to contact Ms. Gamble.

**SUPPLEMENTARY INFORMATION:** 5 CFR 1320.12(a), requires that we provide a 60-day notice in the *FEDERAL REGISTER* concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Mineral Leasing Act of 1920 (MLA) (30 U.S.C. 181 *et seq.*), gives the Secretary of the Interior responsibility for oil and gas leasing on approximately 570 million acres of Federal mineral estate. The MLA authorizes the Secretary and the Secretary of Agriculture to permit lessees, exploration companies, and independent exploration operators to conduct geophysical exploration on or off leases. The Act of August 7, 1947 (Mineral Leasing Act of Acquired Lands), authorizes the Secretary of the Interior to lease lands acquired by the United States (30 U.S.C. 341-359); and the Federal Onshore Oil and Gas Leasing Reform Act of December 22, 1987, authorizes the Secretary of the Interior to lease National Forest System (NFS) lands with Forest Service (FS) consent. On NFS lands, the Secretary of Agriculture is authorized to regulate all surface-disturbing activities which take place on a lease.

43 CFR Group 3150 establishes procedures for BLM to issue

authorizations to conduct oil and gas geophysical exploration operations on public lands. 36 CFR part 228 subpart E, and 36 CFR 251 subpart A and subpart B establish procedures for the FS to authorize geophysical operations on FS lands.

The BLM and FS need the information requested on the Notice of Intent to process applications for geophysical exploration operations on public lands and to manage environmental compliance requirements in accordance with the laws, regulations, and land use plans. The BLM and FS use the information to determine if operators will conduct geophysical operations in a manner consistent with the regulations, local land use plans, and stipulations. The BLM and FS need the information requested on the Notice of Completion to determine whether rehabilitation of the lands is satisfactory or whether additional rehabilitation is necessary. You may submit the forms in person or by mail. We need the company name, address, and telephone number to identify the person/entity conducting operations. BLM will assign a Case File Number to track each specific operation. We require the legal land description to determine the location of the involved public lands. Additional information that we request includes the type and size of the proposed activity, location of the proposed operation, equipment you plan to use, operating procedures, and timing of the operation.

Applicants must submit these forms to allow BLM and FS to determine who is conducting geophysical operations on public lands. An interagency BLM/FS team revised the respective forms to streamline and improve the process for both the Federal government and its customers. Combining the BLM and FS individual forms into a single BLM/FS form will ensure consistent management of the geophysical operations on public lands and will better serve the public. The forms are:

1. Notice of Intent and Request for Authorization to Conduct Geophysical Exploration Operations (NOI/RFA), BLM SF 3110-4/FS SF 2800-16; and
2. Notice of Completion of Geophysical Exploration Operations, BLM SF 3110-5/FS SF 2800-16a.

Based on experience administering onshore oil and gas geophysical exploration operations, BLM and FS estimate the public reporting burden for completing the Notice of Intent is one hour, and for completing the Notice of Completion is 20 minutes. The information we require is clearly outlined on the forms and in the terms and conditions. The respondents

already maintain the information for their own recordkeeping purposes and will need only to transfer or attach it to the forms. BLM and FS estimate that it receives approximately 625 Notices of Intent (600 to BLM and 25 to FS), 625 Notices of Completion, and 3 nonform data items annually (Alaska only, if off lease), with a total annual burden of 836 hours. Respondents vary from small business to major corporations.

Any member of the public may request and obtain, without charge, a copy of the BLM Form 3110-4/FS Form 2800-16 or BLM Form 3110-5/FS Form 2800-16a by contacting the person identified under **FOR FURTHER INFORMATION CONTACT**.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: June 25, 2004.

**Michael H. Schwartz**,  
Bureau of Land Management, Information  
Collection Conference Officer.

Dated: June 28, 2004.

**Bruce Ramsey**,  
Director, Minerals and Geology Management,  
USDA, Forest Service.

[FR Doc. 04-15140 Filed 7-2-04; 8:45 am]

BILLING CODE 4310-34-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[OR-022-1060-JJ; HAG 4-0207]

#### Oregon: Meeting Notice—Use of Helicopters or Motor Vehicles in the Management of Wild Horses

**AGENCY:** Bureau of Land Management (BLM), Burns District, Interior.

**ACTION:** Annual public meeting to discuss the use of helicopters or motor vehicles in the management of wild horses in Oregon.

**SUMMARY:** In accordance with the Wild Free-Roaming Horses and Burros Act of 1971, as amended (Public Law 92-195) and 43 CFR 4740.1(b), this notice sets forth the annual public meeting date to discuss the use of helicopters or motorized vehicles in the management of wild horses in Oregon from October 1, 2004, to September 30, 2005.

**DATES: Public Meeting Date:** July 29, 2004—2 p.m. to 3 p.m.

**ADDRESSES:** The meeting will take place at the BLM Burns District Office, 28910 Hwy 20 West, Hines, Oregon.

**FOR FURTHER INFORMATION CONTACT:** Connie Deller, BLM, Burns District Office, 28910 Hwy 20 West, Hines,

Oregon 97738, telephone (541) 573-4456.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Public comments will be accepted concerning the use of helicopters or motorized vehicles in the management of wild horses. The proposed gathering schedule and approximate dates of gathering for the period October 1, 2004, to September 30, 2005, will be presented at the meeting. Approximately 800 to 1,000 wild horses are proposed for gather and adoption in Oregon, dependent on available funds.

Persons interested in making an oral statement at this meeting regarding the use of helicopters or motorized vehicles in the management of wild horses are asked to notify the District Manager, BLM, Burns District Office, 28910 Hwy 20 West, Hines, Oregon 97738 by July 23, 2004. Summary minutes of the meeting will be available for public inspection and duplication within 30 days following the meeting.

The Burns District is also accepting written comments regarding the use of helicopters or motorized vehicles in the management of wild horses. Written statements must be received by July 28, 2004, and should be sent to the address listed above.

Comments, including names, street addresses, and other contact information of respondents, will be available for public review. Individual respondents may request confidentiality. If you wish to request that BLM consider withholding your name, street address, and other contact information (such as Internet address, FAX or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. BLM will honor your request for confidentiality on a case-by-case basis to the extent allowed by law. BLM will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

Dated: June 24, 2004.

**Dana R. Shuford**,

Burns District Manager.

[FR Doc. 04-15030 Filed 7-2-04; 8:45 am]

BILLING CODE 4310-33-P

## DEPARTMENT OF THE INTERIOR

## Minerals Management Service

**Completion of a Multi-Project Environmental Assessment To Evaluate the Potential Environmental Impacts Associated With the Removal of Sand Resources From Ship Shoal, Outer Continental Shelf, Offshore Central Louisiana**

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Availability of an environmental assessment.

**SUMMARY:** The Minerals Management Service (MMS) has completed an environmental assessment (EA) which examines the potential effects on the marine and coastal environments from using sand from Ship Shoal, a sand shoal located approximately 10 miles south of Isle Dernieres, offshore the central coast of Louisiana. Geological and geophysical studies of Ship Shoal have determined that the shoal's sand is an ideal source of material to place on the rapidly eroding Louisiana barrier islands. Several coastal restoration and storm protection projects that propose to use sand from Ship Shoal are already in the planning stages. Comments on a preliminary version of the EA were submitted by the Louisiana Department of Natural Resources (LDNR), the U.S. Environmental Protection Agency (EPA), the U.S. Army Corps of Engineers (USACE), and the National Oceanic and Atmospheric Administration. These comments were considered during completion of the final document.

The MMS concludes that the proposed action to dredge and emplace the proposed amount of sand from Ship Shoal will not significantly affect the quality of the human environment (40 CFR 1508.27) and preparation of an environmental impact statement is not required. Mitigation will be necessary to ensure environmental protection, consistent environmental policy, and safety as required by the National Environmental Policy Act, as amended, or to avoid or minimize any possible adverse effects on the quality of the human environment. Mitigation includes:

- Requiring stipulations to protect sea turtles when it is determined that there is a likelihood of sea turtle presence within the area during a dredging operation, and a trailing suction hopper dredge is used.
- Avoiding potential historic archaeological site locations identified in both the Ship Shoal and South Pelto areas through a remote sensing survey conducted previously.

- Sampling and monitoring dredge material from within both the Ship Shoal and South Pelto areas to identify and protect possible prehistoric resources located within the borrow sites.

- Establishing a minimum "no dredge" setback distance of 1000 feet from existing pipelines.

- Requiring the use of an electronic positioning system on the dredge vessels and transmittal of location and production information to the MMS.

**FOR FURTHER INFORMATION CONTACT:** Minerals Management Service, Leasing Division, Marine Minerals Branch, 381 Elden Street, Mail Stop 4010, Herndon, Virginia 20170, Mr. Barry Drucker, telephone (703) 787-1296, e-mail: [barry.drucker@mms.gov](mailto:barry.drucker@mms.gov).

**SUPPLEMENTARY INFORMATION:**

Louisiana's coastal land loss problem continues at a rate of more than 30 square miles per year severely affecting the storm buffering capacity and the protection that nearshore barrier islands provide to human populations, oil and gas infrastructure, inland bays, estuaries, and wetlands. The bays inshore of the islands are huge estuaries where fresh and saltwater mix, and most of Louisiana's commercial and recreational fisheries depend on them during parts of their life cycle. Without barrier islands, coastal fisheries will experience significant adverse impacts. The entire Isle Dernieres chain in offshore central Louisiana, a critical component of the Louisiana barrier island system, is projected to be lost by the year 2010. A study by the Coastal Wetlands Planning, Protection and Restoration Act task force recommended returning Isles Dernieres and the Timbalier Islands to 1992 conditions (pre-Hurricane Andrew), which would require adding sand to build them to a width of about 1,230 feet wide and 8-9 feet above sea level. The current overall strategy is to restore the island chains to a condition suitable for providing coastal protection and for maintaining the integrity of the estuarine system.

Geological and geophysical studies of Ship Shoal indicate that very significant similarities exist among the properties of Ship Shoal and the nearby barrier islands. Ship Shoal sand is considered to be ideal material for use in restoration and nourishment projects along the Louisiana coast within the Terrebonne and Barataria Basins. Resource estimates for the volumes of sand comprising Ship Shoal are 1.2 billion cubic meters.

The MMS has already been notified by LDNR and the EPA that they will seek leases for the use of Ship Shoal

sand for planned projects at Whiskey Island and New Cut, Louisiana. In addition, the USACE is considering using Ship Shoal sand as a base for the levee system for the Morganza to the Gulf Hurricane Protection Project. Besides these efforts, MMS anticipates that Ship Shoal will serve as a long-term source of material for further Louisiana coastal restoration efforts well into the future.

Public Law 103-426, enacted October 31, 1994, gave the MMS the authority to convey, on a noncompetitive basis, the rights to Federal sand, gravel, or shell resources for shore protection, beach or wetlands restoration projects, or for use in construction projects funded in whole or part or authorized by the Federal government.

**Public Comments**

The MMS encourages interested parties to submit comments specific to the EA and the environmental issues related to the removal of sand from Ship Shoal. Comments should be sent to Minerals Management Service, Leasing Division, Attention: Chief, Marine Minerals Branch, 381 Elden Street, Mail Stop 4010, Herndon, Virginia 20170. In addition, comments may be sent via e-mail to [barry.drucker@mms.gov](mailto:barry.drucker@mms.gov).

Dated: April 22, 2004.

**Thomas Readinger,**  
Associate Director for Offshore Minerals Management.

[FR Doc. 04-15167 Filed 7-2-04; 8:45 am]

BILLING CODE 4310-MR-P

## DEPARTMENT OF THE INTERIOR

## National Park Service

**30-Day Notice of Submission of Study Package to Office of Management and Budget; Opportunity for Public Comment**

**AGENCY:** Department of the Interior, National Park Service

**ACTION:** Notice and request for comments.

**SUMMARY:** The Yellowstone National Park Wolf Economic Study will provide park managers and others with important, accurate information about the Yellowstone National Park visitor population in general as well as visitor and trip characteristics of those who specifically view wolves in the park. The importance of visitation specifically tied to wolves in the park will be examined. The mail-back questionnaire is designed to systematically collect data from visitors in several different topic areas: individual characteristics,

trip/visit characteristics, individual activities and individual opinions on park and wildlife management.

	Estimated numbers of	
	Responses	Burden hours
Yellowstone National Park Wolf Economic Study	5,000	1,369

Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Recordkeeping Requirements, the National Park Service (NPS) invites comments on a request submitted to the Office of Management and Budget (OMB) to approve a new collection of information (OMB #1024-XXXX). Comments are invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology.

The NPS goal in conducting this survey is to develop statistically valid estimates of Yellowstone National Park visitation and to evaluate the economic effects of wolf restoration in the context of an accurate regional economic model that measures the role of Yellowstone National Park in the overall regional economy.

The broader information on visitation, visitor demographics, and the regional economy will have application to other park planning efforts where reliable visitation and economic data is needed for evaluation of project proposals and other management issues.

**DATES:** Public comments will be accepted on or before August 5, 2004.

**ADDRESSES:** You may submit comments directly to the Desk Officer for the Department of the Interior, (OMB # 1024-XXXX) Office of Information and Regulatory Affairs, OMB, by fax at (202) 395-6566, or by electronic mail at [oir\\_docket@omb.eop.gov](mailto:oir_docket@omb.eop.gov). You may also mail or hand carry a copy of your comments to Dr. John Duffield, University of Montana, Department of Economics, Missoula, MT 59812 or by fax at (406) 721-2265, or by electronic mail at [bioecon@montana.com](mailto:bioecon@montana.com).

The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments within thirty days of

the date on which this notice is published in the Federal Register.

**FOR FURTHER INFORMATION OR A COPY OF THE STUDY PACKAGE SUBMITTED FOR OMB REVIEW, CONTACT:** Dr. John Duffield, University of Montana, Department of Economics, Missoula, MT 59812, via phone at (406) 721-2265, via fax at (406) 721-2265, or via electronic mail at [bioecon@montana.com](mailto:bioecon@montana.com).

**SUPPLEMENTARY INFORMATION:**

**Titles:** Yellowstone National Park Wolf Economic Study  
**Bureau Form Number:** None.  
**OMB Number:** To be requested.  
**Expiration Date:** To be requested.  
**Type of request:** New Collection.  
**Description of need:** Wolf restoration in Yellowstone is an internationally important wildlife conservation success story. The visibility and public interest in wolves, wolf viewing, and wolf-based education programs has far exceeded initial expectations. A major public issue with wolf restoration was the cost to implement, in tax dollars, versus economic benefits. Proponents thought it a boon; opponents predicted negative regional economic impacts. Economic studies done prior to restoration predicted large positive economic benefits. The wolf recovery program has now matured; this proposal would quantify the economic and social effects due to wolf restoration as well as provide critical baseline information for other planning and analyses.

Wolf recovery generates positive economic impacts on the Greater Yellowstone Area (GYA) regional economy in several ways. The most significant impacts arise from visitors traveling from outside the region who choose to come to Yellowstone because wolves are present or who extend their stay because of wolves. Other impacts include wolf-program related expenditures. Economic impacts depend on visitor numbers and expenditures, which are best measured through visitor surveys. Understanding the contribution of wolf recovery requires development of a model of the actual aggregate role of Yellowstone National Park in the regional economy.

**Automated data collection:** At the present time, there is no automated way to gather this information because it includes directly contacting visitors to Yellowstone National Park.

**Description of respondents:** Visitors to Yellowstone National Park.

**Estimated average number of respondents:** 5,000.

**Estimated average number of responses:** 5,000.

**Estimated average burden hours per response:** 23 minutes.

**Frequency of Response:** 1 time per respondent.

**Estimated annual reporting burden:** 1,369 hours.

Dated: May 25, 2004.

**Leonard E. Stowe,**

Acting, National Park Service Information Collection Clearance Officer.

[FR Doc. 04-15145 Filed 7-2-04; 8:45 am]

BILLING CODE 4312-52-P

**DEPARTMENT OF THE INTERIOR**

**National Park Service**

**60 Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment**

**AGENCY:** Department of the Interior, National Park Service

**ACTION:** Notice and request for comments.

**SUMMARY:** The Cape Cod National Seashore Impacts of Hunting Survey of Hunters, Visitors and Residents will provide park managers and others with important social science input about public attitudes on hunting and an assessment about whether conflicts over hunting are occurring at the Cape Cod National Seashore. Specifically the study will use hunter, resident and visitor surveys to (1) Assess attitudes about hunting and hunting programs at the Cape Cod National Seashore, (2) determine the extent of conflict between hunters and nonhunters in the Cape Cod National Seashore and surrounding communities, (3) assess the extent to which the attitudes and characteristics of area residents and visitors to Cape Cod National Seashore have changed since the early 1990s, and (4) estimate the extent, and distribution of hunters and profile the behaviors of hunters within the Seashore.

	Estimated numbers of	
	Responses	Burden hours
Cape Cod National Seashore Impacts of Hunting Survey .....	1,500	625

Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Record Keeping Requirements, the National Park Service invites comments on the need for gathering the information in the proposed survey. Comments are invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate;

(3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology.

Cape Cod National Seashore has been charged by the United States District Court, District of Massachusetts to re-evaluate its hunting programs and will be preparing an Environmental Impact Statement (EIS) of hunting within its borders. This study will provide social science input into the EIS process by measuring the attitudes toward hunting among Seashore visitors and the Seashore neighbors, the extent of conflict between hunters and non-hunters, and the attitudes and behaviors of hunters at the Seashore.

**DATES:** Public comments will be accepted on or before September 7, 2004.

**SEND COMMENTS TO:** Dr. James H. Gramann, Visiting Chief Social Scientist, National Park Service, Social Science Program, 1849 C Street, NW (2300), Washington, DC 20240-0001.

**FOR FURTHER INFORMATION CONTACT:** Brian Forist, Research Associate, National Park Service Social Science Program by telephone at 202-513-7190 or by electronic mail at [Brian\\_Forist@partner.nps.gov](mailto:Brian_Forist@partner.nps.gov).

**SUPPLEMENTARY INFORMATION:**

**Titles:** Cape Cod National Seashore Impacts of Hunting Survey of Visitors and Residents.

**Bureau Form Number:** None.

**OMB Number:** To be requested.

**Expiration Date:** To be requested.

**Type of request:** New Collection.

**Description of need:** Because of the long-standing tradition of hunting on Cape Cod, the enabling legislation of Cape Cod National Seashore in 1961 allowed for continued hunting activity within the boundaries of the Seashore. Animal rights group have argued that environmental and social conditions in and around the Seashore have changed, and that hunting should be discontinued. Public meetings about this issue have been contentious, with the hunting community voicing strong opposition to changes in current hunting regulations within the Seashore. Given the polarity of the current debate, questions remain: Do area residents and visitors object to hunting in the Seashore, are they neutral about the issue, or do they consider it an appropriate and/or desirable use of the area? To what extent do residents and visitors feel threatened by hunting activities? How often do conflicts occur between hunters and

non-hunters during the fall and winter hunting seasons? And what is the extent of hunting activity on the Seashore?

This study is designed to better understand the scope of hunting activities at the Seashore, the degree of conflict that occurs over the practice, and how people feel about hunting at the Seashore.

**Automated data collection:** At the present time, there is no automated way to gather this information because it includes directly contacting hunters, visitors to Cape Cod National Seashore, and residents in the six surrounding townships.

**Description of respondents:** Visitors to Cape Cod National Seashore and residents of the following townships on Cape Cod: Provincetown, Truro, Wellfleet, Eastham, Orleans, and Chatham.

**Estimated average number of respondents:** 1,500.

**Estimated average number of responses:** 1,500.

**Estimated average burden hours per response:** 25 minutes.

**Frequency of Response:** 1 time per respondent.

**Estimated annual reporting burden:** 625 hours.

Dated: May 25, 2004.

**Leonard E. Stowe,**

Acting, National Park Service Information Collection Clearance Officer.

[FR Doc. 04-15146 Filed 7-2-04; 8:45 am]

BILLING CODE 4312-52-P

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Chesapeake and Ohio Canal National Historical Park Advisory Commission; Notice of Public Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Chesapeake and Ohio Canal National Historical Park Federal Advisory Commission is scheduled for Friday, July 16, 2004, at the North Arcade Building, Glen Echo Park, 7300 MacArthur Blvd., Glen Echo, Maryland. The meeting will begin at 10 a.m.

The Commission was established by Public Law 91-664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

Members of the Commission are: Mrs. Sheila Rabb Weidenfeld, Chairman; Mr. Charles J. Weir; Mr. Barry A. Passett; Mr. Terry W. Hepburn; Ms. Elise B.

Heinz; Ms. JoAnn M. Spevacek; Mrs. Mary E. Woodward; Mrs. Donna Printz; Mrs. Ferial S. Bishop; Ms. Nancy C. Long; Mrs. Jo Reynolds; Dr. James H. Gilford; Brother James Kirkpatrick.

Agenda items will include the Georgetown University Boathouse, the General Management Plan, and hurricane Isabelle recovery activities.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Kevin D. Brandt, Superintendent, C&O Canal National Historical Park, 1850 Dual Highway, Suite 100, Hagerstown, Maryland 21740.

Minutes of the meeting will be available for public inspection at park headquarters six weeks after the meeting.

Dated: May 28, 2004.

**Kevin Brandt,**

Superintendent, Chesapeake and Ohio Canal National Historical Park.

[FR Doc. 04-15144 Filed 7-2-04; 8:45 am]

BILLING CODE 4312-JK-M

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Denali National Park Subsistence Resource Commission Meeting

**AGENCY:** National Park Service, Interior.

**ACTION:** Announcement of Denali National Park Subsistence Resource Commission meeting.

**SUMMARY:** Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Denali National Park Subsistence Resource Commission will be held in Kantishna, Alaska. The purpose of the meeting will be to review Federal Subsistence Board actions and continue work on National Park Service (NPS) subsistence hunting program recommendations including other related subsistence management issues. The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed.

The Subsistence Resource Commission is authorized under title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96-487, and operates in accordance with the provisions of the Federal Advisory Committee Act.

**DATES:** The meeting will be held on Friday, August 27, 2004, from 9 a.m. to



5 p.m. at the Kantishna Road House, in Kantishna, Alaska.

**FOR FURTHER INFORMATION CONTACT:** Hollis Twitchell, Subsistence and Cultural Resources Manager at (907) 683-9544 or (907) 455-0673.

**SUPPLEMENTARY INFORMATION:** Notice of this meeting will be published in local newspapers and announced on local radio stations prior to the meeting dates. Locations and dates may need to be changed based on weather or local circumstances.

The following agenda items will be discussed:

1. Call to order.
2. Roll call and confirmation of quorum.
3. Superintendent's welcome and introductions.
4. Approval of minutes from last Commission meeting.
5. Additions and corrections to draft agenda.
6. Public and other agency comments.
7. Old Business.
  - a. Denali Backcountry Management Plan.
  - b. Predator-Prey Research Hunting Program Recommendation.
  - c. North Access and Facilities Studies.
  - d. ATV Issues.
8. New Business.
  - a. Federal Subsistence Board Actions on Wildlife Proposals.
  - b. Alaska Board of Game Wildlife Actions.
  - c. NPS Wildlife Status Reports and Survey Updates.
  - d. Salmon Surveys.
  - e. Community Harvest Assessments.
  - f. NPS Staff Reports.
9. Public and other agency comments.
10. Set time and place of next Denali SRC meeting.
11. Adjournment.

Draft minutes of the meeting will be available for public inspection approximately six weeks after the meeting from: Superintendent, Denali National Park and Preserve, P.O. Box 9, Denali Park, AK 99755.

Dated: June 3, 2004.

Kayci Cook Collins,  
Alaska Desk Officer.

[FR Doc. 04-15147 Filed 7-2-04; 8:45 am]

BILLING CODE 4312-H7-P

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Flight 93 National Memorial Advisory Commission

**AGENCY:** National Park Service.

**ACTION:** Notice of July 30, 2004 meeting.

**SUMMARY:** This notice sets forth the date of the July 30, 2004 meeting of the Flight 93 Advisory Commission.

**DATES:** The public meeting will be held on July 30, 2004 from 10 a.m. to 4 p.m.

**Location:** The meeting will be held at the Flight 93 National Memorial Office, 109 West Main Street, Newberry Building, Somerset, Pennsylvania 15501.

**Agenda:**

The July 30, 2004 meeting will consist of:

(1) Opening of Meeting and Pledge of Allegiance.

(2) Review and Approval of Minutes from May 14, 2004.

(3) Reports from the Flight 93 Memorial Task Force Committees and the National Park Service Administration Committee, Lands/Resource Assessment Committee, Memorial Ideas Planning Committee, Design Solicitation Committee, Fundraising Committee, Government Relations Committee, Public Relations Committee, Archives Committee, Temporary Memorial Management Committee, Family Memorial Committee, Families of Flight 93, Inc., and National Park Service. Comments from the public will be received after each committee briefing.

(4) Old Business.

(5) New Business.

(6) Closing Remarks.

**FOR FURTHER INFORMATION CONTACT:**

Joanne M. Hanley, Superintendent, Flight 93 National Memorial, 109 West Main Street, Somerset, PA 15501.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Flight 93 Advisory Commission, 109 West Main Street, Somerset, PA 15501.

Dated: June 3, 2004.

Joanne M. Hanley,

Superintendent, Flight 93 National Memorial.

[FR Doc. 04-15143 Filed 7-2-04; 8:45 am]

BILLING CODE 4312-52-M

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### National Park System Advisory Board; Meeting

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of meeting.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. appendix, that the

National Park System Advisory Board will meet July 14-15, 2004, in Estes Park, Colorado. On July 14, the Board will tour Rocky Mountain National Park areas and will be briefed regarding environmental, education and partnership programs. On July 15, the Board will convene its business meeting at 9 a.m., e.s.t., in the Billiard/Pinon Room of The Stanley Hotel, 333 Wonderview Avenue, Estes Park, Colorado 80517, telephone 970-586-3371. The meeting will be adjourned at 5:30 p.m. During the morning session, the Board will be addressed by National Park Service Director Fran Mainella and will receive the reports of its Education Committee and Partnerships Committee. In the afternoon, the Board will receive the reports of its Director's Council and National Parks Science Committee, including a report on the National Natural Landmarks Program. The Board also will receive reports on Colorado River Management and the President's Healthier U.S. Initiative, and will discuss pending business.

Other officials of the National Park Service and the Department of the Interior may address the Board, and other miscellaneous topics and reports may be covered. The order of the agenda may be changed, if necessary, to accommodate travel schedules or for other reasons.

The Board meeting will be open to the public. Space and facilities to accommodate the public are limited and attendees will be accommodated on a first-come basis. Anyone may file with the Board a written statement concerning matters to be discussed. The Board may also permit attendees to address the Board, but may restrict the length of the presentations, as necessary to allow the Board to complete its agenda within the allotted time.

Anyone who wishes further information concerning the meeting, or who wishes to submit a written statement, may contact Mr. Loran Fraser, Office of Policy, National Park Service, 1849 C Street, NW., Room 7250; Washington, DC 20240; telephone 202-208-7456.

Draft minutes of the meeting will be available for public inspection about 12 weeks after the meeting, in room 7252, Main Interior Building, 1849 C Street, NW., Washington, DC.

Dated: June 25, 2004.

Bernard Fagan,

Deputy Chief, Office of Policy.

[FR Doc. 04-15148 Filed 7-2-04; 8:45 am]

BILLING CODE 4312-52-P

**DEPARTMENT OF THE INTERIOR****National Park Service****National Register of Historic Places;  
Notification of Pending Nominations**

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 12, 2004. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, (202) 371-6447. Written or faxed comments should be submitted by July 21, 2004.

**Carol D. Shull,**

*Keeper of the National Register of Historic Places.*

**ALASKA****Anchorage Borough—Census Area**

Civil Works Residential Dwellings, 786 and 800 Delaney St., Anchorage, 04000717

**Kodiak Island Borough—Census Area**

Agricultural Experiment Station Barn, 614 Egan Way, Kodiak, 04000716

**ARIZONA****Cochise County**

Our Lady of Victory Catholic Church, Fronting 4th St., bet. Cedar and Spruce Sts., Pearce, 04000718  
Smith, J.H., Grocery Store and Filling Station, 1835 Old Ranch Rd., Dragoon, 04000720

**Yavapai County**

Mayer Red Brick Schoolhouse, Main St., Mayer, 04000719

**CONNECTICUT****New London County**

St. James Episcopal Church, 125 Huntington St., New London, 04000731

**KANSAS****Douglas County**

Hancock (12th Street) Historic District, (Lawrence, Kansas MPS) Roughly along W. 12th St., from Oread Ave. to Mississippi St., Lawrence, 04000726

**Mitchell County**

Porter Hotel, 209 E. Main St., Beloit, 04000725

**Riley County**

McFarlane—Wareham House, 1906 Leavenworth, Manhattan, 04000724

**MINNESOTA****Goodhue County**

Carleton Airport, 1235 MN 19, Stanton, 04000722

**Olmsted County**

Balfour, Dr. Donald C., House, 427 Sixth Ave. SW., Rochester, 04000723

**Ramsey County**

St. Paul Municipal Grain Terminal, (Grain Elevator Design in Minnesota MPS) 266 Old Shepard Rd., St. Paul, 04000721

**NEVADA****Douglas County**

Reese—Johnson—Virgin House, 193 Genoa Ln., Genoa, 04000728

**Elko County**

Midas Schoolhouse, Second St., two blks east of Main St., Midas, 04000727

**OREGON****Marion County**

Delaney—Edwards House, 4292 Delaney Rd. SE, Salem, 04000729

**WISCONSIN****Oneida County**

Reay Boathouse, 1260 Honk Hill Rd., Three Lakes, 04000730

A request for REMOVAL has been made for the following resource:

**PENNSYLVANIA****Crawford County**

White, Dr. James, House Jct. of U.S. 322 and PA 285, Hartstown, 80003478

[FR Doc. 04-15149 Filed 7-2-04; 8:45 am]

BILLING CODE 4312-51-P

**DEPARTMENT OF JUSTICE****Drug Enforcement Administration****Agency Information Collection  
Activities: Proposed Collection;  
Comments Requested**

**ACTION:** 30-day notice of information collection under review: Application for Permit to Import Controlled Substances for Domestic and/or Scientific Purposes Pursuant to 21 U.S.C. 952.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 69, Number 67, on

page 18405 on April 7, 2004, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until August 5, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503, or facsimile (202) 395-5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Permit to Import Controlled Substances for Domestic and/or Scientific Purposes pursuant to 21 U.S.C. 952.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: DEA Form 357. Applicable component of the Department sponsoring the collection: Office of Diversion Control, Drug Enforcement Administration. U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-

profit. Other: None. *Abstract:* Title 21, CFR, Section 1312.11 requires any registrant who desires to import certain controlled substances into the United States to have an import permit. In order to obtain the permit, an application must be made to the Drug Enforcement Administration on DEA Form 357.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: There are approximately 49 respondents who will complete the form within approximately 15 minutes per response. A respondent may submit multiple responses.

(6) An estimate of the total public burden (in hours) associated with the collection: There are 88 estimated burden hours associated with this collection.

*If additional information is required contact:* Brenda E. Dyer, Department Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: June 29, 2004.

**Brenda E. Dyer,**

*Department Deputy Clearance Officer,  
Department of Justice.*

[FR Doc. 04-15169 Filed 7-2-04; 8:45 am]

BILLING CODE 4410-09-P

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### **Robert Brehm d/b/a Infinite Pills; Denial of Application**

On October 15, 2003, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Robert Brehm (Mr. Brehm), proposing to deny his application for DEA Certificate of Registration as a distributor. The Order to Show Cause alleged that granting Mr. Brehm's application would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(b) and (e). The show cause order also notified Mr. Brehm that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Mr. Brehm at his address of record and DEA received a signed receipt indicating that it was received on October 20, 2003. DEA has not received a request for hearing or any other reply from Mr. Brehm or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Mr. Brehm is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Mr. Brehm submitted a DEA registration application dated May 30, 2000, under the business name "Infinite Pills" at a location in Sellersville, Pennsylvania. Mr. Brehm sought a DEA registration to handle controlled substances in Schedules I through V as a distributor.

On June 21, 2000, a diversion investigator from DEA's Philadelphia Field Division (the Philadelphia Division) conducted an on-site pre-registration inspection of the applicant's proposed business location. The inspection revealed the proposed registered location to be a private, residential townhouse owned by the mother of Mr. Brehm. DEA's investigation further revealed that at the time he submitted an application for DEA registration, Mr. Brehm was a 20-year old male who had never operated a business and had no working experience or knowledge about the pharmaceutical (controlled substance) industry.

DEA's inspection further revealed that at the time of DEA's pre-registration inspection, Mr. Brehm had yet to determine what controlled substance products he would be handling, or from whom he would purchase them. Mr. Brehm was unable to distinguish products that are controlled substances (*i.e.*, narcotics, barbiturates, *etc.*) as opposed to non-controlled drugs. In addition, Mr. Brehm had no potential customers and had not surveyed local pharmacies or practitioners in his area to determine whether or not he could establish a customer base. Finally, DEA's inspection revealed that Mr. Brehm had not developed a recordkeeping/invoicing system for his proposed business.

As a result of its inspection, on July 20, 2000, the Philadelphia Division sent a letter to Mr. Brehm notifying him that DEA would seek the denial of his application, and further requested that Mr. Brehm voluntarily withdraw his application. Mr. Brehm informed the Philadelphia Field Division through a subsequent telephone message of his intention not to withdraw his application.

In late August 2000, the Philadelphia Division received information from the agency's Pittsburgh (Pennsylvania) office that a DEA registration number belonging to a physician from western Pennsylvania had been transferred to an address in Sellersville, Pennsylvania in mid-July 2000. According to the investigative file, someone using this registration number and claiming to be the doctor was attempting to obtain controlled substances from a drug manufacturer located in Aurora, Colorado. DEA's investigation revealed that the physician had not requested a transfer of his DEA registration and was unaware of any such transfer. It was later determined that the Sellersville address from which an attempt was made to obtain controlled substances was the same address that appeared on Mr. Brehm's May 30, 2000, application for DEA registration.

On August 28, 2000, a DEA diversion investigator spoke with a representative of the Colorado drug manufacturer. The company representative stated that on July 28, 2000, she received a call from a man identifying himself as a physician by the name of "Louis Nichamin." Several days later, the company received an order from "Dr. Nichamin" on a Kinko's letterhead fax. When the drug company representative subsequently called the telephone number provided to her by "Dr. Nichamin," she was told by the person answering the call that " \* \* \* he (Dr. Nichamin) doesn't live here anymore." On August 18, 2000, the company representative received another call from a man purportedly on Dr. Nichamin's behalf, who asked the status of an earlier order. The man was described as speaking with an "Indian accent." When the company representative asked the name of the person placing the call, the caller identified himself as "Bob Brehm."

On September 1, 2000, the drug company representative called the Philadelphia Division informing that office that she had just received another call from a person representing himself as "Dr. Nichamin." This time the caller spoke with no discernable accent. When the caller asked about the order placed by "Dr. Nichamin", the drug company representative again asked the caller to identify himself. The caller identified himself as Robert Brehm. When the drug company representative stated her unfamiliarity with the caller, the caller stated he was "Bob Brehm", the same person that she (the drug company representative) had spoken to on an earlier occasion.

The drug company representative then asked the caller for a number

where he could be reached. Mr. Brehm again provided that same number that was purportedly provided on behalf of Dr. Nichamin on a prior occasion. When the drug company representative told Mr. Brehm of her earlier unsuccessful attempt at reaching Dr. Nichamin at the number provided, Mr. Brehm stated that he and the doctor had been "roommates", but the doctor had moved into a house. It is unclear from the investigative file whether any controlled substances were distributed to Mr. Brehm pursuant to the orders that were placed.

On September 5, 2000, the drug company representative informed DEA that a second order for controlled substances was received on behalf of Dr. Nichamin, and originating from Mr. Brehm's address of record in Sellersville. The controlled substances were ordered, in varying quantities, via unsigned DEA Order Forms. Among the controlled substances ordered were Morphine Sulfate, Hydromorphone, OxyCodone, Hydrocodone Bitartrate, Meperidine, Testosterone Micro, Testosterone Cypionate, Testosterone Propionate and Ketamine.

DEA's investigation further revealed that on September 1, 2000, the Pennridge Regional Police received a complaint from Robert Brehm that his father had stolen his (Mr. Brehm's) gun. It was later determined by law enforcement authorities that Mr. Brehm attempted to shoot his father with the gun. According to the police investigative report, Robert Brehm had an altercation with his father inside the family's residential address (the same address used for application purposes with DEA), where Mr. Brehm fired six rounds from his .380 pistol at his father. At the time the police arrived at the townhouse, it was noted that Robert Brehm was " \* \* \* sweating profusely, had a blank stare, and was displaying a difficult time with balance." The report further described Mr. Brehm as " \* \* \* very withdrawn while in the holding cell. He was sweating, holding his head between his legs, rocking back and forth. He also was [observed] mumbling and sticking his finger down his throat."

Mr. Brehm was later taken to a local hospital for treatment, and a warrant was issued for his arrest. Pursuant to a search warrant which was subsequently executed at the Brehm residence, police found, among other things, .380 caliber ammunition, a water pipe, and plastic jugs with rubber tubes attached.

Following his release from the hospital, Robert Brehm was processed at the Pennridge Police Department. At that time, he advised the police to be careful with the jugs taken during the search

warrant because he didn't know what they contained, and the jugs were a part of what Mr. Brehm described to police as his "old meth lab."

According to the investigative file, on September 11, 2000, Mr. Brehm was arraigned in Pennsylvania state court on charges of aggravated assault; simple assault; recklessly endangering another person; terroristic threats; possessing an instrument of crime; and, possession with intent to use drug paraphernalia. His \$25,000 bail was not initially posted, and Mr. Brehm was sent for detention to the Bucks County Prison, where he was placed under a severe suicide watch due to depression.

The investigative file also recounts the Philadelphia Division receiving information from a detective in nearby Perkasie (Pennsylvania) that Mr. Brehm, then 19 years of age, had been arrested by Perkasie Police Department on possession of marijuana charges. The arresting officer is quoted by a DEA diversion investigator as saying that Mr. Brehm had been at a house where " \* \* \* just about every drug imaginable was in the house." There is no information in the investigative file on the disposition of these charges against Mr. Brehm.

The investigative file further recounts that shortly after his arrest, Mr. Brehm's bail was paid by his mother. Later that same night, Mr. Brehm, who was driving his mother's car, hit a parked truck and then veered the vehicle into a garage, where it hit two antique Harley Davidson motorcycles. Mr. Brehm was the only person involved in the accident and was apparently unhurt. Nevertheless, he was subsequently arrested by local police, charged with misdemeanor offenses, and released the same night.

The investigative file further reveals that on September 6, 2000, the Philadelphia Division received information from the Pennsylvania Department of Health (Department of Health), advising that a complaint had been received from a manufacturer of medical gases located in Allentown, Pennsylvania. The complaint alleged that Mr. Brehm was "stockpiling nitrous oxide." DEA learned that Mr. Brehm was not licensed as a distributor by Department of Health to engage in this activity. DEA also received information that between March 31 and August 18, 2000, Mr. Brehm made ten purchases of nitrous oxide totaling \$2,474.32, as well as medical oxygen at a cost of \$28.54.

According to the investigative file, on October 16, 2000, the Philadelphia Division learned that Mr. Brehm attempted to place an order for some unspecified product with the Colorado

drug manufacturer, again, purportedly on behalf of Dr. Nichamin. In his faxed order, Mr. Brehm also left instructions with the drug manufacturer to deliver the ordered product to his residential address and Mr. Brehm provided the name of an individual who would accept the order on behalf of Dr. Nichamin. It turned out that the name of the individual left by Mr. Brehm to accept the order was same as the Bucks County Assistant District Attorney whose name was listed on the search warrant served at the Brehm residence in September of 2000. A copy of the warrant had been left at the premises at the time it was executed.

The investigative file further reveals that in a Bucks County court proceeding on March 13, 2001, Mr. Brehm waived a jury trial and entered a plea of not guilty due to mental health reasons, to charges arising from the assault on his father. The docket of that proceeding showed that on that same date, the presiding judge found Mr. Brehm not guilty on all counts, and under the state Mental Health Act, committed Mr. Brehm to mental health evaluation, to be reviewed yearly. As part of the judge's order, Mr. Brehm was to report to the Lenape Valley Foundation on March 16, 2001. It appears from the investigative file that on April 2, 2001, a subsequent court order was entered pursuant to Section 304(g) of the state Mental Health Procedures Act, committing Mr. Brehm to a partial hospitalization program at the Penn Foundation for up to one year.

The investigative file further describes the issuance of an unspecified order dated July 6, 2001, ordering Mr. Brehm to take medication as directed by his doctors and a subsequent request by the state that Mr. Brehm be held in contempt for failure to comply with Penn Foundation treatment recommendations as ordered by the court. The investigative file further describes a court finding that Mr. Brehm was in contempt of an earlier commitment order of the court, and on April 5, 2002, was recommitted to the partial program at the Penn Foundation for a period of up to one year, apparently for further observation.

The Deputy Administrator may deny an application under 21 U.S.C. 823(b) and (e), if she determines that the registration would be inconsistent with the public interest. *Associated Pharmaceutical Group, Ins.*, 58 FR 58181 (1993).

Pursuant to 21 U.S.C. 823(b) and (e), [i]n determining the public interest, the following factors shall be considered:

(1) Maintenance of effective controls against diversion of particular

controlled substances into other than legitimate medical, scientific and industrial channels;

(2) Compliance with applicable State and local law;

(3) Prior conviction record of the applicant under federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances;

(4) Past experience in the distribution of controlled substances;

(5) Such other factors as may be relevant to and consistent with the public health or safety."

It is well established that these factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration denied. See *Henry J. Schwartz, Jr., M.D.*, 54 FR 16422 (1989).

Of the stated factors, the Deputy Administrator finds that there is no evidence in the investigative file that Mr. Brehm or his company is licensed under the State of Pennsylvania to handle controlled substances, or that his company was not in compliance with applicable state law, as contemplated by factor two. In addition, there is not evidence in the record that Mr. Brehm or his company have ever been convicted under controlled substance laws, or ever actually distributed controlled substances, as described under factors three and four. Accordingly, the Deputy Administrator finds factors one and five relevant to this proceeding.

It is clear that granting the application for DEA Certificate of Registration of Mr. Brehm d/b/a Infinite Pills would be inconsistent with the public interest. Under the first factor, maintenance of effective controls against diversion of particular controlled substances into other than legitimate medical scientific and industrial channels, the Deputy Administrator finds this factor relevant to the findings of DEA's investigation that Mr. Brehm had not developed a record keeping or invoicing system for his proposed business.

Factor one is further relevant to Mr. Brehm's attempts at obtaining various controlled substances from a drug manufacturer under the name and DEA registration of a physician without the latter's knowledge. Given the dishonest methods employed to obtain these drugs, the Deputy Administrator is left to conclude that Mr. Brehm's actions were an attempt to divert controlled substances to his personal use. Therefore, the maintenance of effective

controls as contemplated under factor one, are not present with respect to Mr. Brehm's pending application for registration, and support the denial of his pending application.

With regard to factor five, such other factors as may be relevant to and consistent with the public health or safety, Mr. Brehm's proposed registered location is a residential townhouse which he shares with his mother and other family members. At the time of the submission of his application, Mr. Brehm was a 20-year old with no known experience working with controlled substances. He had no potential customers, nor had he made any visible efforts to establish a customer base.

Factor five is further relevant to Mr. Brehm's use of several artifices to obtain controlled substances from a Colorado drug manufacturer, including the unauthorized use of the name and DEA number of a physician; his apparent attempt to disguise his accent; his apparent misrepresentation to the drug company representative that he and the physician were roommates; and his apparent unauthorized use of the name of yet another individual as the contact person for delivery of controlled substances. In addition, Mr. Brehm attempted to have a physician's DEA number transferred to a different address, without the knowledge or authorization of the physician. This factor is also relevant to Mr. Brehm's fraudulent submission to a drug manufacturer of unsigned DEA order forms in a further attempt to obtain various controlled substances.

Also given consideration under factor five is the reference in the investigative file to an altercation involving Mr. Brehm and his father, resulting in the firing of a loaded weapon by Mr. Brehm. This altercation took place at the same address proposed by Mr. Brehm as a DEA registered location. Mr. Brehm was later charged with various assault, weapon, and drug charges. Following his arrest, and the execution of a search warrant at his residential address, Mr. Brehm advised law enforcement officers to exercise care in their handling of certain materials at the residence because they were part of a methamphetamine lab. The DEA investigative file also recounts the arrest of Mr. Brehm on a charge of possessing marijuana.

In addition to his legal woes, Mr. Brehm has exhibited behavior which can best be described as unstable. Such conduct raises further questions about his ability to adequately discharge the responsibilities of a DEA registrant.

Following his arrest in September of 2000, Mr. Brehm was placed under a

suicide watch after exhibiting erratic behavior while in custody. Following his release from police custody, the automobile in which he was driving struck three parked vehicles, and he was later charged with a misdemeanor offense apparently related to the incident. Pursuant to a subsequent court order, Mr. Brehm was committed to an institution for a mental health evaluation, and was found to be in violation of the court's order for noncompliance. Mr. Brehm's failure to comply resulted in his being recommitted for further mental health evaluation. Finally, DEA received information from the Pennsylvania Department of Health which alleged that Mr. Brehm stockpiled nitrous oxide without state authorization to do so.

It is clear that Mr. Brehm and the firm that he represents, does not possess the requisite qualifications for DEA registration as a distributor. Moreover, in reviewing the instant request for DEA registration, and in light of Mr. Brehm's failure to request a hearing in this matter, the Deputy Administrator has only the benefit of the DEA investigative file in making her determination. No evidence has been submitted on behalf of the applicant in support of his pending application. Based on the above, the Deputy Administrator reiterates that the applicant's registration would be inconsistent with the public interest and therefore, his application for registration must be denied.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 28 CFR 0.100(b), hereby orders that the application for DEA Certificate of Registration as a distributor submitted by Robert Brehm d/b/a Infinite Pills, be, and it hereby is, denied. This order is effective August 5, 2004.

Dated: June 21, 2004.

**Michele M. Leonhart,**  
Deputy Administrator.

[FR Doc. 04-15152 Filed 7-2-04; 8:45 am]

BILLING CODE 4410-09-M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket No. 03-51]

### Miles J. Jones, M.D.; Revocation of Registration

On August 11, 2003, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order

to Show Cause to Miles J. Jones, M.D. (Respondent) notifying him of an opportunity to show cause as to why DEA should not revoke his Certificate of Registration, BJ0839540 under 21 U.S.C. 824(a)(3) and deny any pending applications or requests pursuant to 21 U.S.C. 823(f). Specifically, the Order to Show alleged that the Respondent is not authorized under state law to handle controlled substances based upon the revocation of his Missouri state medical license on February 5, 2003.

By letter dated September 15, 2003, the Respondent, proceeding *pro se*, timely requested a hearing in response to the show cause order. In his hearing request, the Respondent asserted that the DEA action in revoking his Certificate of Registration was premature since matters involving the revocation of his Missouri medical license were under appeal. In response to the Respondent's request for stay, the presiding Administrative Law Judge Gail A. Randall (Judge Randall) issued a Notice and Order on September 25, 2003, allowing the Government the opportunity to respond to the Respondent's request.

On September 26, 2003, counsel for DEA filed Government's Request for Stay of Proceedings and Motion for Summary Judgment. The Government asserted that the Respondent is without authorization to handle controlled substances in Missouri, and as a result, further proceedings in the matter were not required. On September 30, 2003, the Government followed its motion with the Government's Response to Respondent's Request for Stay of Proceedings, arguing that the Respondent had failed to provide sufficient grounds to warrant a stay of the proceedings.

On September 30, 2003, Judge Randall issued an Order Staying Proceedings, where she afforded the Respondent the opportunity to respond to the Government's Motion by October 29, 2003. However, the Respondent did not file a response.

Accordingly, on December 4, 2003, Judge Randall issued her Opinion and Recommended Decision of the Administrative Law Judge (Opinion and Recommended Decision). As part of her recommended ruling, Judge Randall granted the Government's Motion for Summary Disposition and found that the Respondent lacked authorization to handle controlled substances in Missouri, the jurisdiction in which he is registered with DEA. In granting the Government's motion, Judge Randall also recommended that the Respondent's DEA registration be revoked and any pending applications

for renewal or modification be denied. No exceptions were filed by either party to Judge Randall's Opinion and Recommended Decision, and on January 16, 2004, the record of these proceedings was transmitted to the Office of the DEA Deputy Administrator.

The Deputy Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues her final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Deputy Administrator finds that the Respondent currently possesses DEA Certificate of Registration BJ0839540, and is registered to handle controlled substances in Missouri. The record before the Deputy Administrator reveals that on July 26, 2002, the North Dakota Board of Medical Examiners (North Dakota Board) revoked the Respondent's medical license in that state, based in part upon information that the Respondent repeatedly wrote prescriptions for patients over the Internet without first examining the patient or obtaining appropriate patient information.

In response to the revocation action of the North Dakota Board, on February 5, 2003, the Missouri State Board of Registration for the Healing Arts (Missouri Board) issued its Findings of Fact, Conclusions of Law and Disciplinary Order in the matter of the Respondent's Missouri medical license. The Missouri Board ordered the revocation of the Respondent's medical license and further ordered that he be prohibited from applying for reinstatement of his license "for two (2) years and one (1) day from the date of [the Missouri Board's] order."

There is no evidence before the Deputy Administrator that the order of the Missouri Board has been stayed or rescinded. Therefore, the Deputy Administrator finds that the Respondent is currently not licensed to practice medicine in Missouri and as a result, it is reasonable to infer that he is also without authorization to handle controlled substances in that state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See *Kanwaljit S. Serai, M.D.*, 68 FR 48943.(2003); *Dominick A. Ricci,*

*M.D.*, 58 FR 51104 (1993); *Bobby Watts, M.D.*, 53 FR 11919 (1998).

Here, it is clear that the Respondent is not currently authorized to handle controlled substances in Missouri, where he is registered with DEA. Therefore, he is not entitled to maintain that registration. Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BJ0839540, issued to Miles J. Jones, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective August 5, 2004.

Dated: June 21, 2004.

**Michele M. Leonhart,**  
Deputy Administrator.

[FR Doc. 04-15151 Filed 7-2-04; 8:45 am]

BILLING CODE 4410-09-M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Simon J. Trueblood, M.D.; Revocation of Registration

On June 13, 2003, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Simon J. Trueblood, M.D. (Dr. Trueblood), proposing to revoke his DEA Certificate of Registration, BT5741081, as a practitioner pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f), for reason that Dr. Trueblood does not have a controlled substance license for the State of Illinois, the state in which he intends to move his practice. The Order to Show Cause further alleged that renewal or modification of Dr. Trueblood's DEA registration would be inconsistent with the public interest, based in relevant part, upon the following:

1. On March 10, 1998, the Medical Licensing Board of Indiana (the Board) placed Dr. Trueblood's medical license on indefinite probation. As grounds for this action, the Board found that Dr. Trueblood had prescribed legend drugs and controlled substances to a number of members of his family. Dr. Trueblood admitted that all the prescriptions had been for his mother. Dr. Trueblood also admitted that he had written the prescriptions in different names in order

to deceive pharmacists and not draw attention to his practices.

2. On February 22, 1999, Dr. Trueblood entered into a Memorandum of Understanding (MOU) with DEA in lieu of the agency taking action to revoke his DEA controlled substance registration. Under the MOU, Dr. Trueblood agreed, among other things, that he would:

a. Not purchase, manufacture, possess, dispense, administer or in any way acquire, handle or engage in any other controlled substance activities whatever, except to prescribe in Schedules II through V;

b. Not prescribe, dispense or administer controlled substances to himself or to any member of his immediate family;

c. Maintain and submit to DEA a complete and accurate record of all controlled substances that he prescribed, every three months, for three years.

3. In November 2000, Dr. Trueblood applied for renewal of his Illinois DEA Registration, BT57 41081, as well as his Indiana DEA registration, AT23001241. On his applications, Dr. Trueblood answered "no" to a question which asked: "has the applicant ever surrendered or had a federal controlled substance registration revoked, suspended, restricted or denied." This answer was false, since the MOU restricted Dr. Trueblood's DEA registrations.

4. On January 10, 2001, Dr. Trueblood admitted to DEA investigators that he violated the MOU by purchasing, administering, handling and possessing controlled substances. On January 17, 2001, DEA investigators conducted an inspection of the office of Dr. Trueblood and found that he had violated the MOU and numerous laws and regulations concerning controlled substances. Among the violations noted were failure to keep an inventory of controlled substances, in violation of 21 U.S.C. 827 and 21 CFR 1304.11(e)(3); failure to keep records of controlled substances that he received and dispensed, in violation of 21 CFR 1304.22(c) and 21 CFR 1304.03(b); the ordering of controlled substances on 55 occasions, in violation of the MOU; maintaining controlled substances at an unregistered location, in violation of 21 CFR 1301.13(a); violation of terms of the MOU by failing to send to DEA complete and accurate records of all controlled substances prescribed, every three months; failure to maintain records of administering controlled substances to patients, in violation of 21 CFR 1304.03(d); and, failure to maintain prescribing records in separate files or

ledgers for three years, in violation of the MOU.

5. DEA investigators inspecting Dr. Trueblood's Merrillville, Indiana office on January 17, 2001, seized controlled substances found in the office. Pursuant to the investigators' request that the surrender all controlled substances in his office, Dr. Trueblood provided the investigators with a box containing controlled substances. Dr. Trueblood told investigators that he had provided all controlled substances that were in his office, but further informed them that they were free to conduct a further search of the office for these products. A further search uncovered additional controlled substances, which Dr. Trueblood claimed he was unaware of. Dr. Trueblood again told inspectors that there were no more controlled substances in his office.

6. On January 19, 2001, DEA investigators returned to the Merrillville office where they met with Dr. Trueblood and his counsel. The investigators found additional controlled substances in Dr. Trueblood's office. On the same day, DEA investigators met Dr. Trueblood and his attorney at the doctor's second office location in Valparaiso, Indiana. The investigators searched and seized controlled substances in that office. The investigators advised Dr. Trueblood that he had not obtained a registration for the Valparaiso office and therefore no controlled substances could be stored, dispensed, or administered at that location.

7. On January 19, 2001, Dr. Trueblood surrendered his DEA registration, AT2301341, which was assigned to his Indiana registered location. The surrender of Dr. Trueblood's Indiana DEA registration rendered his renewal application for that registration null and void.

8. Following the surrender of his registration, Dr. Trueblood continued writing prescriptions using his Indiana DEA registration. Between January 19 and March 2, 2001, Dr. Trueblood wrote prescriptions for OxyContin, Percodan, Dilaudid and methadone, all Schedule II controlled substances; two prescriptions for Vicodin, a Schedule III controlled substance; and Xanax and Ambien, both Schedule IV controlled substances.

9. On February 28, 2001, the Board suspended Dr. Trueblood's Indiana medical license for 90 days, on the grounds that he represented a clear and immediate danger to the public health and safety. Dr. Trueblood admitted to the Board that he violated the restrictions in the MOU from the time it was signed by continuing to purchase, possess, dispense and administer

Schedules II through V controlled substances. The Board found that Dr. Trueblood effectively ignored and failed to comply with the terms of the MOU. Dr. Trueblood appealed the Board's decision and a stay was issued.

10. On May 30, 2001, the Board revoked Dr. Trueblood's Indiana medical license and forbade him from reapplying for that license for seven years. Despite the revocation, Dr. Trueblood continued to write prescriptions for non-controlled substances.

11. On September 27, 2001, Dr. Trueblood appeared before the Board concerning his request for renewal of his Indiana medical license.

12. On October 23, 2001, the Board denied Dr. Trueblood's renewal application.

13. On January 24, 2003, a hearing was held concerning Dr. Trueblood's appeal of the denial of his renewal application. The Board voted in favor of denying Dr. Trueblood's appeal.

14. On February 23, 2003, the Board revoked Dr. Trueblood's Indiana medical license.

The Order to Show Cause was sent by certified mail to Dr. Trueblood at his address in Buffalo Springs, Illinois, and was received by Dr. Trueblood on June 23, 2003. Nevertheless, DEA has not received a request for hearing or any other reply from Dr. Trueblood or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator of DEA, finding that (1) thirty days having passed since the delivery of the Order to Show Cause to Dr. Trueblood's address of record and his receipt of the same, and (2) no request for hearing having been received, concludes that Dr. Trueblood is deemed to have waived his hearing right. See *David W. Linder*, 67 FR 12579 (2002). After considering material from the investigative file in this matter, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

According to the investigative file, DEA Certificate of Registration, AT2301341, was assigned to Dr. Trueblood in or around 1986, at an address in Merrillville, Indiana. On January 23, 2001, Dr. Trueblood surrendered that registration. The investigative file also reveals that on March 3, 1998, DEA Certificate of Registration, BT5741081, was assigned to Dr. Trueblood for an address in Calumet, Illinois. The latter DEA registration of Dr. Trueblood is the subject of the instant proceeding.

Subsequent to the issuance of the Order to Show Cause, and in light of Dr.

Trueblood's waiver of a hearing, the Deputy Administrator accepted into the record a copy of a Certification of Licensure (certification) from the Illinois Department of Professional Regulation (IDPR). The certification was dated April 7, 2004, and was signed by the Deputy Director, Licensing and Testing for IDPR. According to the certification, Dr. Trueblood's Illinois controlled substance license expired on July 31, 1999, and is currently in a "NON-RENEWED" status.

The investigative file contains no evidence that Dr. Trueblood's Illinois controlled substance license has been renewed. Therefore, the Deputy Administrator finds that Dr. Trueblood is currently not authorized to handle controlled substances in that state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See *Rory Patrick Doyle, M.D.*, 69 FR 11655 (2004); *Dominick A. Ricci, M.D.*, 58 FR 51104 (1993); *Bobby Watts, M.D.*, 53 FR 11919 (1988).

Here, it is clear that Dr. Trueblood's Illinois controlled substance license has expired and has not been renewed. As a result, he is currently not licensed under Illinois law to handle controlled substances and therefore, he is not entitled to a DEA registration in that state. As a result of a finding that Dr. Trueblood lacks state authorization to handle controlled substances, the Deputy Administrator concludes that it is unnecessary to address further whether his DEA registration should be revoked based upon the public interest grounds asserted in the Order to Show Cause. See *Fereida Walker-Graham, M.D.*, 68 FR 24761 (2003); *Nathaniel-Aikens-Afful, M.D.*, 62 FR 16871 (1997); *Sam F. Moore, D.V.M.*, 58 FR 14428 (1993).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BT5741081, issued to Simon J. Trueblood, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective August 5, 2004.

Dated: June 21, 2004.

**Michele M. Leonhart,**  
Deputy Administrator.

[FR Doc. 04-15150 Filed 7-2-04; 8:45 am]

BILLING CODE 4410-09-M

## DEPARTMENT OF JUSTICE

### Federal Bureau of Investigation

#### Agency Information Collection Activities: Proposed New Collection, Comments Requested

**ACTION:** 30-day notice of information collection under review: CJIS Customer Satisfaction Survey.

The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with review procedures of the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the *Federal Register* on March 22, 2004, Volume 69, Number 55, on page 13334, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until August 5, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395-5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies/components 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* CJIS Customer Satisfaction Surveys.

(3) *Agency Form Number, if any, and the applicable component of the department sponsoring the collection:* Form Number: None. Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

(4) *Affected Public Who Will Be Asked or Required To Respond, As well As a Brief Abstract: Primary:* State, local or tribal governments. Other: Federal government and business or other for-profit. Brief Abstract: The FBI established the CJIS Division to serve as the focal point and central repository for criminal justice information services within the FBI. The CJIS Division is responsible for the following programs administered by the FBI for the benefit of local, State, Federal, and foreign criminal justice agencies: (a) Integrated Automated Fingerprint Identification System, (b) Law Enforcement Online, (c) National Crime Information Center, (d) National Instant Criminal Background Check System—Federal Firearm Licensees, (e) National Instant Criminal Background Check System: Point of Contact and Partial Point of Contact States, (f) Uniform Crime Reporting, Interstate Identification, and Index, and (g) the CJIS Help Desk. CJIS will be conducting a customer service survey for each of the seven aforementioned programs as well as for the CJIS Help Desk. These surveys will be used to establish approval rating baselines of CJIS Division services in addition to identifying areas where our services can be improved, or new services established to assist the criminal justice community with the performance of their official duties.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent To Respond:* The estimated total number of respondents are 2,485 which are broken into the following areas: (a) Integrated Automated Fingerprint Identification System, 400 respondents,



and 9 minutes average completion time; (b) Law Enforcement Online, 400 respondents, and 2 minutes average completion time; (c) National Crime Information Center, 400 Respondents, and 2 minutes average completion time; (d) National Instant Criminal Background Check System—Federal Firearm Licensees, 400 respondents and 3 minutes average completion time; (e) National Instant Criminal Background Check System—Point of Contact and Partial Point of Contact, 24 respondents, and 2 minutes average completion time; (f) Uniform Crime Reporting, 400 respondents, and 7 minutes average completion time; (g) Interstate Identification Index, 400 respondents, and 3 minutes average completion time; and CJIS Help Desk, 61 respondents and 3 minutes average completion time.

(6) *An Estimate of the Total Public Burden (in Hours) Associated With the Collection:* There are an estimated 177 total public burden hours associated with this collection.

*If additional information is required contact:* Mrs Brenda E. Dyer, Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: June 29, 2004.

**Brenda E. Dyer,**

*Deputy Clearance Officer, United States Department of Justice.*

[FR Doc. 04-15170 Filed 7-2-04; 8:45 am]

BILLING CODE 4410-02-P

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

#### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 30-Day notice of information collection under review; OVC TTAC Feedback Form.

The Department of Justice, Office of Justice Programs, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** Volume 69, Number 6, on page 1606 on January 9, 2004, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until August 5, 2004. This

process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Emily Martin, Acting Director, Technical Assistance, Publications, and Information Resources, Office for Victims of Crime, Office of Justice Programs, Department of Justice, 810 7th Street, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies/components 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* OVC TTAC Feedback Form Package.

(3) *The Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number(s): T-100, T-200, T-300, G-100, G-200, and G-300. Office for Victims of Crime, Office of Justice Programs, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract.* Primary: State, Local or Tribal. Other: Federal Government; Individuals or households; Not-for-profit institutions; Businesses or other for-profit. Abstract: The Office for Victims of Crime Training and Technical Assistance Center (OVC TTAC) Feedback Form Package is designed to collect the data necessary to

continuously improve customer service intended to meet the needs of the victim service field. OVC TTAC will send these forms to technical assistance (TA) recipients to capture important feedback on the TA requester's satisfaction with the quality, efficiency, referrals, and resources of the OVC TTAC. The data will then be used to advise OVC TTAC on ways to improve the support that OVC TTAC provides to its users and the victim service field at-large.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* There are approximately 16,492 respondents who will each require an average of 3-10 minutes to respond to a single form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual public burden hours for this information collection is estimated to be 1,561 hours.

*If additional information is required contact:* Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Planning and Policy Staff, Justice Management Division, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: June 30, 2004.

**Brenda E. Dyer,**

*Deputy Clearance Officer, United States Department of Justice.*

[FR Doc. 04-15217 Filed 7-2-04; 8:45 am]

BILLING CODE 4410-18-P

## DEPARTMENT OF LABOR

### Office of the Secretary

#### Submission for OMB Review: Comment Request

June 21, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Darrin King on 202-693-4129 (this is not a toll-free number) or e-mail: [king.darrin@dol.gov](mailto:king.darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Bureau of Labor Statistics (BLS), 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:* Bureau of Labor Statistics.  
*Type of Review:* Revision of a currently approved collection.  
*Title:* Survey of Occupational Injuries and Illnesses.  
*OMB Number:* 1220-0045.  
*Frequency:* Annually.  
*Type of Response:* Reporting and recordkeeping.

*Affected Public:* Business or other for-profit; not-for-profit institutions; farms; and State, local, or tribal government.  
*Number of Respondents:* 230,000.  
*Number of Annual Responses:* 230,000.

*Estimated Time Per Response:* 24 minutes (10 minutes to 5 hours) to complete the Form BLS-9300 and 14 minutes for each new entry on the OSHA Form 300 (OSHA Log).  
*Total Burden Hours:* 327,666.  
*Total Annualized capital/startup costs:* \$0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* \$0.

*Description:* Section 24(a) of the Occupational Safety and Health Act of 1970 requires the Secretary of Labor to develop and maintain an effective program of collection, compilation, and analysis of statistics on occupational injuries and illnesses. The BLS fulfills this responsibility, in part, by conducting the Survey of Occupational Injuries and Illnesses in conjunction with participating State statistical agencies. The BLS Survey of Occupational Injuries and Illnesses provides the nation's primary indicator of the progress towards achieving the

goal of safer and healthier workplaces. The survey produces the overall rate of occurrence of work injuries and illnesses by industry which can be compared to prior years to produce measures of the rate of change. These data are used to improve safety and health programs and measure the change in work-related injuries and illnesses.

**Darrin A. King,**

*Acting Departmental Clearance Officer.*

[FR Doc. 04-15177 Filed 7-2-04; 8:45 am]

BILLING CODE 4510-24-P

## DEPARTMENT OF LABOR

### Office of the Secretary

#### Submission for OMB Review: Comment Request

June 28, 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](mailto: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:* Application for Training Grant.

*OMB Number:* 1218-0020.

*Frequency:* Annually.

*Type of Response:* Reporting.

*Affected Public:* Not-for-profit institutions.

*Number of Respondents:* 250.

*Number of Annual Responses:* 250.

*Estimated Time Per Response:* 59.25 hours.

*Total Burden Hours:* 14,813.

*Total Annualized capital/startup costs:* \$0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* \$0.

*Description:* Section 21 of the Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 670) authorizes the OSHA to conduct directly, or through grants and contracts, education and training courses. These courses must ensure an adequate number of qualified personnel to fulfill the purposes of the Act, provide them with short-term training, inform them of the importance and proper use of safety and health equipment, and train employers and employees to recognize, avoid, and prevent unsafe and unhealthful working conditions.

Under section 21 of the Act, OSHA awards grants to non-profit organizations to provide part of the required training. To obtain such a grant, an organization must complete the training grant application. OSHA uses the information in this application to evaluate: The organization's competence to provide the proposed training (including the qualifications of the personnel who manage and implement the training); the goals and objectives of the proposed training program; a workplan that describes in detail the tasks that the organization will implement to meet these goals and objectives; the appropriateness of the proposed costs; and compliance with Federal regulations governing nonprocurement debarment and suspension, maintaining a drug-free workplace, and lobbying activities. Also required is a program summary that Agency officials use to review and evaluate the highlights of the overall proposal.

*Agency:* Occupational Safety and Health Administration.

*Type of Review:* Extension of currently approved collection.

*Title:* Standard on the Control of Hazardous Energy (Lockout/Tagout).

*OMB Number:* 1218-0150.

*Frequency:* On occasion; annually; and initially.

*Type of Response:* Recordkeeping and third party disclosure.

*Affected Public:* Business or other for-profit; not-for-profit institutions; Federal Government; and State, local, or tribal government.

*Number of Respondents:* 818,532.

*Number of Annual Responses:* 94,647,166.

*Estimated Time Per Response:* Varies from 15 seconds for an employer or authorized employee to notify affected employees prior to applying, and after removing, a lockout/tagout device from a machine or equipment to 80 hours for certain employers to develop energy-control procedures.

*Total Burden Hours:* 3,421,527.

*Total Annualized capital/startup costs:* \$0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* \$0.

*Description:* The purpose of the information collection requirements in 29 CFR 1910.147 is to control the release of hazardous energy while employees service, maintain, or repair machines or equipment when activation, start up, or release of energy from an energy source is possible; proper control of hazardous energy prevents death and serious injury among these employees.

*Agency:* Occupational Safety and Health Administration.

*Type of Review:* Extension of currently approved collection.

*Title:* Material Hoists, Personnel Hoists, and Elevators; Posting Requirements.

*OMB Number:* 1218-0231.

*Frequency:* On occasion and Quarterly.

*Type of Response:* Recordkeeping and third party disclosure.

*Affected Public:* Business or other for-profit; not-for-profit institutions; Federal Government; and State, local, or tribal government.

*Number of Respondents:* 26,547.

*Number of Annual Responses:* 130,467.

*Estimated Time Per Response:* Varies from 2 minutes for a supervisor to disclose test and inspection certification records to 30 minutes for a construction worker to obtain and post information for hoists.

*Total Burden Hours:* 30,282.

*Total Annualized capital/startup costs:* \$0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* \$0.

*Description:* The information collection requirements in 29 CFR 1926.552 are designed to protect employees who operate and work around personnel hoists.

*Agency:* Occupational Safety and Health Administration.

*Type of Review:* Extension of currently approved collection.

*Title:* Rigging Equipment for Material Handling.

*OMB Number:* 1218-0233.

*Frequency:* On occasion and Annually.

*Type of Response:* Recordkeeping and third party disclosure.

*Affected Public:* Business or other for-profit; not-for-profit institutions; Federal Government; and State, local, or tribal government.

*Number of Respondents:* 132,737.

*Number of Annual Responses:* 301,619.

*Estimated Time Per Response:* Varies from 3 minutes for an employer to maintain and disclose a certificate to 30 minutes for employer to acquire information and make a tag for a sling.

*Total Burden Hours:* 56,335.

*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 1926.251 paragraphs (b)(1), (b)(6)(i), (b)(6)(ii), (c)(15)(ii), (e)(1)(i), (ii), and (iii), and (f)(2) of the Rigging Equipment for Construction Standard require affixing identification tags or markings on rigging equipment; developing and maintaining inspection records; and retaining proof-testing certificates. The purpose of each of these requirements is to prevent employees from using defective or deteriorated equipment, thereby reducing their risk of death or serious injury caused by equipment failure during material handling.

**Darrin A. King,**

*Acting Departmental Clearance Officer.*

[FR Doc. 04-15176 Filed 7-2-04; 8:45 am]

BILLING CODE 4510-26-P

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Proposed Information Collection Request Submitted for Public Comment and Recommendations; Unemployment Insurance (UI) Facilitation of Claimant Reemployment

**ACTION:** Notice.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor (DOL) conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that the requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

The Employment and Training Administration (ETA) is soliciting comments concerning the proposed new collection of information on the reemployment of UI benefit recipients. ETA is seeking Office of Management and Budget (OMB) approval under the PRA95 to establish a system to collect data at the state level on the percentage of individuals who become reemployed in the calendar quarter subsequent to the quarter in which they received their first UI payment.

**DATES:** Submit comments on or before September 7, 2004.

**ADDRESSES:** Submit comments to Andrew W. Spisak, Office of Workforce Security, Employment and Training Administration, U.S. Department of Labor, Room S-4522, 200 Constitution Avenue, NW., Washington, DC 20210; fax: 202-693-3975; e-mail: [spisak.andrew@dol.gov](mailto:spisak.andrew@dol.gov).

**FOR FURTHER INFORMATION CONTACT:** Andrew W. Spisak, telephone: 202-693-3196 (this is not a toll-free number); fax: 202-693-3975; e-mail: [spisak.andrew@dol.gov](mailto:spisak.andrew@dol.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Required by Congress under the Government Performance and Results Act of 1993 (GPRA), the DOL Strategic Plan is an integral part of the budget process. Among the purposes of the

GPRA are to improve Federal program effectiveness and public accountability by focusing on program results, service quality, and customer satisfaction.

One of the goals in the fiscal year (FY) 2003—2008 DOL strategic plan—A Secure Workforce—focuses on improving the operational performance and effectiveness of the federal/state UI program. Four performance measures support this strategic goal:

- Make Timely Benefit Payments to UI Claimants
- Detect Overpayments
- Establish Tax Accounts Promptly
- Facilitate the Reemployment of UI Claimants

Data are currently available for measuring performance for three of the indicators; however, data are not available to adequately reflect the degree to which the UI system facilitates the reemployment of UI benefit recipients. For this indicator, ETA proposes to collect data on the rate at which UI beneficiaries become reemployed within the calendar quarter subsequent to the quarter in which they received their first UI payment. This measurement will encourage UI agencies—which share responsibility with all Workforce Investment partners in facilitating the reemployment of UI beneficiaries—to be innovative in the steps they take to facilitate these individuals' reemployment. Insights gained about the combinations of reemployment efforts and UI eligibility conditions that promote the quick return of UI beneficiaries to suitable work will be shared with state UI agencies.

States currently measure the entered employment rates of certain limited categories of job seekers (for example, veterans and UI claimants whose profiles indicate they are in the greatest need of reemployment services) and convey this information through the ETA reporting system. However, no reemployment data are currently collected of the general population of UI beneficiaries. Therefore, during FY 2003, DOL developed and pilot-tested a reemployment rate measure for UI beneficiaries in six states. The results of the pilot are discussed below.

#### *The Measure*

ETA carefully considered several options for measuring the reemployment of UI claimants:

- Use currently reported Employment Service data to obtain entered employment data for workforce investment system registrants who were monetarily eligible for UI;
- Crossmatch samples of UI recipients in the Benefit Accuracy Measurement (BAM) (OMB Approval No. 1205-0245, expiring 6/07) survey with state wage record files;
- Crossmatch samples of UI claimants receiving first payments with state wage record files; and
- Crossmatch all UI claimants receiving first payments with state wage record files.

ETA concluded that the most appropriate measure of claimant reemployment is obtained by crossmatching all UI claimants who received a first UI payment during a calendar quarter against state wage record files in the subsequent quarter. This method for measuring the reemployment of UI claimants:

- Is comprehensive;
- Yields reemployment rates that have no sampling variability;
- Should be reasonably easy to obtain because it so closely resembles the wage record crossmatch states currently use for overpayment detection;
- Is similar in concept to Workforce Investment Act outcome measures that use wage record data; and
- Will not require extensive state staff time.

#### *Pilot Description*

States participating in the pilot identified UI claimants who received first payments in each quarter of calendar year (CY) 2002 for intrastate state UI claims—including combined wage claims (CWC) and joint State UI/Federal claims (Unemployment Compensation for Federal Employees and Unemployment Compensation for Ex-Servicemembers (OMB Approval No. 1205-0176, expiring 6/06)).

The states then ran computer crossmatches of the Social Security Numbers (SSNs) of the claimants with the UI wage records for each of the two quarters following the quarter of first payment and counted the number of UI benefit recipients who had wages in the subsequent quarters. The one-quarter and two-quarter reemployment rates equal the ratios of total wage record-matches in each of the quarters to the

number of claimants who receive a first payment.

In order to expedite data collection, only first payments for intrastate claims and crossmatches of intrastate wage records were included in the pilot. For national implementation of this measure, ETA will pursue the technical changes required to include first payments for interstate claims and wage records reported by out-of-state employers in the crossmatch.

#### *Pilot Results*

The unadjusted reemployment rates for the six pilot states averaged 55.4 percent for the first quarter after receiving a first payment and 60.8 percent for the second quarter. Reemployment rates ranged from 52.9 percent to 71.9 percent for reemployment in the first subsequent quarter, and from 55.4 percent to 75.1 percent for reemployment in the second subsequent quarter.

These rates were adjusted to take into account those UI benefit recipients who had earnings from temporary or part-time employment during their period of eligibility for UI benefits, referred to as the benefit year. These earnings generally reduce the amount of the claimant's weekly benefit but do not eliminate it. Therefore, these individuals are considered partially unemployed, not reemployed.

Benefit year earnings data are available from the BAM program, a statistical survey designed to estimate the accuracy of paid and denied UI claims. (BAM data are collected from random audits of UI claims conducted by state BAM auditors.) For the six pilot states combined, an estimated 7.1 percent of the claimants had earnings during the quarter after their first payment and 7.9 percent had earnings two quarters after their first payment but were not reemployed.

Applying the adjustment for claimant benefit year earnings, the reemployment rates for the six states combined averaged 51.5 percent for the first quarter after receiving a first payment and 56 percent for the second quarter. Pilot results are summarized in the following table.

## SUMMARY OF UI REEMPLOYMENT MEASURE PILOT RESULTS

State: ALL				Run date	12/4/2003
First payment cohort	Number of first payments	Number Xmatch hits YYY.Y.Q+1	Number of Xmatch YYY.Y.Q+2	Percent of Xmatch hits YYY.Y.Q+1	Percent of Xmatch hits YYY.Y.Q+2
2002.Q1 .....	666,817	394,346	426,407	59.14	63.95
2002.Q2 .....	489,168	272,458	290,960	55.70	59.48
2002.Q3 .....	470,749	264,349	271,922	56.15	57.76
2002.Q4 .....	531,718	264,576	323,017	49.76	60.75
2002 .....	2,158,452	1,195,729	1,312,306	55.40	60.80
2002 Adjusted .....				51.48	55.97

**Notes to the table:**

(1) One state also provided rates based on the number of individuals receiving first payments (unique SSNs in the file of first payments) in addition to the number of first payments. Reemployment rates averaged about 0.2 percentage points higher using this count.

(2) The number of first payments reported by one state includes some interstate claims. This state's interstate population is relatively small compared to its intrastate population, and the state estimates that the effect on the reemployment percentages is less than 1.5 percentage points.

Many factors affect the rate at which UI claimants become reemployed. For example, the average unemployment rates in the six pilot states for the period that the crossmatches were run (CY 2002, 2nd quarter, through CY 2003, 2nd quarter) ranged from 3.7 percent to 7.2 percent. The state with the lowest unemployment rate also had the highest adjusted reemployment rates for both quarters. An initial analysis of the pilot data indicates a close relationship between the reemployment rate in a state and the state's total unemployment rate and exhaustion rate. However, a larger evaluation would need to be conducted to statistically substantiate this relationship. The analysis of the pilot data is available on the ETA Web site at: <http://workforcesecurity.doleta.gov/unemploy/reemployilot.asp>.

Although the pilot study collected data for two quarters subsequent to the first payment quarter, ETA proposes to collect this information for only the first subsequent quarter. Pilot results show differences between the reemployment percentages for the first and second quarters of only 5.4 percentage points (unadjusted) and 4.5 percentage points (adjusted). This may indicate that the UI system is most likely to facilitate reemployment of job-ready claimants relatively early in their benefit years. Limiting data collection to a single quarter will also reduce the cost.

**II. Desired Focus of Comments**

DOL 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.

A copy of the proposed information collection request can be obtained by contacting the office listed above in the addressee section of this notice.

**III. Current Actions**

ETA proposes to: (1) Require State Workforce Agencies (SWAs) to report quarterly data on the number of UI claimants receiving first payments for UI benefits during a calendar quarter and the number of those claimants who have earnings in the next calendar quarter; (2) use these data to construct a reemployment rate to measure the UI program goal of facilitating the reemployment of UI claimants; (3) adjust the reemployment rate for the proportion of claimants who receive earnings for partial employment but are not considered reemployed; and (4) identify and separate the effects of labor market and UI program characteristics on the state's reemployment rate from the efforts and actions of states to facilitate the reemployment of UI claimants.

At least six months prior to implementation, ETA will disseminate to the SWAs the technical specifications needed to implement this data collection system. States will electronically transmit the reports to

ETA according to the following schedule.

Quarter in which first payment is issued	Report due to ETA by
1st quarter (January to March).	November 30.
2nd quarter (April to June).	February 28.
3rd quarter (July to September).	May 31.
4th quarter (October to December).	August 31.

ETA will provide states with the resources for startup costs and operation costs for the first year of data collection, as described in the burden cost sections below.

*Type of Review:* New.

*Agency:* Employment and Training Administration.

*Title:* Unemployment Insurance Facilitation of Claimant Reemployment.

*Recordkeeping:* States are required to follow their state laws regarding public record retention in retaining records for this proposed data collection system.

*Affected Public:* State Workforce Agencies (SWAs).

*Frequency:* Quarterly.

*Total Respondents:* 53 SWAs.

*Total Responses:* 212 per year (53 SWAs x 4 quarterly reports per year).

*Estimated Time Per Response:* SWA staff—10 hours.

*Total Burden Hours:* 2,120 hours.

*Total Burden Cost (capital/startup):* \$53,000 (53 SWAs at \$1,000 per SWA).

*Total Burden Cost (operating/maintaining):* \$79,500 (annual) (53 SWAs at \$1,500 per SWA).

Comments submitted in response to this request will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Signed in Washington, DC, on June 28, 2004.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training.

[FR Doc. 04-15174 Filed 7-2-04; 8:45 am]

BILLING CODE 4510-30-P

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Proposed Information Collection Request

**ACTION:** Submitted for Public Comment and Recommendations: Labor Surplus Areas.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed extension of the collection of data contained in the procedures to petition for classification as a Labor Surplus Area (LSA) under exceptional circumstances criteria.

**DATES:** Submit comments on or before September 7, 2004.

**ADDRESSES:** Anthony D. Dais, Acting Director, USES/ALMIS, Employment and Training Administration, 200 Constitution Avenue, NW., Room S-4231, Washington, DC 20210; (202) 693-2784 (not a toll-free number); Internet

address: [dais.anthony@dol.gov](mailto:dais.anthony@dol.gov); FAX: (202) 693-3015.

#### SUPPLEMENTARY INFORMATION:

**I. Background:** Under Executive Orders 12073 and 10582, and 20 CFR Parts 651 and 654, the Secretary of Labor is required to classify LSAs and disseminate this information for the use of all Federal agencies. This information is used by Federal agencies for various purposes including procurement decisions, food stamp waiver decisions, certain small business loan decisions, as well as other purposes determined by the agencies. The LSA list is issued annually, effective October 1 of each year, utilizing data from the Bureau of Labor Statistics. Areas meeting the criteria are classified as LSAs.

Department regulations specify that the Department can add other areas to the annual LSA listing under the exceptional circumstance criteria. Such additions are based upon information contained in petitions submitted by the State Workforce Agencies (SWAs) to the ETA's national office. These petitions contain specific economic information about an area in order to provide ample justification for adding the area to the LSA listing under the exceptional circumstances criteria. An area is eligible for classification as a LSA if it meets all of the criteria, and if the exceptional circumstance event is not temporary or seasonal. This data collection pertains only to data submitted voluntarily by states in exceptional circumstances petitions.

Most of the information contained in the SWA LSA petitions is already available from other sources, e.g., internal reports, statistical programs, newspaper clippings, etc. The petitions are not intended to provide new (unduplicated) information but serve to bring various types of information together in a single document in order that a LSA classification determination can be made. The only information which SWAs may have to develop for use in the petition is the 12-month projections of the area's labor force and unemployment. No periodic reporting is required.

**II. Desired Focus of Comments:** The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office below in the ADDRESSES section of this notice.

**III. Current Actions:** This is a request for the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) of an extension to an existing collection of information previously approved and assigned OMB Control No. 1205-0207. There is a reduction in burden based on an experience rate for the last two years of the approved data collection period: one petition in 2003 and zero in 2004.

**Type of Review:** Extension without change.

**Agency:** Employment and Training Administration.

**Title:** Procedures for Classifying Labor Surplus Areas Exceptional Circumstances Reporting.

**OMB Number:** 1205-0207.

**Affected Public:** State Workforce Agencies.

**Burden Table below:**

**Total Estimated Cost to SWAs:** \$208 (\$24.93 average wage × 4 hours = 99.72 × 1 respondent = \$99.72).

Form	Number of respondents	Response per year	Total responses	Hours per response	Total burden hours
Current Procedure .....	5	5	5	4	20
Proposed Procedure .....	1	1	1	4	4

**Total Burden Cost (capital/startup):** 0.  
**Total Burden Cost (operating/maintaining):** 0.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB

approval of the ICR; they will also become a matter of public record.

Dated: June 28, 2004.

Grace A. Kilbane,  
Administrator, Office of Workforce  
Investment.

[FR Doc. 04-15175 Filed 7-2-04; 8:45 am]

BILLING CODE 4510-30-P

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Public Meeting of the Advisory Committee on Apprenticeship (ACA)

**AGENCY:** Employment and Training  
Administration, DOL.

**ACTION:** Notice of open meeting.

**SUMMARY:** Pursuant to Section 10 of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. APP.1), notice is hereby given of a meeting of the Advisory Committee on Apprenticeship (ACA).

**Time and Date:** The meeting will begin at approximately 8:30 a.m. on Thursday, July 22, 2004, and continue until approximately 5 p.m.

**Place:** The Historic Menger Hotel, 204 Alamo Plaza, San Antonio, Texas 78205 Ballroom B & C, (210) 223-4361.

The agenda is subject to change due to time constraints and priority items which may come before the Committee between the time of this publication and the scheduled date of the ACA meeting.

**FOR FURTHER INFORMATION CONTACT:** Mr. Anthony Swoope, Administrator, Office of Apprenticeship Training, Employer and Labor Services, Employment and Training Administration, U.S. Department of Labor, Room N-4671, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 693-2796, (this is not a toll-free number).

**Matters to be Considered:** The agenda will focus on the following topics:

- Debriefing on Workforce Innovations Conference
- Partnership with the Department of Education
- Coordination with Texas Workforce Investment Act (WIA), Grants, One Stop Centers & Apprenticeship
  - Status on ACA Recommendations and Reports
  - Public Comment

**Status:** Members of the public are invited to attend the proceedings. Individuals with special needs should contact Ms. Marion Winters at (202) 693-3786 no later than July 12, 2004, if special accommodations are required.

Any member of the public who wishes to file written data or comments pertaining to the agenda may do so by

forwarding the request to Mr. Anthony Swoope, Administrator, Office of Apprenticeship Training, Employer and Labor Services, Employment and Training Administration, U.S. Department of Labor, Room N-4671, 200 Constitution Avenue, NW., Washington, DC 20210. Such submissions should be sent by July 12, 2004, to be included in the record for the meeting. Any member of the public who wishes to speak at the meeting should indicate the nature of the intended presentation and the amount of time needed by furnishing a written statement to the Designated Federal Official, Mr. Anthony Swoope, by July 12, 2004. The Chairperson will announce at the beginning of the meeting the extent to which time will permit the granting of such requests.

Signed at Washington, DC, this 28th day of June, 2004.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training.

[FR Doc. 04-15173 Filed 7-2-04; 8:45 am]

BILLING CODE 4510-30-M

## INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

### United States Section; Notice of Availability of Final Environmental Impact Statement, River Management Alternatives for the Rio Grande Canalization Project, Sierra and Doña Ana Counties, NM and El Paso County, TX

**AGENCY:** United States Section,  
International Boundary and Water  
Commission, United States and Mexico.

**ACTION:** Notice of availability of Final  
Environmental Impact Statement.

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as amended, the United States Section, International Boundary and Water Commission (USIBWC), in cooperation with the United States Bureau of Reclamation (USBR), has prepared a Final Environmental Impact Statement (FEIS) on River Management Alternatives for the Rio Grande Canalization Project (RGCP) located in Sierra and Doña Ana Counties, NM and El Paso County, TX. The FEIS analyzes effects of the No Action Alternative and three action alternatives on the future RGCP operation, maintenance, and implementation of environmental measures. No final action will be taken on this proposal during the 30 days following the filing of this FEIS, in

accordance with the Council on Environmental regulations, 40 CFR 1506.10(b)(2).

**ADDRESSES:** Copies of the FEIS are available for inspection and review at the following locations: Branigan Memorial Library, 200 East Picacho Avenue, Las Cruces, New Mexico; El Paso Public Library, 501 North Oregon Street, El Paso, Texas; New Mexico State University Library, Las Cruces, New Mexico; University Library, The University of Texas at El Paso, El Paso, Texas; and United States Section, International Boundary and Water Commission, 4171 North Mesa Street, El Paso, Texas. A copy of the FEIS will also be posted at the USIBWC site at <http://www.ibwc.state.gov> "IBWC News."

**FOR FURTHER INFORMATION CONTACT:** Mr. Douglas Echlin, Lead Environmental Protection Specialist, Environmental Management Division, USIBWC, 4171 North Mesa Street, C-100, El Paso, Texas 79902 or call 915/832-4741.

**SUPPLEMENTARY INFORMATION:** The USIBWC evaluated long-term river management alternatives for the RGCP, a narrow river corridor that extends 105.4 river miles along the Rio Grande, from below Percha Dam in Sierra County, New Mexico to American Dam in El Paso County, Texas. The RGCP is operated and maintained by the USIBWC and was constructed to facilitate water deliveries to the Rincon and Mesilla Valleys in New Mexico, El Paso Valley in Texas, and Juarez Valley in Mexico. The project also includes a levee system for flood control.

The USIBWC currently implements operation and maintenance procedures to enhance ecosystem functions within the RGCP; however, alterations to the river and floodway from events that pre-date RGCP construction continue to affect the river and floodway. Therefore, USIBWC recognizes the need to accomplish flood control, water delivery, and operations and maintenance activities in a manner that enhances and restores the riparian ecosystem, if possible.

River management alternatives were considered and developed over an extensive public consultation process that included input from the general public and stakeholders such as regulatory agencies, irrigation districts, farmers, and environmental organizations. The No Action Alternative and three potential action alternatives were selected for further evaluation. Levee rehabilitation, changes associated with grazing leases to improve erosion control, floodway management, and river restoration

including aquatic habitat diversification and riparian vegetation development are measures considered in the action alternatives. The Preferred Alternative is the Integrated USIBWC Land Management Alternative representing the best balance of flood control, water delivery and habitat enhancement.

The FEIS has been filed with the Environmental Protection Agency (EPA) in accordance with 40 CFR parts 1500-1508 and USIBWC procedures. No action will be taken on the proposed publication of the notice of availability of the FEIS by EPA in the **Federal Register**. A Record of Decision will be issued on this proposal after the minimum 30 days following the filing of the FEIS by the EPA.

Dated: June 29, 2004.

Susan Daniel,

Legal Advisor.

[FR Doc. 04-15224 Filed 7-2-04; 8:45 am]

BILLING CODE 4710-03-P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04-080]

### NASA Advisory Council, Minority Business Resource Advisory Committee; Meeting

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announce a forthcoming meeting of the NASA Advisory Council (NAC), Minority Business Resource Advisory Committee.

**DATES:** Thursday, July 22, 2004, 9 a.m. to 4 p.m., and Friday, July 23, 2004, 9 a.m. to 12 noon.

**ADDRESSES:** Jet Propulsion Laboratory (JPL) 4800 Oak Grove Drive, Room 180-101 Pasadena, CA 91109.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ralph C. Thomas III, Code K, National Aeronautics and Space Administration, (202) 358-2088.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- Review of Previous Meeting.
- Return to Flight.
- Agency Transformation.
- NAC Meeting Report.
- Overview of Small Business Program.

- Public Comment.
- Panel Discussion and Review.
- Office of Small and Disadvantage Business Utilization National Program Update.
- New Business.

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information: full name; gender; date/place of birth; citizenship; employee/affiliation information (name of institution, address, country, phone); title/position of attendee. To expedite admittance, attendees can provide identifying information in advance by contacting Mr. Lamont Hames via e-mail at [lhames@nasa.gov](mailto:lhames@nasa.gov) or by telephone at 202-358-2088. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Visitors will be requested to sign a visitor's register.

R. Andrew Falcon,

Advisory Committee Management Officer,  
National Aeronautics and Space Administration.

[FR Doc. 04-15257 Filed 7-2-04; 8:45 am]

BILLING CODE 7510-01-P

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Records Schedules; Availability and Request for Comments

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for

disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

**DATES:** Requests for copies must be received in writing on or before August 20, 2004. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

**ADDRESSES:** You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means: Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740-6001. E-mail: [records.mgt@nara.gov](mailto:records.mgt@nara.gov). FAX: 301-837-3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

**FOR FURTHER INFORMATION CONTACT:** Paul M. Wester, Jr., Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. Telephone: 301-837-3120. E-mail: [records.mgt@nara.gov](mailto:records.mgt@nara.gov).

**SUPPLEMENTARY INFORMATION:** Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This



approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

#### Schedules Pending

1. Department of the Army, Agency-wide (N1-AU-03-5, 3 items, 3 temporary items). Inputs, outputs, master files, and documentation associated with an electronic web-based system used in connection with the information technology and information management planning process. Also included are electronic copies of records created using electronic mail and word processing.

2. Department of the Army, Agency-wide (N1-AU-04-3, 9 items, 9 temporary items). Records relating to the Army correctional system. Included are such records as logs documenting activities at confinement facilities, statistical reports, prisoner rosters, clothing requisitions, and files relating to prisoners' personal property and funds. Also included are electronic copies of documents created using electronic mail and word processing. This schedule modifies the retention periods of these records, which were previously approved for disposal. This schedule also authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

3. Department of Health and Human Services, Centers for Disease Control and Prevention (N1-442-04-1, 1 item, 1 temporary item). Case files created under the Energy Employees

Occupational Illness Compensation Program Act. Included are paper and electronic versions of such records as claim forms, site profiles, correspondence, and other records collected to create a dose reconstruction report.

4. Department of Health and Human Services, Centers for Medicare and Medicaid Services (N1-440-04-1, 6 items, 5 temporary items). Consent forms, audio/video tapes, and other consumer research records that are accumulated by the Center for Beneficiary Choices. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of final reports.

5. Department of Homeland Security, Transportation Security Administration (N1-560-03-8, 13 items, 13 temporary items). Statistical reports, policy and planning files, annuity offset waiver forms, retirement records and other records accumulated by the Office of Human Resources. Also included are electronic copies of records created using electronic mail and word processing.

6. Department of Justice, Office of Justice Programs (N1-423-04-1, 3 items, 3 temporary items). Briefing materials collected by the Office for Victims of Crime for victims of terrorism or mass violence and/or their families. Also included are electronic copies of records created using word processing and electronic mail.

7. Small Business Administration, Office of the Chief Financial Officer (N1-309-04-05, 6 items, 6 temporary items). Inputs, outputs, master files, backups, and documentation associated with an electronic system used in connection with agency cash collection activities. Also included are electronic copies of documents created using word processing and electronic mail.

Dated: June 25, 2004.

Michael J. Kurtz,

Assistant Archivist for Records Services—  
Washington, DC.

[FR Doc. 04-15141 Filed 7-2-04; 8:45 am]

BILLING CODE 7515-01-P

#### NATIONAL SCIENCE FOUNDATION

##### Notice of Permits Issued Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95-541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1989. This is a required notice.

#### FOR FURTHER INFORMATION CONTACT:

Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

**SUPPLEMENTARY INFORMATION:** On May 27, 2004, the National Science Foundation published a notice in the *Federal Register* of a permit applications received. Permits were issued on June 29, 2004, to: Ron Naveen, Permit No. 2005-005; Rudolf Scheltema, Permit No. 2005-006.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 04-15258 Filed 7-2-04; 8:45 am]

BILLING CODE 7555-01-M

#### NATIONAL SCIENCE FOUNDATION

##### Notice of Permits Issued Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95-541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

#### FOR FURTHER INFORMATION CONTACT:

Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

**SUPPLEMENTARY INFORMATION:** On May 25, 2004, the National Science Foundation published a notice in the *Federal Register* of a permit applications received. Permits were issued on June 26, 2004, to: Michael Castellini, Permit No. 2005-002; Arthur L. DeVries, Permit No. 2005-003; Lawrence J. Conrad, Permit No. 2005-004.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 04-15259 Filed 7-2-04; 8:45 am]

BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-346]

### FirstEnergy Nuclear Operating Company, Davis-Besse Nuclear Power Station, Unit 1, Withdrawal of Exemption

#### 1.0 Background

The FirstEnergy Nuclear Operating Company (the licensee) is the holder of Facility Operating License No. NPF-3 which authorizes operation of the Davis-Besse Nuclear Power Station, Unit 1 (DBNPS). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a pressurized-water reactor located in Ottawa County in Ohio.

#### 2.0 Request

Title 10 of the Code of Federal Regulations (10 CFR), part 50, appendix R, subsection III.L.1 requires that alternative or dedicated shutdown capability be able to achieve cold shutdown conditions within 72 hours. The NRC granted an exemption to this requirement by letter dated August 20, 1984, for DBNPS.

In summary, the licensee now concludes that DBNPS meets the requirement and the exemption is no longer required; therefore, the licensee requests that the exemption be withdrawn.

#### 3.0 Evaluation

Two issues caused the licensee to originally request the exemption. They were the ability to depressurize the reactor coolant system and a limitation on cooldown rate. The licensee has recently performed an evaluation and determined that alternate pressurizer spray from the high pressure injection pumps could be used for depressurization and the limit on cooldown rate can be increased. The licensee concluded that DBNPS can now comply with the regulation and the exemption is no longer required.

Based upon the licensee's recent evaluation determining that DBNPS alternative shutdown capability can achieve cold shutdown within 72 hours, the staff concludes that the exemption can be withdrawn.

#### 4.0 Conclusion

Accordingly, the Commission hereby grants FirstEnergy Nuclear Operating Company withdrawal of the exemption

from the requirements of CFR part 50, appendix R, subsection III.L.1, granted by letter dated August 20, 1984, for DBNPS.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption withdrawal will not have a significant effect on the quality of the human environment (69 FR 28951).

This exemption withdrawal is effective upon issuance.

Dated at Rockville, Maryland, this 24th day of June, 2004.

For the Nuclear Regulatory Commission.

**Ledyard B. Marsh,**

*Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 04-15171 Filed 7-2-04; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

### Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

#### I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued, from June 11, 2004, through June 23, 2004. The last biweekly notice was published on June 22, 2004 (69 FR 34696).

*Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing*

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1)

involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received

may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific

contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express

mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, [HEARINGDOCKET@NRC.GOV](mailto:HEARINGDOCKET@NRC.GOV); or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415-1101, verification number is (301) 415-1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415-3725 or by e-mail to [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov). A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)-(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1-800-397-4209, (301) 415-4737 or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

*AmerGen Energy Company, LLC, Docket No. 50-461, Clinton Power Station, Unit 1, DeWitt County, Illinois*  
Date of amendment request: May 20, 2004.

*Description of amendment request:* The proposed amendment would support conversion from an 18-month to a 24-month fuel cycle. Specifically, the proposed amendment would (1) change certain technical specification (TS) surveillance requirement (SR)

frequencies from "18 months" to "24 months" in accordance with the guidance of Generic Letter 91-04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle," (2) change Administrative Controls Section 5.5.7, "Ventilation Filter Testing Program (VFTP)," to address changes to 18-month frequencies that are specified in Regulatory Guide 1.52, "Design, Inspection, and Testing Criteria for Air Filtration and Adsorption Units of Post-Accident Engineered-Safety-Feature Atmosphere Cleanup Systems in Light-Water-Cooled Nuclear Power Plants," and (3) change selected allowable values for instrumentation setpoints. In addition, two separate administrative changes are being proposed to eliminate temporary changes that have expired and no longer apply. These include (1) removal of TS Table 3.0.2-1, "Surveillance Intervals Extended to November 30, 2000," and a reference to it in SR 3.0.2, and (2) removal of footnotes (a) and (b) from TS Table 3.3.8.1-1, "Loss of Power Instrumentation."

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed TS changes involve a change in the surveillance testing intervals and allowable values to facilitate a change in the operating cycle length. The analytical limit increase for the Reactor Vessel Pressure-High function remains conservative with respect to considerations for isolating the Residual Heat Removal-Shut Down Cooling (RHR-SDC) system in the event of a line break and for providing overpressure protection to the low pressure RHR-SDC system piping. Also included in this application are administrative changes to remove Table 3.0.2-1 and the reference to it in SR 3.0.2 (since this implements an expired one-time TS exception), to renumber certain SRs remaining at 18 month frequencies, and to remove footnotes (a) and (b) from Table 3.3.8.1-1 that applied temporary allowable values until completion of modification to tap settings and degraded voltage setpoints. The proposed TS changes do not physically impact the plant. The proposed TS changes do not degrade the performance of, or increase the challenges to, any safety systems assumed to function in the accident analysis. The proposed TS changes do not impact the usefulness of the SRs in evaluating the operability of required systems and components, or the way in which the surveillances are performed. In addition, the frequency of surveillance testing is not

considered an initiator of any analyzed accident, nor does a revision to the frequency introduce any accident initiators. The specific value of the allowable value is not considered an initiator of any analyzed accident. Therefore, the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

The consequences of a previously evaluated accident are not significantly increased. The proposed change does not affect the performance of any equipment credited to mitigate the radiological consequences of an accident. Evaluation of the proposed TS changes demonstrated that the availability of credited equipment is not significantly affected because of other more frequent testing that is performed, the availability of redundant systems and equipment, and the high reliability of the equipment. Historical review of surveillance test results and associated maintenance records did not find evidence of failures that would invalidate the above conclusions.

The allowable values have been developed in accordance with RG 1.105, "Instrument Setpoints," to ensure that the design and safety analysis limits are satisfied. The methodology used for the development of the allowable values ensures the affected instrumentation remains capable of mitigating design basis events as described in the safety analyses and that the results and radiological consequences described in the safety analyses remain bounding. Therefore, the proposed change does not alter the ability to detect and mitigate events and, as such, does not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed TS changes involve a change in the surveillance testing intervals and allowable values to facilitate a change in the operating cycle length. The analytical limit increase for the Reactor Vessel Pressure-High function remains conservative with respect to considerations for isolating the RHR-SDC system in the event of a line break and for providing overpressure protection to the low pressure RHR-SDC system piping. Also included in this application are administrative changes to remove Table 3.0.2-1 and the reference to it in SR 3.0.2 since this implements an expired one-time exception, to renumber certain SRs remaining at 18 month frequencies, and to remove footnotes (a) and (b) from Table 3.3.8.1-1 that applied temporary allowable values until completion of modification to tap settings and degraded voltage setpoints. The proposed TS changes do not introduce any failure mechanisms of a different type than those previously evaluated, since there are no physical changes being made to the facility. No new or different equipment is being installed. No installed equipment is being operated in a different manner. As a result, no new failure modes are being introduced. The way surveillance tests are performed remains unchanged. A historical

review of surveillance test results and associated maintenance records indicated there was no evidence of any failures that would invalidate the above conclusions.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed TS changes involve a change in the surveillance testing intervals and allowable values to facilitate a change in the operating cycle length. The analytical limit increase for the Reactor Vessel Pressure-High function remains conservative with respect to considerations for isolating the RHR-SDC system in the event of a line break and for providing overpressure protection to the low pressure RHR-SDC system piping. Also included in this application are administrative changes to remove Table 3.0.2-1 and the reference to it in SR 3.0.2 since this implements an expired one-time exception, to renumber certain SRs remaining at 18 month frequencies, and to remove footnotes (a) and (b) from Table 3.3.8.1-1 that applied temporary allowable values until completion of modification to tap settings and degraded voltage setpoints. The impact of these changes on system availability is not significant, based on other more frequent testing that is performed, the existence of redundant systems and equipment, and overall system reliability. Evaluations have shown there is no evidence of time dependent failures that would impact the availability of the systems. The proposed changes do not significantly impact the condition or performance of structures, systems, and components relied upon for accident mitigation. The proposed changes in TS instrumentation allowable values are the result of application of the CPS setpoint methodology using plant specific drift values. The revised allowable values more accurately reflect total instrumentation loop accuracy including drift while continuing to protect any assumed analytical limit. The proposed changes do not result in any hardware changes or in any changes to the analytical limits assumed in accident analyses. Existing operating margin between plant conditions and actual plant setpoints is not significantly reduced due to these changes. The proposed changes do not significantly impact any safety analysis assumptions or results.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mr. Thomas S. O'Neill, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenton, IL 60666.

*NRC Section Chief:* Anthony J. Mendiola.

*AmerGen Energy Company, LLC, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey*

*Date of amendment request:* May 20, 2004.

*Description of amendment request:*

The licensee proposed to revise the Technical Specifications (TS), section 3.2.B.4, to clarify the application of the action requirements for inoperable control rods. Specifically, this involves adding wording to clarify that operable control rods that have been taken out of service at the fully inserted position (*i.e.*, disarmed) to perform hydraulic control unit maintenance are not to be counted as inoperable control rods. Control rods that have been fully inserted, and disarmed, fulfill the safety function of the control rod since it is in a position of maximum contribution to shutdown reactivity. Such clarification is consistent with the intent of the current operability requirements, and with the Nuclear Regulatory Commission guidance document entitled "Standard Technical Specifications—General Electric Plants, BWR [Boiling Water Reactor]/4," NUREG-1433, Revision 2, where the control rod operability requirements explicitly apply to "inoperable control rods" and "withdrawn stuck control rods."

In addition, the licensee proposed to correct a typographical error in Table 3.1.1 (page 3.1-12 of the TS), where "note i" was inadvertently typed as "note I."

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff's analysis is presented below:

The first standard requires that operation of the unit in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed amendment involves clarifying, but not changing, the current intent of control rod operability requirements. The proposed amendment also corrects a typographical error. These changes will not lead to alteration of the physical design or operational procedures associated with the control rod system, or any other plant structure, system, or component (SSC). All requirements needed to assure the operability of the control rod system will remain unchanged. Action

requirements for control rods were not assumed to be precursors of accidents, nor were they assumed to be components in previously evaluated accident scenarios. Accordingly, the revised specifications will lead to no increase in the consequences of an accident previously evaluated, and no increase of the probability of an accident previously evaluated.

The second standard requires that operation of the unit in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated above, the proposed changes involve clarification of control rod operability requirements and correction of a typographical error. These changes do not alter the physical design, safety limits, or method of operation associated with the operation of the plant. Accordingly, the changes do not introduce any new or different kind of accident from those previously evaluated.

The third standard requires that operation of the unit in accordance with the proposed amendment will not involve a significant reduction in a margin of safety. Since the licensee did not propose to exceed or alter a design basis or safety limit, did not propose to operate any component in a less conservative manner, and did not propose to use a less conservative analysis methodology, the proposed amendment will not affect in any way the performance characteristics and intended functions of any SSC. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

Based on the NRC staff's analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendment involves no significant hazards consideration.

*Attorney for licensee:* Thomas S. O'Neill, Associate General Counsel, Exelon Generation Company, LCC, 4300 Winfield Road, Warrenville, IL 60555.

*NRC Section Chief:* Richard J. Laufer.

*Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona*

*Date of amendments request:* February 4, 2004.

*Description of amendments request:* The amendments would revise Technical Specification (TS) 3.7.1, "Main Steam Safety Valves (MSSVs)," to: (1) Permit operation in Mode 3 with 5 to 8 inoperable MSSVs (2 to 5

operable MSSVs) per steam generator, (2) increase the completion time to reduce the variable overpower trip (VOPT) setpoint when 1 to 4 MSSVs per steam generator are inoperable, and (3) make associated editorial changes.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

*Response:* No. Each change is discussed below.

- Revise Technical Specification (TS) 3.7.1 to permit operation in Mode 3 when there are five to eight inoperable MSSVs (two to five operable MSSVs) per steam generator.

This proposed change would allow the plant to remain in Mode 3 with as few as two operable MSSVs per steam generator. Currently, the plant must be placed in Mode 4 with fewer than six operable MSSVs per steam generator. Two MSSVs have sufficient relieving capacity to dissipate core decay heat and reactor coolant pump heat in Mode 3 to limit secondary system pressure to less than or equal to 110% of design pressure, as required by ASME Code, Section III. A minimum of two MSSVs per steam generator (four total) would be required to be operable in Mode 3 in case of a single failure of one of the valves. Since this proposed change would continue to provide over-pressure protection and heat removal capability in Mode 3, this change would have no effect on any analyzed accidents. Therefore, this proposed change would not involve a significant increase in the probability or consequences of an accident previously evaluated.

- Increase the Completion Time for Required Action A.2 of TS 3.7.1 (reduce the variable overpower trip [VOPT] setpoint when one to four MSSVs per steam generator are inoperable) from 12 hours to 36 hours.

Required Action A.2 of TS 3.7.1 specifies a Completion Time of 12 hours to reduce the variable overpower trip (VOPT)—high setpoint if one or more required MSSVs are inoperable. The proposed increase in the Completion Time for Action A.2 from 12 hours to 36 hours is consistent with Industry/Technical Specification Task Force TSTF-235, Revision 1, incorporated in Revision 2 of NUREG-1432, Combustion Engineering Standard Technical Specifications. The revised TS 3.7.1 Bases associated with TSTF-235, Revision 1, states that the Completion Time of 36 hours for Required Action A.2 is based on a reasonable time to correct the MSSV inoperability, the time required to perform the power reduction, operating experience in resetting all channels of a protective function, and on the low probability of the occurrence of a transient that could result in steam generator overpressure during this period. Increasing the Completion Time to reset the VOPT from

12 hours to 36 hours does not involve a significant increase in the probability or consequences of an accident previously evaluated.

- Make associated editorial changes.

The associated editorial changes do not change any structure, system or component (SSC) or affect the operation or maintenance of any SSC. They are editorial enhancements to make the TSs easier to understand, eliminate potential inconsistencies with other TSs, and reduce the potential for human errors. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

*Response:* No. Each change is discussed below.

- Revise Technical Specification (TS) 3.7.1 to permit operation in Mode 3 when there are five to eight inoperable MSSVs (two to five operable MSSVs) per steam generator.

This proposed change would allow the plant to remain in Mode 3 with as few as two operable MSSVs per steam generator. Currently, the plant must be placed in Mode 4 with fewer than six operable MSSVs per steam generator. Two MSSVs have sufficient relieving capacity to dissipate core decay heat and reactor coolant pump heat in Mode 3 to limit secondary system pressure to less than or equal to 110% of design pressure, as required by ASME Code, Section III. A minimum of two MSSVs per steam generator (four total) would be required to be operable in Mode 3 in case of a single failure of one of the valves. This proposed change would continue to provide overpressure protection and heat removal capability in Mode 3. Therefore, this proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

- Increase the Completion Time for Required Action A.2 of TS 3.7.1 (reduce the variable overpower trip [VOPT] setpoint when one to four MSSVs per steam generator are inoperable) from 12 hours to 36 hours.

Required Action A.2 of TS 3.7.1 specifies a Completion Time of 12 hours to reduce the variable overpower trip—high setpoint if one or more required MSSVs are inoperable. The proposed increase in the Completion Time for Action A.2 from 12 hours to 36 hours is consistent with Industry/Technical Specification Task Force TSTF-235, Revision 1, incorporated in Revision 2 of NUREG-1432, Combustion Engineering Standard Technical Specifications. The revised TS 3.7.1 Bases associated with TSTF-235, Revision 1, states that the Completion Time of 36 hours for Required Action A.2 is based on a reasonable time to correct the MSSV inoperability, the time required to perform the power reduction, operating experience in resetting all channels of a protective function, and on the low probability of the occurrence of a transient that could result in steam generator overpressure during this period. Therefore, this proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

- Make associated editorial changes.

The associated editorial changes do not change any structure, system or component (SSC) or affect the operation or maintenance of any SSC. They are editorial enhancements to make the TSs easier to understand, eliminate potential inconsistencies with other TSs, and reduce the potential for human errors. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

*Response:* No. Each change is discussed below.

- Revise Technical Specification (TS) 3.7.1 permit operation in Mode 3 when there are five to eight inoperable MSSVs (two to five operable MSSVs) per steam generator.

This proposed change would allow the plant to remain in Mode 3 when there are as few as two operable MSSVs per steam generator. Currently, the plant must be placed in Mode 4 with fewer than six operable MSSVs per steam generator. Two MSSVs have sufficient relieving capacity to dissipate core decay heat and reactor coolant pump heat in Mode 3 to limit secondary system pressure to less than or equal to 110% of design pressure, as required by ASME Code, Section III. A minimum of two MSSVs per steam generator (four total) would be required to be operable in Mode 3 in case of a single failure of one of the valves. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

- Increase the Completion Time for Required Action A.2 of TS 3.7.1 (reduce the variable overpower trip [VOPT] setpoint when one to four MSSVs per steam generator are inoperable) from 12 hours to 36 hours.

Required Action A.2 of TS 3.7.1 specifies a Completion Time of 12 hours to reduce the variable overpower trip—high setpoint if one or more required MSSVs are inoperable. The proposed increase in the Completion Time for Action A.2 from 12 hours to 36 hours is consistent with Industry/Technical Specification Task Force TSTF-235, Revision 1, incorporated in Revision 2 of NUREG-1432, Combustion Engineering Standard Technical Specifications. The revised TS 3.7.1 Bases associated with TSTF-235, Revision 1, states that the Completion Time of 36 hours for Required Action A.2 is based on a reasonable time to correct the MSSV inoperability, the time required to perform the power reduction, operating experience in resetting all channels of a protective function, and on the low probability of the occurrence of a transient that could result in steam generator overpressure during this period. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

- Make associated editorial changes.

The associated editorial changes do not change any structure, system or component (SSC) or affect the operation or maintenance of any SSC. They are editorial enhancements to make the TSs easier to understand, eliminate potential inconsistencies with other TSs, and reduce the potential for human errors. Therefore, the proposed

change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

*Attorney for licensee:* Kenneth C. Manne, Senior Attorney, Arizona Public Service Company, P.O. Box 52034, Mail Station 7636, Phoenix, Arizona 85072-2034.

*NRC Section Chief:* Stephen Dembek.

*Dominion Nuclear Connecticut Inc., et al., Docket No. 50-423, Millstone Power Station, Unit No. 3, New London County, Connecticut*

*Date of amendment request:* April 15, 2004.

*Description of amendment request:*

The proposed amendment would modify the fire protection license condition to reflect a proposed permanent change to the CO<sub>2</sub> fire suppression system in the cable spreading area (CSA).

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

#### Criterion 1:

Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The CO<sub>2</sub> system is designed to limit the effects of fire damage to plant equipment and does not contribute to the prevention or initiation of a fire event. The CO<sub>2</sub> system is not safety-related and is not relied upon to safely shut down the reactor, mitigate radiological consequences of any accident, or maintain the reactor in a safe shutdown condition. Accordingly, the proposed amendment does not affect the inputs or assumptions for any accidents previously evaluated nor does it affect initiation of a fire event. Modifying the CO<sub>2</sub> initiation system to a manual mode reduces the possibility of a malfunction leading to an inadvertent CO<sub>2</sub> discharge. Because the automatic initiation feature of the CO<sub>2</sub> system would be eliminated by the proposed amendment, inadvertent operation would no longer need to be a postulated failure for the CO<sub>2</sub> system. The current analysis for a worst-case fire event allows for complete loss of the CSA which is protected by 3-hour fire-rated barriers. Alternate safe shutdown methods are available in the event that a fire consumes all equipment and cables in the room. The proposed amendment does not modify the fire suppression methodology in a way that would cause any greater damage than

complete loss of the CSA. The incipient fire detection system offsets the delay time for manual CO<sub>2</sub> initiation by allowing an earlier response time by the fire brigade. Failure to take manual action is bounded by previous failure of the CO<sub>2</sub> system to operate. Based on this discussion, the proposed amendment does not increase the probability or consequence of an accident previously evaluated.

**Criterion 2:**

Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The CO<sub>2</sub> system is a mitigating system designed to limit the effects of fire damage to plant equipment and is not credited for safe shutdown of the plant. The proposed amendment does not involve any change that would impact designed CO<sub>2</sub> concentration levels and therefore does not affect the ability of the CO<sub>2</sub>, once delivered, to act as [a] fire extinguishing agent. The proposed amendment does not introduce failure modes, accident initiators, or malfunctions that would cause a new or different kind of accident or fire event. The potential for increased water usage due to the proposed change in fire fighting methodology for the CSA is within the capability and capacity of the existing site fire water system and potential water buildup on the CSA floor is bounded by the existing flooding analysis. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

**Criterion 3:**

Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No.

The evaluated fire event assumes a fire coincident with a loss of power, with no additional plant accidents. As stated above, the current analysis for a worst-case fire event in the CSA allows for complete loss of all cables and equipment in the CSA resulting in loss of use of the control room. The proposed amendment changes the CO<sub>2</sub> system initiation method from automatic to manual and impacts the response time of applying CO<sub>2</sub> as a fire-extinguishing agent. This impact is not significant in that any potential increase in fire damage does not exceed complete loss of all the CSA cables and equipment. In addition, the incipient fire detection system offsets the delay time for manual CO<sub>2</sub> initiation by allowing an earlier response time by the fire brigade. The proposed amendment does not modify the CSA fire area 3-hour fire rated barriers. Therefore, based on the above, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Waterford, CT 06141-5127.

*NRC Section Chief:* James W. Clifford.  
*Duke Energy Corporation, Docket Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina*  
*Date of amendment request:* May 25, 2004.

*Description of amendment request:* The proposed amendments would revise the licensing basis in the Updated Final Safety Analysis Report to support installation of a passive low-pressure injection (LPI) cross connect inside containment for Unit 3. The proposed changes would revise the licensing basis for selected portions of the core flood and LPI piping to allow exclusion of the dynamic effects associated with a postulated rupture of that piping by application of leak-before-break technology. Similar amendments were approved for Unit 1 by NRC letter dated September 29, 2003, and for Unit 2 by NRC letter dated February 5, 2004.

The proposed amendments would also delete technical specifications (TSs) which will no longer apply when the LPI cross connect modification has been implemented. *Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated:

The proposed License Amendment Request (LAR) modifies the Unit 3 licensing basis to allow the dynamic effects associated with postulated pipe rupture of selected portions of the Unit 3 Low Pressure Injection (LPI)/Core Flood (CF) piping to be excluded from the design basis. The proposed LAR also removes Technical Specifications that are no longer applicable due to the completion of the LPI cross connect modification on all three Oconee Units. The proposed design allowances for these selected portions of piping continue to allow the LPI system design to meet General Design Criteria (GDC) 4 requirements related to environmental and dynamic effects. The proposed LAR will continue to ensure that ONS [Oconee Nuclear Station] can meet design basis requirements associated with the LPI safety function. The addition of the crossover line will enhance the ability of the control room operator to mitigate the consequences of specific events for which LPI is credited. Therefore, the proposed LAR does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any kind of accident previously evaluated:

The proposed LAR modifies the Unit 3 licensing basis to allow the dynamic effects associated with postulated pipe rupture of selected portions of Unit 3 LPI/CF piping to be excluded from the design basis and removes TS requirements that are no longer applicable due to the completion of the LPI cross connect modification on all three Oconee Units. The proposed design allowances for these selected portions of piping continue to allow the LPI system design to meet GDC 4 requirements related to environmental and dynamic effects. The systems affected by the changes are used to mitigate the consequences of an accident that has already occurred. The proposed licensing basis change does not affect the mitigating function of these systems. Consequently, these changes do not alter the nature of events postulated in the Safety Analysis Report nor do they introduce any unique precursor mechanisms. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in a margin of safety.

The proposed licensing basis and TS changes do not unfavorably affect any plant safety limits, set points, or design parameters. The changes also do not unfavorably affect the fuel, fuel cladding, RCS [Reactor Coolant System], or containment integrity. Therefore, the proposed changes, which add new design allowances associated with the passive LPI cross connect modification and remove obsolete TS requirements, do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Anne W. Cottingham, Winston and Strawn LPP, 1400 L Street, NW., Washington, DC 20005.

*NRC Section Chief:* Stephanie M. Coffin (Acting).

*FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS-1 and 2), Beaver County, Pennsylvania*  
*Date of amendment request:* May 26, 2004.

*Description of amendment request:* The proposed amendments would revise the current 72-hour allowed outage time (AOT) for the emergency diesel generators (EDGs) in Technical Specification (TS) 3.8.1.1 to a 14-day AOT. Additionally, the proposed amendments delete the surveillance requirement in TS 4.8.1.1.2.b.1 which requires an EDG inspection, in accordance with the manufacturer's recommendations, every 18 months

during shutdown. The periodic EDG maintenance inspection requirements will be relocated to a licensee-controlled maintenance program that is referenced in the Updated Final Safety Analysis Report (UFSAR). Future changes to the EDG maintenance program would then be controlled pursuant to Title 10 of the Code of Federal Regulations (10 CFR), Section 50.59. Lastly, the proposed amendments would revise footnote (1) of TS 3.8.1.1, which currently provides a 7-day AOT to restore EDG fuel oil properties which do not meet the requirements of TS 4.8.1.1.2.d.2 or TS 4.8.1.1.2.e. The revised footnote wording would allow delay of action requirements for up to 7 days when the EDGs are inoperable solely as a result of failure to meet TS 4.8.1.1.2.d.2 or TS 4.8.1.1.2.e surveillance requirements.

**Basis for proposed no significant hazards consideration determination:** As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change does not affect the design, operational characteristics, function or the reliability of the EDGs. The EDGs are not initiating conditions for any accident previously evaluated. The EDGs mitigate the consequences of previously evaluated accidents involving loss of offsite power.

The consequences of any previously analyzed accident will not be significantly affected by extending the AOT for a single EDG, since the remaining EDG supporting the redundant Engineered Safety Features systems will continue to be available to perform the accident mitigation functions. In addition, to fully evaluate the effects of the proposed EDG AOT extension, a Probabilistic Risk Assessment was performed to quantitatively assess the risk impact of the proposed change for each unit. The results of this risk assessment concluded that the increase in plant risk is very small and consistent with the guidance contained in Regulatory Guide 1.174 and Regulatory Guide 1.177.

The deletion of TS surveillance requirement 4.8.1.1.2.b.1 from the Technical Specifications will not impact the capability of the EDGs to perform their accident mitigation functions. The required EDG maintenance inspections will continue to be performed in accordance with the licensee EDG maintenance program. The risk of performing the maintenance inspections during power operation has been considered in the EDG AOT extension supporting risk evaluation and determined to be acceptable.

The proposed change to footnote (1) of TS 3.8.1.1 will also not impact the capability of the EDGs to perform their accident mitigation functions. Fuel oil properties that are not

within the specified limits will not have an immediate effect on EDG operation and restoring the fuel oil to within limits within 7 days will ensure the availability of high grade fuel oil for the EDGs.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed changes do not involve a change in the design, configuration, or method of operation of the plant. The changes do not involve the addition of new equipment or the modification of existing equipment. As such, no new failure modes are introduced by these changes.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The proposed changes do not alter the plant design and do not affect any assumptions or inputs to the safety analysis. The proposed changes to the EDG allowed outage time have been evaluated both deterministically and using a risk informed approach. These evaluations demonstrate that power system design defense-in-depth capabilities will be maintained and that the risk contribution is small.

In addition, the proposed deletion of the EDG maintenance inspection surveillance requirements from the TS[s] and modifications to the EDG action requirements associated with the EDG fuel oil surveillances will not impact the EDG reliability and their capability to perform their accident mitigation function.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mary O'Reilly, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

*NRC Section Chief:* Richard J. Laufer.

*FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS-1 and 2), Beaver County, Pennsylvania*  
Date of amendment request: June 2, 2004.

*Description of amendment request:* The proposed amendments would revise the Technical Specification (TS) surveillance interval from monthly to

quarterly for certain reactor trip system and engineered safety feature actuation system channel functional tests in accordance with the methodology presented in the Nuclear Regulatory Commission-approved topical report, WCAP-10271, "Evaluation of Surveillance Frequencies and Out of Service Times for the Reactor Protection Instrumentation System," and supplements thereto.

**Basis for proposed no significant hazards consideration determination:** As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

Operation of the Beaver Valley Power Station in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change modifies surveillance frequencies. Increases in the surveillance test intervals have been established based on achieving acceptable levels of equipment reliability. Consequently, equipment that is required to operate to mitigate an accident will continue to operate as expected and the probability of the initiation of any accident previously evaluated will not be significantly increased. Implementation of the proposed changes does not alter the manner in which protection is afforded. This equipment will continue to be tested in a manner and at a frequency to give confidence that the equipment can perform its assumed safety function. As a result, the proposed surveillance requirement changes do not significantly affect the consequences of any accident previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change does not involve any physical changes to the plant or the modes of plant operation defined in the Technical Specifications. The proposed change does not involve the addition or modification of plant equipment nor does it alter the design or operation of any plant systems. No new accident scenarios, transient precursors or failure mechanisms are introduced as a result of these changes.

There are no changes in this proposal that would cause the malfunction of safety-related equipment assumed to be operable in accident analyses. No new mode of failure has been created and no new equipment performance requirements are imposed. The proposed change has no effect on any previously evaluated accident.



Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The change in surveillance frequencies has been evaluated to ensure that it provides an acceptable level of equipment reliability. Equipment continues to be tested at a frequency that gives confidence that the equipment can perform its assumed safety function when required. The proposed changes do not alter the manner in which safety limits, limiting safety system setpoints or limiting conditions for operations are determined. The impact of reduced testing is to allow a longer time interval over which instrument uncertainties (e.g. drift) may act. Experience has shown that the initial uncertainty assumptions are valid for reduced testing.

Implementation of the proposed changes is expected to result in an overall improvement in safety since plant transients initiated from inadvertent safety system actuation should be reduced. Less frequent testing will reduce the likelihood for inadvertent reactor trips and inadvertent actuation of Engineered Safety Feature Actuation System components.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mary O'Reilly, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

*NRC Section Chief:* Richard J. Laufer. *FirstEnergy Nuclear Operating Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio*

*Date of amendment request:* March 31, 2004.

*Description of amendment request:* The proposed change allows entry into a mode or other specified condition in the applicability of a technical specification (TS), while in a condition statement and the associated required actions of the TS, provided the licensee performs a risk assessment and manages risk consistent with the program in place for complying with the requirements of section 50.65(a)(4) of Title 10 of the Code of Federal Regulations (10 CFR), part 50. Limiting Condition for Operation (LCO) 3.0.4 exceptions in individual TS would be eliminated, several notes or specific exceptions are revised to reflect the related changes to LCO 3.0.4, and

Surveillance Requirement 3.0.4 is revised to reflect the LCO 3.0.4 allowance.

This change was proposed by the industry's Technical Specification Task Force (TSTF) and is designated TSTF-359. The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 2, 2002 (67 FR 50475), on possible amendments concerning TSTF-359, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on April 4, 2003 (68 FR 16579). The licensee affirmed the applicability of the following NSHC determination in its application dated March 1, 2004.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

**Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated**

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. Being in a TS condition and the associated required actions is not an initiator of any accident previously evaluated. Therefore, the probability of an accident previously evaluated is not significantly increased. The consequences of an accident while relying on required actions as allowed by proposed LCO 3.0.4, are no different than the consequences of an accident while entering and relying on the required actions while starting in a condition of applicability of the TS. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

**Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated**

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Entering into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS, will not introduce new failure modes or effects and will not, in the absence of other

unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

**Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety**

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. The TS allow operation of the plant without the full complement of equipment through the conditions for not meeting the TS LCO. The risk associated with this allowance is managed by the imposition of required actions that must be performed within the prescribed completion times. The net effect of being in a TS condition on the margin of safety is not considered significant. The proposed change does not alter the required actions or completion times of the TS. The proposed change allows TS conditions to be entered, and the associated required actions and completion times to be used in new circumstances. This use is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The change also eliminates current allowances for utilizing required actions and completion times in similar circumstances, without assessing and managing risk. The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

*NRC Section Chief:* Anthony J. Mendiola.

*Nuclear Management Company, LLC, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin*

*Date of amendment request:* May 25, 2004.

*Description of amendment request:* The proposed amendment revises Technical Specifications (TSs) 3.10.e and 3.10.f to add an allowed outage time for the individual rod position indication (IRPI) system of 24 hours with more than one IRPI group inoperable. Additional changes add the demand step counters to the TSs and add a note to allow for a soak time subsequent to substantial rod motion for the rods that exceed their position limits before invoking the TS requirements. Also, the definition of "immediately" is added to TS 1.0.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

Rod position indication instrumentation is not an assumed accident initiator, providing indication only of the control and shutdown rods position. Normal operation, abnormal occurrences and accident analyses assume the rods are at certain positions within the reactor core. The changes requested herein modify the time the existing two rod position indication systems may be inoperable and provide appropriate actions to compensate for that inoperability and add the second, digital, rod position indication system to the TS. Thus, this change does not involve a significant increase in the probability of an accident.

The condition of concern is the alignment of the rods. Operating with a rod position indicator inoperable does not change the position of the rod; an inoperable rod position indication instrument does not make a rod misaligned. An increase in the consequences with the rods only comes from a rod being misaligned such that an increase in the heat produced in a localized area causes the fuel to fail either during operation, during a plant transient or post-accident. An inoperable rod position indicator does not change the position of the rod. Rod position is subsequently verified by other means if the rod is moved by greater than a predetermined amount. Indication of rod position by other means ensures rod position remains within analytical limits. Thus, inoperable rod position indication instrumentation does not involve an increase in the consequences of an accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

This proposed change does not alter the design, function, or operation of any plant component and does not install any new or different equipment. The malfunction of safety related equipment, assumed operable in the accident analyses, would not be caused because of the proposed technical specification change. No new failure mode has been created and no new equipment performance burdens are imposed. Therefore, the possibility of a new or different kind of accident from those previously analyzed has not been created.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No.

The rod position indication system is an instrumentation system that provides indication to the operators that a control rod may be misaligned. Inoperable individual rod position indication instrumentation does not by itself harm or affect reactor operation, but may impair the ability of the operators to detect a misaligned rod. To compensate for this potential impairment of the operators' ability to detect a misaligned rod, requirements to verify the inoperable rod position indicators position are added. The impact of inoperable rod position indication instrumentation is offset by the availability of other indications that a rod is misaligned. Excure and incore nuclear instrumentation provides indication that reactor power, flux density, may have shifted axially or radially. Also, thermocouple indication would show that the core temperatures have increased in one region of the core and/or decreased in another region of the core.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, WI 53701-1497.

*NRC Section Chief:* L. Raghavan.

*Nuclear Management Company, LLC, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin*

*Date of amendment request:* June 1, 2004.

*Description of amendment request:*

The proposed amendment revises Technical Specification (TS) 1.0, "Definitions," Table TS 3.5-2, "Instrument Operation Conditions for Reactor Trip," and Table TS 4.1-1, "Minimum Frequencies for Checks, Calibrations and Test of Instrument Channels." The TS revisions will add a definition for "staggered test basis," increase surveillance test intervals for reactor protection system and engineered safety features actuation system analog channels and logic cabinets, and add a completion time for the reactor trip breakers.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed changes to the STIs [surveillance test intervals] and the RTB CT [reactor trip breaker completion time] reduce the potential for inadvertent reactor trips and spurious actuations, and therefore, do not increase the probability of an accident previously evaluated.

The proposed changes will not result in a significant increase in the risk of plant operation as demonstrated in WCAP-15376-P-A. The impact of plant safety as measured by core damage frequency (CDF) is less than  $1.0E-06$  per year and the impact of large early release frequency (LERF) is less than  $1.0E-07$  per year. For the addition of the RTB CT, the incremental conditional core damage probabilities (ICCDP) and incremental conditional large early release probabilities (ICLERP) are less than  $5.0E-08$ . These changes meet the acceptance criteria in Regulatory Guides 1.174 and 1.177. Therefore, there will not be a significant increase in the probability of an accident.

The proposed changes did not include any hardware changes, and therefore, all structures, systems, and components will continue to perform their intended function to mitigate the consequences of an event within the assumed acceptance limits. The proposed changes do not affect source term, containment isolation, or the radiological release assumptions used in evaluating radiological consequences of previously analyzed accidents. Therefore, the proposed changes do not increase the consequences of an accident previously evaluated.

Based on the above paragraphs, it is concluded the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed changes do not involve any hardware changes, any setpoint changes, any addition of safety related equipment, or any changes in the manner in which the systems provide plant protection. Additionally, all operator actions credited in accident analyses remain the same. There are no new or different accident initiators or new accidents scenarios created by the proposed changes. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

No. The safety analyses acceptance criteria in the Updated Safety Analysis Report (USAR) are not impacted by these changes. The proposed changes do not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. All signals and operator actions credited in the USAR accident analyses will remain the same. Redundant RPS [reactor protection system] and ESFAS [engineered safety features actuation system] trains are maintained and diversity with regard to the signals that provide reactor trip and engineered safety features actuation is also maintained. The calculated impact on risk continues to meet

the acceptance criteria contained in Regulatory Guides 1.174 and 1.177. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, WI 53701-1497.

*NRC Section Chief:* L. Raghavan.

*Nuclear Management Company, LLC, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota*  
Date of amendment request: May 3, 2004.

*Description of amendment request:* The proposed amendments would revise the Prairie Island Nuclear Generating Plant (PINGP) licensing basis to (1) define a hydraulic analysis methodology for demonstrating functionality of the cooling water (CL) system following a design basis seismic event and (2) define acceptance criteria from the American Society of Mechanical Engineers (ASME) Section III Code, Subsection ND, when performing stress analysis of the CL system non-Class I piping with design basis seismic loads.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

This license amendment proposes to revise the plant licensing basis to include: (1) a hydraulic analysis methodology for demonstrating functionality of the CL system following a design basis seismic event; and (2) American Society of Mechanical Engineers, Section III, Subsection ND, "Class 3 Components," 1986 Edition, Service Level D as the basis for acceptance criteria when performing stress analysis of the cooling water system non-Class I piping with design basis seismic loads.

The cooling water system provides a heat sink for removal of process and operating heat from safety related components during design basis accidents. This system is not an accident initiator and thus these proposed licensing basis changes do not increase the probability of a previously evaluated accident.

The proposed plant licensing basis changes will provide the basis for evaluating cooling water system capability during and following a design basis seismic event. Use of the proposed methodology and acceptance criteria will conservatively demonstrate that the cooling water system will continue to provide its design cooling function. With the cooling water system design heat removal capability maintained, accident consequences will not be increased. Thus these licensing basis changes do not involve an increase in the consequences of an accident previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

This license amendment proposes to revise the plant licensing basis to include: (1) a hydraulic analysis methodology for demonstrating functionality of the CL system following a design basis seismic event; and (2) American Society of Mechanical Engineers, Section III, Subsection ND, "Class 3 Components," 1986 Edition, Service Level D as the basis for acceptance criteria when performing stress analysis of the cooling water system non-Class I piping with design basis seismic loads.

The proposed licensing basis changes do not involve a change in system operation, or procedures involved with the cooling water system. The proposed changes provide a conservative basis for evaluating cooling water system capability following a design basis seismic event. There are no new failure modes or mechanisms created through use of the proposed evaluation methodology or pipe stress analysis with the proposed acceptance criteria. Use of these licensing basis changes with the cooling water system does not involve any modification in the operational limits of plant systems. There are no new accident precursors generated with use of these licensing basis changes.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

*Response:* No.

This license amendment proposes to revise the plant licensing basis to include: (1) A hydraulic analysis methodology for demonstrating functionality of the CL system following a design basis seismic event; and (2) American Society of Mechanical Engineers, Section III, Subsection ND, "Class 3 Components," 1986 Edition, Service Level D as the basis for acceptance criteria when performing stress analysis of the cooling water system non-Class I piping with design basis seismic loads.

The current plant licensing basis does not provide a hydraulic analysis methodology for demonstrating functionality of the cooling water system following a design basis seismic event and it does not provide acceptance criteria for piping stress analysis of the

cooling water system non-Class I piping with design basis seismic loads. The proposed changes provide a conservative basis for evaluating cooling water system capability during and following a design basis seismic event. The proposed methodology for evaluating cooling water system capability is consistent with methods proposed by the NRC Staff and current plant methods for evaluating internal flooding. The intended use of the proposed acceptance criteria is consistent with the intended post-seismic use of the non-Class I portions of the cooling water system.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

*Attorney for licensee:* Jonathan Rogoff, Esquire, Vice President, Counsel & Secretary, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016.

*NRC Section Chief:* L. Raghavan.

*Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska*  
Date of amendment request: May 14, 2004.

*Description of amendment request:* The proposed amendment revises the Fort Calhoun Station, Unit No. 1 (FCS) Technical Specifications to provide a risk-informed alternative to the existing restoration period for the high pressure safety injection (HPSI) system. The FCS application of the risk-informed change integrates the Westinghouse Owners Group recommendations identified in WCAP-15773, "Joint Application Report for the Implementation of a Risk Management Technical Specification for the High Pressure Safety Injection (HPSI) System."

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not require any physical change to any plant systems, structures, or components nor does it require any change in systems or plant operations; thus the probability of an accident previously evaluated occurring remains unchanged. The proposed change does not require any change in safety analysis methods or results. A single HPSI subsystem inoperability is considered

in existing plant analyses and regulatory criteria with respect to single failure criteria and the risk of extended HPSI subsystem outages are assessed in accordance with the Maintenance Rule [10 CFR 50.65]. Because risk is appropriately managed and compensatory measures established where necessary, the consequences of an accident previously analyzed are not significantly increased. The change to establish the extended HPSI CT [completion time] limits is justified because operation within the requirements of the Maintenance Rule continues to be governed by the current regulation and plant programs.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

HPSI System inoperabilities are assumed in existing analyses with respect to single failure criteria and are limited by existing regulation. Extending the time in which a HPSI component may remain inoperable does not constitute a change that could result in a new type of accident initiator than that previously identified. In addition, overall plant risk will be managed in accordance with the Maintenance Rule to help ensure continued safe plant operation.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change does not require any change in accident analysis methods or results. Overall plant risks will continue to be appropriately managed and compensatory measures established when appropriate to reduce the overall risk during extended HPSI CT periods. In addition, an evaluation of common cause failure and a determination of the flow capacity of remaining ECCS [emergency core cooling system] components will continue to be performed in relation to HPSI System inoperabilities. Although components important to safety have an impact on overall plant risk and may impact the overall margin to safety, the adverse impacts that are realized due to single HPSI subsystem inoperabilities is largely offset by the avoidance of unnecessary shutdown transition risks and the establishment of compensatory measures and contingency actions where appropriate.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* James R. Curtiss, Esq., Winston & Strawn, 1400 L

Street, NW., Washington, DC 20005-3502.

*NRC Section Chief:* Stephen Dembek.  
*PPL Susquehanna, LLC, Docket Nos. 50-387 and 50-388, Susquehanna Steam Electric Station, Units 1 and 2 (SSES 1 and 2), Luzerne County, Pennsylvania*

*Date of amendment request:* May 11, 2004.

*Description of amendment request:* The proposed amendment would revise the standby liquid control (SLC) pump discharge pressure surveillance requirement 3.1.7.7 acceptance criteria from 1224 psig to 1395 psig in the SSES 1 and 2 Technical Specification 3.1.7.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability [\* \* \*] or consequences of an accident previously evaluated?

No. The proposed change establishes the operability requirements for the SLC subsystem based on its functional capability to operate during an ATWS [anticipated transients without scram] event. This proposed change to the surveillance for SLC pump discharge pressure does not affect the operation of any other SSES SSC's [structures, systems and components]. The SLC system is already being tested on a quarterly basis to the proposed new pump discharge pressure to demonstrate that the In Service Inspection Program requirements are met.

Consequently, the proposed change has no effect on the probability of any accident previously evaluated. Further, the consequences of any accident previously evaluated are not affected. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change to the surveillance for SLC pump discharge pressure does not involve any physical alteration of the plant (no new or different type of equipment is installed) or changes in methods governing normal plant operation. Since this change does not introduce any new accident initiators, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The proposed change to the surveillance for SLC pump discharge pressure does not involve any physical alteration of the plant (no new or different type of equipment is installed) or changes in

methods governing normal plant operation. The proposed change only affects determination of SLC system Technical Specification operability based on the functional capability of the SLC subsystems to inject boron during an ATWS event. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101-1179.

*NRC Section Chief:* Richard J. Laufer.

#### *Notice of Issuance of Amendments to Facility Operating Licenses*

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection

at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. 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](mailto:pdr@nrc.gov).

*Enérgy Northwest, Docket No. 50-397, Columbia Generating Station, Benton County, Washington*

*Date of application for amendment:* November 4, 2003.

*Brief description of amendment:* The amendment revises technical specification (TS) requirements for mode change limitations in Limiting Condition for Operation 3.0.4 and Surveillance Requirement 3.0.4 to adopt the provisions of Industry TS Task Force (TSTF) change TSTF-359, "Increase Flexibility in Mode Restraints."

*Date of issuance:* June 7, 2004.

*Effective date:* June 7, 2004, and shall be implemented within 60 days from the date of issuance.

*Amendment No.:* 187.

*Facility Operating License No. NPF-21:* The amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* December 9, 2003 (68 FR 68662).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 7, 2004.

No significant hazards consideration comments received: No.

*Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana*

*Date of amendment request:* February 3, 2004.

*Brief description of amendment:* The amendment revises Technical Specification 3.1.8, "Scram Discharge Volume (SDV) Vent and Drain Valves," for the condition of having one or more SDV vent or drain lines with one valve inoperable.

*Date of issuance:* June 16, 2004.

*Effective date:* As of the date of issuance and shall be implemented 60 days from the date of issuance.

*Amendment No.:* 140.

*Facility Operating License No. NPF-47:* The amendment revised the Technical Specifications.

*Date of initial notice in Federal*

*Register:* March 30, 2004 (69 FR 16619).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 16, 2004.

No significant hazards consideration comments received: No.

*Entergy Nuclear Operations, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York*

*Date of application for amendment:* October 21, 2003, as supplemented on March 1, 2004.

*Brief description of amendment:* The amendment revises Technical Specification 5.5.7.b.1 regarding the maximum time interval between steam generator (SG) inspections. The amendment permits, on a one-time basis, the extension of the SG inspection interval such that the next SG inspection, which would have been required to be performed no later than November 17, 2004, to be deferred until June 17, 2006. This effectively extends the current inspection interval from a maximum of 24 calendar months to 43 calendar months.

*Date of issuance:* June 23, 2004.

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment No.:* 239.

*Facility Operating License No. DPR-26:* Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* December 9, 2003 (68 FR 68663).

The supplement dated March 31, 2004, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 23, 2004.

No significant hazards consideration comments received: No.

*Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana*

*Date of amendment request:* March 15, 2004.

*Brief description of amendment:* The amendment relocates the Waterford Steam Electric Station, Unit 3 Technical Specification 3.4.8.2, pressurizer heatup and cooldown limits, the associated action statements and surveillance requirements to the Technical Requirements Manual.

*Date of issuance:* June 16, 2004.

*Effective date:* As of the date of issuance and shall be implemented 60 days from the date of issuance.

*Amendment No.:* 195.

*Facility Operating License No. NPF-38:* The amendment revised the Technical Specifications.

*Date of initial notice in Federal*

*Register:* April 13, 2004 (69 FR 19569).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 16, 2004.

No significant hazards consideration comments received: No.

*Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana*

*Date of amendment request:* October 22, 2003.

*Brief description of amendment:* The licensee is changing the existing pressure/temperature limits from 16 effective full power years (EFPY) to 32 EFPYs. In addition, the reactor coolant system maximum heatup and cooldown temperatures are changed to 60 °F and 100 °F/hour, respectively. For inservice hydrostatic pressure and leak testing, the maximum heatup and cooldown rates are now 60 °F and 100 °F respectively.

*Date of issuance:* June 16, 2004.

*Effective date:* As of the date of issuance and shall be implemented 60 days from the date of issuance.

*Amendment No.:* 196.

*Facility Operating License No. NPF-38:* The amendment revised the Technical Specifications.

*Date of initial notice in Federal*

*Register:* December 9, 2003 (68 FR 68667).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 16, 2004.

No significant hazards consideration comments received: No.

*Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi*

*Date of application for amendment:* February 18, 2004, and supplemented by letter dated June 8, 2004.

*Brief description of amendment:* The amendment deletes the requirements from the Technical Specifications to maintain hydrogen recombiners and hydrogen analyzers.

*Date of issuance:* June 16, 2004.

*Effective date:* As of the date of issuance and shall be implemented within 120 days of issuance.

*Amendment No.:* 166.

*Facility Operating License No. NPF-29:* The amendment revises the Technical Specifications.

*Date of initial notice in Federal Register:* March 16, 2004 (69 FR 12366).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 16, 2004.

*No significant hazards consideration comments received:* No.

*Exelon Generation Company, LLC, Docket No. STN 50-454, Byron Station, Unit No. 1, Ogle County, Illinois*

*Date of application for amendment:* December 5, 2003.

*Brief description of amendment:* The amendment permits a change in the fuel rod-average-burnup limit from 60,000 MWD/MTU to 65,000 MWD/MTU for four lead test assemblies during Byron Station, Unit 1, Cycle 13.

*Date of issuance:* June 16, 2004.

*Effective date:* As of the date of issuance and shall be implemented within 30 days.

*Amendment No.:* 137.

*Facility Operating License No. NPF-37:* The amendment revised the License.

*Date of initial notice in Federal Register:* January 20, 2004 (69 FR 2742).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 16, 2004.

*No significant hazards consideration comments received:* No.

*Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket No. 50-277, Peach Bottom Atomic Power Station, Unit 2, York and Lancaster Counties, Pennsylvania*

*Date of application for amendments:* February 12, 2004, as supplemented March 29, 2004.

*Brief description of amendment:* This amendment revised Technical Specification (TS) Table 3.3.6.1-1, "Primary Containment Isolation Instrumentation," to increase the TS Allowable Value related to the setpoint for the Main Steam Tunnel Temperature—High system isolation function for those instruments located within the Reactor Building. A new Function, 1.f, has been added to represent the Reactor Building Main Steam Tunnel Temperature—High. Function 1.e has been renamed to clarify that it represents only the Turbine Building Main Steam Tunnel Temperature—High.

*Date of issuance:* June 16, 2004.

*Effective date:* As of the date of issuance, to be implemented within 30 days.

*Amendment No.:* 250.

*Renewed Facility Operating License No. DPR-44:* The amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* March 2, 2004 (69 FR 9860).

The March 29, 2004, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 16, 2004.

*No significant hazards consideration comments received:* No.

*Nuclear Management Company, LLC, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa*

*Date of application for amendment:* January 30, 2004.

*Brief description of amendment:* The amendment deletes the Technical Specification requirements associated with the hydrogen and oxygen monitors.

*Date of issuance:* June 10, 2004.

*Effective date:* As of the date of issuance and shall be implemented within 120 days.

*Amendment No.:* 254.

*Facility Operating License No. DPR-49:* The amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* March 2, 2004 (69 FR 9862).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 10, 2004.

*No significant hazards consideration comments received:* No.

*Nuclear Management Company, LLC, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin*

*Date of application for amendment:* October 8, 2003, as supplemented February 27 and May 3, 2004.

*Brief description of amendment:* The amendment revises the Technical Specifications with a one-time change to allow a 40-month inspection interval after the first (post-replacement) steam generator inservice inspection, rather than after two consecutive inspections resulting in a C-1 classification.

*Date of issuance:* June 18, 2004.

*Effective date:* As of the date of issuance and shall be implemented within 30 days.

*Amendment No.:* 175.

*Facility Operating License No. DPR-43:* Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* January 20, 2004 (69 FR 2743).

The supplements dated February 27 and May 3, 2004, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change staff's original proposed no significant hazards

consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 18, 2004.

*No significant hazards consideration comments received:* No.

*Nuclear Management Company, LLC, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan*

*Date of application for amendment:* January 29, 2004, as supplemented on May 14, and June 2, 2004.

*Brief description of amendment:* The amendment grants approval to update the final safety analysis report (FSAR) to reflect the fuel pool building crane (L-3 crane) main hoist upgrade to the new rated capacity of 110 tons and reflect the new single-failure-proof design.

Specifically, the amendment approves the use of the L-3 crane as a single-failure-proof crane for below-the-hook loads up to 110 tons.

*Date of issuance:* June 16, 2004.

*Effective date:* As of the date of issuance and shall be implemented within 60 days.

*Amendment No.:* 215.

*Facility Operating License No. DPR-20:* Amendment updated the FSAR.

*Date of initial notice in Federal Register:* March 1, 2004 (69 FR 9649).

The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 16, 2004.

*No significant hazards consideration comments received:* No.

*Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California*

*Date of application for amendments:* September 15, 2003.

*Brief description of amendments:* The amendments revise Technical Specification (TS) 2.1.1.2 of TS Section 2.0, "Safety Limits (SLs)." The amendments replace the peak linear heat rate SL with a peak fuel centerline temperature SL so that the SL in TS 2.1.2.2 adequately conforms to 10 CFR 50.36(c)(1)(ii)(A) which requires that limiting safety system settings prevent a SL from being exceeded.

*Date of issuance:* June 10, 2004.

*Effective date:* June 10, 2004, to be implemented within 60 days of issuance.

*Amendment Nos.:* Unit 2-192 ; Unit 3-183.

*Facility Operating License Nos. NPF-10 and NPF-15:* The amendments revised the Technical Specifications.

*Date of initial notice in Federal Register:* October 14, 2003 (68 FR 59219).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 10, 2004.

No significant hazards consideration comments received: No.

*Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee*

*Date of application for amendment:* October 22, 2003 (TS 03-12).

*Brief description of amendment:* The amendments extend from 1 hour to 24 hours the completion time for Condition B of Technical Specification 3.5.1.1, which defines requirements for the restoration of an emergency core cooling system accumulator when it has been declared inoperable for a reason other than boron concentration.

*Date of issuance:* June 18, 2004.

*Effective date:* As of the date of issuance and shall be implemented within 45 days of issuance.

*Amendment Nos.:* 291 and 281.

*Facility Operating License Nos. DPR-77 and DPR-79:* Amendments revise the technical specifications.

*Date of initial notice in Federal Register:* January 6, 2004 (69 FR 699).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 18, 2004.

No significant hazards consideration comments received: No.

*Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri*

*Date of application for amendment:* June 6, 2003, as supplemented by the letter dated December 19, 2003.

*Brief description of amendment:* The amendment revises several surveillance requirements (SRs) in Technical Specifications (TSs) 3.8.1 and 3.8.4 on alternating current and direct current sources, respectively, for plant operation. The revised SRs have notes deleted or modified to allow the SRs to be performed, or partially performed, in reactor modes that previously were not allowed by the TSs. The licensee withdrew the changes to SRs 3.8.4.7 and 3.8.4.8 in its letter dated April 14, 2004.

*Date of issuance:* June 14, 2004.

*Effective date:* June 14, 2004, and shall be implemented within 60 days of the date of issuance including the incorporation of the changes to the Technical Specification Bases as described in the licensee's letters dated June 6 and December 19, 2003, and April 14, 2004.

*Amendment No.:* 162.

*Facility Operating License No. NPF-30:* The amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* July 22, 2003 (68 FR 43394).

The December 19, 2003, and April 14, 2004, supplemental letters provided additional clarifying information, did not expand the scope of the application as noticed and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 14, 2004.

No significant hazards consideration comments received: No.

*Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas*

*Date of amendment request:* February 9, 2004.

*Brief description of amendment:* The amendment revises TS 5.5.7, "Reactor Coolant Pump Flywheel Inspection Program," to increase the inspection interval from 10 years to 20 years.

*Date of issuance:* June 16, 2004.

*Effective date:* June 16, 2004, and shall be implemented within 90 days from the date of issuance.

*Amendment No.:* 153.

*Facility Operating License No. NPF-42:* The amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* March 16, 2004 (69 FR 12373).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 16, 2004.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 28th day of June 2004.

For the Nuclear Regulatory Commission.

**Edwin M. Hackett,**

*Acting Deputy Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 04-15061 Filed 7-2-04; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

### Regulatory Guide; Issuance, Availability

The U.S. Nuclear Regulatory Commission (NRC) has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by

the staff in its review of applications for permits and licenses, and data needed by the NRC staff in its review of applications for permits and licenses.

The NRC has issued Revision 1 to Regulatory Guide 3.69, "Topical Guidelines for the Licensing Support Network," which provides guidance acceptable to NRC Staff regarding the scope of documentary material that should be identified in or made available via the Licensing Support Network (LSN). The original version of this regulatory guide was published on September 19, 1996 (61 FR 49363). The LSN is an electronic information system that makes relevant documentary material available (via the Internet at <http://www.lsnnet.gov>) to parties, potential parties, and interested governmental participants in the adjudicatory proceeding on an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area. The LSN facilitates document discovery similar to that available in NRC licensing proceedings. A proposed draft revision 1 of Regulatory Guide 3.69 (DG-3022) was made available for comment on July 2, 2002 (67 FR 44478). The proposed revision modified the topical guidelines to be consistent with the license application content specified in 10 CFR Part 63, "Disposal of High-Level Radioactive Wastes in a Geologic Repository at Yucca Mountain, Nevada," (66 FR 55732, November 2, 2001), the structure of proposed Revision 2 of the "Yucca Mountain Review Plan," NUREG-1804, published for comment on March 29, 2002 (67 FR 15257), the topics in the U.S. Department of Energy's "Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada," dated February 2002, and the topics in Draft NUREG-1748, "Environmental Review Guidance for Licensing Actions Associated with NMSS Programs," dated August 2001. The comment period for proposed Revision 1 of Regulatory Guide 3.69 (DG-3022) closed September 30, 2002.

This revision also reflects modifications made in response to comments and a recently issued change to 10 CFR 2.1005, which excludes "Correspondence between a potential party, interested governmental participant, or party and the Congress of the United States" from documentary material to be identified in or made available via the LSN. See "Licensing Proceeding for a High-Level Radioactive Waste Geologic Repository; Licensing Support Network, Submissions to the

Electronic Docket," 69 FR 32836 (June 14, 2004). Minor editorial changes were also made.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555. Questions on the content of this guide may be directed to Mr. Jeffrey A. Ciocco, (301) 415-6391, e-mail [jac3@nrc.gov](mailto:jac3@nrc.gov).

Regulatory guides are available for inspection or downloading at the NRC's Web site at [www.nrc.gov](http://www.nrc.gov) under Regulatory Guides and in NRC's Electronic Reading Room (ADAMS System) at the same site. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555-001, or by fax to (301) 415-2289, or by e-mail to [distribution@nrc.gov](mailto:distribution@nrc.gov). Issued guides may also be purchased from the National Technical Information Service (NTIS) on a standing order basis. Details on this service may be obtained by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161; telephone 1-800-553-6847; <http://www.ntis.gov>. A copy of the Yucca Mountain Review Plan, NUREG-1804, Revision 2, Final Report, is also available for inspection, and copying for a fee, in NRC's Public Document Room, One White Flint North, Public File Area, O-1F21, 11555 Rockville Pike, Rockville, Maryland. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

In preparing Revision 1 of Regulatory Guide 3.69, "Topical Guidelines for the Licensing Support Network," NRC Staff reviewed and considered all the comments received during the public comment period from eight commenters:

#### Commenters

- (1) A.S. Hunjan, India.
- (2) Board of County Commissioners, Lincoln County, Nevada, (submitted on behalf of Lincoln County and the City of Caliente).
- (3) Eureka County, Nevada.
- (4) Nuclear Energy Institute.
- (5) Exelon Generation, Warrenville, Illinois.
- (6) State of Nevada.
- (7) CP&L and Florida Power, Raleigh, North Carolina.
- (8) U.S. Department of Energy.

#### Commenter: A.S. Hunjan, India

*Comment 1.* The commenter recommended that the definition of "document," in the third paragraph of Section A, "Introduction," of the regulatory guide, be revised to include optical media, because magnetic media are included in this definition.

*Response 1.* The definition of "document" in the regulatory guide is quoted from 10 CFR 2.1001, "Definitions." It is not necessary to add optical media to this definition because optical media are encompassed by the words "or other documentary material, regardless of form or characteristic."

*Comment 2.* The commenter recommended that Item 1.1, "General Description," under Section C, "Topical Guidelines," include the position of the facility with respect to the site.

*Response 2.* The topics in Sections C.1 and C.2 of the regulatory guide are the subjects listed in the "Table of Contents," of NUREG-1804, "Yucca Mountain Review Plan," Revision 2, dated July 2003 (hereafter "Yucca Mountain Review Plan"), which the NRC Staff would use to review an application for a high-level waste repository at Yucca Mountain, Nevada, submitted under 10 CFR Part 63. The topical guidelines identify a list of general topics for documentary materials related to the adjudicatory proceeding on a license application for a geologic repository at Yucca Mountain, Nevada. Information on the location of facilities for a high-level waste repository is addressed in the Yucca Mountain Review Plan and is encompassed by the topics listed in Section C of the "Topical Guidelines." Additional detail is not necessary.

*Comment 3.* The commenter recommended that Item 1.2, "Proposed Schedules for Construction, Receipt, and Emplacement of Waste," under Section C, "Topical Guidelines," include the basic attributes of the spent fuel (such as chemical form, date of removal from reactor, burnup at date of removal).

*Response 3.* The topics in Sections C.1 and C.2 of the regulatory guide are the subjects listed in the "Table of Contents" of the Yucca Mountain Review Plan, which the NRC Staff would use to review an application for a high-level waste repository at Yucca Mountain, Nevada. The "Topical Guidelines" identify a list of general topics for documentary materials relevant to an adjudicatory proceeding on a license application for a geologic repository at Yucca Mountain, Nevada. Information on the basic attributes of the spent fuel is addressed in the Yucca

Mountain Review Plan and is encompassed by Section C of the "Topical Guidelines." Additional detail is not necessary.

*Comment 4.* The commenter recommended that Item 1.3, "Physical Protection Plan," under Section C, "Topical Guidelines," include the design basis threat against which the physical protection plan is to be effective.

*Response 4.* Sections C.1 and C.2 of the regulatory guide reflects the structure of the Yucca Mountain Review Plan, which the NRC staff would use to review an application for a high-level waste repository at Yucca Mountain, Nevada. The general topics in the "Topical Guidelines" are not intended to identify all the specific information that would be evaluated during an NRC licensing review. Information on the physical protection plan is addressed in the Yucca Mountain Review Plan, which references 10 CFR 73.51, and is encompassed by Item C.1.3 of the "Topical Guidelines." Additional detail is not necessary.

*Comment 5.* The commenter recommended that Item 2.1.1.2, "Description of Structures, Systems, Components, Equipment, and Operational Process Activities," under Section C, "Topical Guidelines," include the facility and individual area layout.

*Response 5.* The topics in Sections C.1 and C.2 of the regulatory guide are the subjects listed in the "Table of Contents" of the Yucca Mountain Review Plan, which the NRC Staff would use to review an application for a high-level waste repository at Yucca Mountain, Nevada. Information on the facility and individual area layout for a high-level waste repository is addressed in the Yucca Mountain Review Plan and is encompassed by Section C of the "Topical Guidelines." Additional detail is not necessary.

#### Commenter: Board of County Commissioners, Lincoln County, Nevada (Submitted on Behalf of Lincoln County and the City of Caliente)

*Comment 1.* The commenter stated that, without additional detail being provided, it is not clear, in the second paragraph of "Purpose of the Regulatory Guide," under Section B, "Discussion," how the regulatory guide might be used by the Pre-License Application Presiding Officer in evaluating petitions for access to the LSN during the pre-license application phase under 10 CFR 2.1007. The commenter asked whether a petition would be evaluated to determine if the petitioner's issues were



reflected in the topical content of the LSN.

*Response 1.* The second paragraph of Section B of the draft Regulatory Guide (DG-3022) contained a misnumbered reference to an outdated provision in 10 CFR Part 2, Subpart J, that required individuals to petition for access to the system that makes documentary material electronically available. That requirement was deleted as part of the December 30, 1998 LSN rule (63 FR 71729), which changed from a central database, Licensing Support System, to a publicly available, web-based system called the LSN. The cited paragraph has been removed from Revision 1 of Regulatory Guide 3.69.

*Comment 2.* The commenter stated that, in the last paragraph of "Use of the Regulatory Guide," under Section B, "Discussion," it is not clear what the qualifying statement regarding the scope of transportation-related information is seeking to limit. The commenter recommended inclusion of one or more examples of transportation-related information that would be inappropriate for submission to the LSN. The commenter also asked how the Commission intends to prevent the submission or inclusion of "non-relevant" transportation-related information if information is not identified as excluded or privileged under 10 CFR 2.1005 or 2.1006. The commenter asked whether, for example, U.S. Navy waste stored at the Idaho National Engineering and Environmental Laboratory would be considered to be from a reactor, from an independent spent fuel storage facility, or from a monitored retrievable storage facility. The commenter concluded that this ambiguity may make consistent adherence to this guidance difficult.

*Response 2.* Information regarding the impacts of transporting high-level waste that could be disposed of at Yucca Mountain, Nevada, is analyzed in the DOE Final Environmental Impact Statement, and is encompassed by Section C of the "Topical Guidelines." Classified information (for example, regarding Naval reactor spent fuel) is excluded from LSN documentary material by 10 CFR 2.1005(g).

The purpose of the "Topical Guidelines" is to inform parties, potential parties and interested governmental participants regarding documentary material to be identified (by bibliographic header only) or made available (by image or searchable full text) via the LSN. As the NRC indicated when revising the definition of documentary material, non-relevant information could affect the responsiveness and usefulness of the

LSN by cluttering the system with extraneous material (63 FR 71729, 17130, December 30, 1998). Additional detail in the regulatory guide is not necessary.

*Comment 3.* The commenter recommended that Item 2.5.7, "Emergency Planning," under Section C, "Topical Guidelines," be expanded to include emergency planning and implementation, because, beyond demonstrating an adequate plan for emergency situations, the applicant will need to demonstrate that the plan can be implemented and that it has the capability to implement the plan.

*Response 3.* The topics in Sections C.1 and C.2 of the regulatory guide are the subjects listed in the "Table of Contents" of the Yucca Mountain Review Plan, which provides guidance for the NRC Staff review of an application for a high-level waste repository at Yucca Mountain, Nevada. The "Topical Guidelines" identify a list of general topics for documentary materials relevant to an adjudicatory proceeding on a license application for a geologic repository at Yucca Mountain, Nevada. Information on emergency planning and implementation for the high-level waste repository is addressed in sections of the Yucca Mountain Review Plan and is encompassed by the general topics in Section C of the "Topical Guidelines." Additional detail is not necessary.

*Comment 4.* The commenter recommended that the following items be added to the list in Appendix A, "Types of Documents," to be included in the LSN:

1. Any U. S. Department of Energy (DOE) draft and final environmental impact statement preparation plans;
2. Any DOE "Record of Decision" relating to any DOE final environmental impact statement; and
3. Any as-built drawings and specifications for the exploratory studies facility and any related facilities that may be potentially converted or modified for use in the permanent geologic repository.

*Response 4.* The topics in Section C.3 of the regulatory guide are the subjects listed in the "Table of Contents" of DOE's "Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada," dated February 2002, which evaluated the impacts of a potential high-level waste repository at Yucca Mountain, Nevada. Sections C.1 and C.2 are the subjects from the table of contents of the Yucca Mountain Review Plan. These general topics for documentary materials

encompass information relevant to an application for a potential repository at Yucca Mountain, Nevada. Appendix A, as modified, includes the License Application, published draft and final environmental evaluations or assessments, as well as published draft, supplemental, and final environmental impact statements. Any relevant "Record of Decision," should be identified in or made available via the LSN (see 10 CFR 2.1003(b)) as part of the environmental impact statement documentation submitted with the license application. A "Record of Decision" could also be a readily available reference. See, for example, DOE's "Record of Decision on Mode of Transportation and Nevada Rail Corridor for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, NV (69 FR 18557, April 8, 2004). Additional detail in the regulatory guide is not necessary.

*Comment 5.* The commenter encouraged the Commission to maintain the listing of "Information for a Geologic Repository Environmental Impact Statement" in Section C, "Topical Guidelines," and to urge the submission of such information.

*Response 5.* The regulatory guide still retains the stated information.

#### **Commenter: Eureka County, Nevada**

*Comment 1.* The commenter stated that the language of the second paragraph of "Purpose of the Regulatory Guide," under Section B, "Discussion," is unclear and should be clarified. The commenter asked whether not following the "Topical Guidelines" may be grounds for disqualification as a participant and stated that "access to the LSN" is confusing terminology. The commenter opined that a participant in Yucca Mountain licensing hearings must first be certified by the LSN Administrator based on the function and conformity of a Web site with Commission LSN guidelines rather than on the content of the documents. If the intent is to allow the judge to disqualify potential parties based on the "Topical Guidelines," the commenter recommended that this be clearly stated.

*Response 1.* Under 10 CFR 2.1009(b), a responsible official of an LSN participant must certify to the Pre-License Application Presiding Officer (not the LSN Administrator) that, among other things, procedures implementing the requirements to make documentary material available (10 CFR 2.1003) have been implemented. As stated in response to Comment 1, above, from Lincoln County, the second paragraph of Section B pertained to an outdated

regulation in 10 CFR Part 2, Subpart J, that required individuals to petition the Pre-license Application Presiding Officer for access. That requirement was deleted in 1998 (63 FR 71729, December 30, 1998) with the change from a central database to a publicly available, web-based LSN. The cited paragraph has been removed from Revision 1 of Regulatory Guide 3.69.

**Comment 2.** The commenter noted that the terms "draft and final environmental assessments," used in Item 8.1 of Appendix A, "Types of Documents," to be included in the LSN are specific terms in the National Environmental Policy Act (NEPA). The commenter requested clarification as to whether these terms refer only to NEPA-defined environmental assessments or more broadly to all environmental reviews. If the latter, the commenter suggested using the term "environmental reviews."

**Response 2.** Item 8.1 is now Item 7.1 of Appendix A due to the removal of former Item 7, "Congressional questions and answers," consistent with the exclusion of Congressional correspondence from LSN documentary material, effective July 14, 2004 (69 FR 32836, June 14, 2004). This item encompasses published environmental documentation related to a geologic repository at Yucca Mountain, Nevada. For clarity, the category "draft and final environmental assessments" has been expanded to include draft and final environmental evaluations or assessments that are prepared under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.* A new Item 7.7, "DOE environmental report," has been added to encompass any DOE environmental report that DOE may decide to submit with its license application.

**Comment 3.** The commenter noted that Item 8.8 of Appendix A, "Types of Documents To Be Included in the Licensing Support Network," refers only to DOE's environmental impact statements. The commenter recommended revision to allow for environmental impact statements not generated by DOE, including those generated by other Federal agencies, such as land-use environmental impact statements produced by the U.S. Department of Interior, Bureau of Land Management and U.S. Department of Defense-generated environmental impact statements that might pertain to the topic.

**Response 3.** Item 8.8 (now Item 7.9) of Appendix A encompasses any published draft or final environmental impact statements related to a license application for a geologic repository at

Yucca Mountain, Nevada. The text of Revision 1 of Regulatory Guide 3.69 has been modified accordingly.

#### **Commenter: Nuclear Energy Institute**

**Comment 1.** The commenter recommended the addition of a clear statement of purpose for this guidance, because the currently stated purpose "to provide a list of the topics for which Licensing Support Network participants should submit documentary materials;" is not sufficient. The commenter stated that the regulatory guide needs to clearly describe at least one method that, if followed by participants in the Yucca Mountain licensing process, will meet LSN requirements. The commenter also provided several suggested wording changes, including those described in the following two comments, to accomplish this objective.

**Response 1.** The purpose of the regulatory guide is to provide guidance on the scope of material that should be identified in or made available via the LSN. The regulatory guide contains references to 10 CFR Part 2, Subpart J, and includes quotes from regulations defining documentary material (10 CFR 2.1001), excluded material (10 CFR 2.1005) and privileged material (2.1006). The purpose statement in the regulatory guide has been modified to clarify that it lists topics of documentary material that LSN participants should identify or make available via the LSN. Additional detail regarding LSN requirements is not necessary.

**Comment 2.** The commenter recommended the deletion of the second paragraph of "Purpose of the Regulatory Guide," under Section B, "Discussion," because the currently stated additional use of the regulatory guide "\* \* \* in evaluating petitions for access" is not supported by guidance regarding the identification of relevant types of documentary material for inclusion in the LSN. The commenter stated that, if the Commission believes that guidance concerning access to the LSN is necessary, it should promulgate separate guidance specifically focused on that purpose.

**Response 2.** As stated in response to Comment 1 above from Lincoln County, the second paragraph of Section B addressed an outdated regulation in 10 CFR Part 2, Subpart J, that required individuals to petition the Pre-license Application Presiding Officer for access. That requirement was deleted with the 1998 rule (63 FR 71729, December 30, 1998) with the change from a central database to a publicly available, web-based LSN. The cited paragraph has been removed from Revision 1 of Regulatory Guide 3.69.

**Comment 3.** The commenter recommended that the last sentence of the second paragraph of "Use of the Regulatory Guide," under Section B, "Discussion," be deleted, because the statement is too broad and contradicts the purpose of the guidance. The commenter suggested that inclusion in the LSN of other documents related to topics in the Yucca Mountain Review Plan and the DOE Yucca Mountain Final Environmental Impact Statement defeats the purpose of providing guidance on what types of documents relating to these topics should be included.

**Response 3.** The last sentence of the second paragraph of "Use of the Regulatory Guide" indicates that Appendix A lists document types to be identified in or made available via the LSN, but is not exhaustive. That sentence has been revised to indicate that LSN documentary material should include material "relevant" to the topics listed in Section C of the regulatory guide.

**Comment 4.** The commenter recommended restructuring the regulatory guide so that it provides specific guidance that will aid participants in determining what should (and should not) be included in the LSN. The commenter provided specific recommendations for accomplishing this restructuring, including reorganizing, relocating, and renaming various sections of the regulatory guide.

**Response 4.** The structure of the regulatory guide is consistent with NRC Staff guidance on the format and content of regulatory guides. Additionally, Section C of the regulatory guide reflects both the structure and content of the Yucca Mountain Review Plan, DOE's Final Environmental Impact Statement, and NUREG-1748, "Environmental Review Guidance for Licensing Actions Associated with NMSS Programs," dated August 2003. The regulatory guide identifies the scope of documentary material to be identified in or made available via the LSN. The suggested revisions are not necessary.

**Comment 5.** The commenter recommended clarifying the distinction between preliminary (or pre-decisional) and final (or post-decisional) documentary material. The commenter also recommended providing specific guidance for assessing relevance for each type of information because a different test of relevance may apply at different points in a participant's decision-making process. The commenter provided specific suggestions for reorganizing, relocating, and renaming various sections of the

regulatory guide, as well as additional provisions regarding levels of authority, levels of formality, and the time frame during which preliminary information is relevant to the hearing process.

*Response 5.* Traditional uses of the term "pre-decisional" and "post-decisional" under NRC and Federal case law would apply in the licensing proceeding. In addition, in issuing recent changes to 10 CFR Part 2, Subpart J, the NRC indicated that "reliance" information (i.e., information an LSN participant intends to rely on and/or cite in support of its position, or information it possesses or develops that is contrary to that position) is difficult to identify prior to the filing of contentions in a proceeding. See "Licensing Proceeding for a High-Level Radioactive Waste Geologic Repository; Licensing Support Network, Submissions to the Electronic Docket," 69 FR 32836, 32843 (June 14, 2004).

The regulatory guide provides guidance on the general scope of documentary material to be identified in or made available via the LSN. The suggested revisions relating to relevance, levels of authority, levels of formality, and time frames are not necessary.

*Comment 6.* The commenter recommended clarifying that only information that has some nexus to the license application need be included in the LSN, and that examples be provided to guide participants in determining when such a nexus exists.

*Response 6.* Revision 1 of Regulatory Guide 3.69 contains the 10 CFR 2.1001 definition of "documentary material" to be identified in or made available via the LSN. That definition also includes two categories of "reliance" information as discussed in the previous comment response. No further clarification is necessary.

*Comment 7.* The commenter stated that its separate comments on the "Yucca Mountain Review Plan" should also be taken into account when making changes to the regulatory guide, including comments that could result in a change to the outline of the Yucca Mountain Review Plan. The commenter also noted that the outline of the "Table of Contents" from the Yucca Mountain Review Plan (Sections C.1 and C.2 of the "Topical Guidelines") and the outline from the "Table of Contents" of the DOE "Yucca Mountain Environmental Impact Statement" in Section C.3 of the "Topical Guidelines" could be replaced with references to these two documents to make it easier to update one document without the need to revise the others.

*Response 7.* Any structural changes made to the Yucca Mountain Review Plan in response to public comments have been incorporated in Revision 1 of Regulatory Guide 3.69. In the interest of completeness and making the regulatory guide easy to use, however, text from the table of contents of the "Yucca Mountain Review Plan" and the DOE Final Environmental Impact Statement has been retained.

**Commenter: Exelon Generation, Warrenville, Illinois**

*Comment.* The commenter stated that it is essential that the regulatory guide be as clear and unambiguous as possible in establishing the scope and content of the LSN. The commenter provided comments to the Nuclear Energy Institute and strongly endorses the comments submitted by the Nuclear Energy Institute.

*Response.* Section B of the regulatory guide has broad topics to encompass information that may bear on a party's position in the licensing proceeding or on a license application for a geologic repository issues. Additional detail is not necessary.

**Commenter: State of Nevada**

*Comment 1.* The commenter stated that several pending actions may further define the appropriate topics for LSN documentary material. These actions include pending litigation relating to the content of 10 CFR Part 63, a petition for rulemaking with respect to the content of 10 CFR Part 63, State of Nevada comments regarding the draft Yucca Mountain Review Plan (NUREG-1804), State of Nevada reply comments to the DOE comments on the draft Yucca Mountain Review Plan, and litigation challenging the content and scope of the final DOE Yucca Mountain environmental impact statement. The commenter stated that the "Topical Guidelines" should be expanded to incorporate shortcomings specifically addressed by the State of Nevada in each of actions listed above regarding the scope of the licensing proceeding. The commenter also indicated that five additional comments are made without waiving its position in any of the pending actions and with the understanding that the draft regulatory guide, as well as 10 CFR Part 63, NUREG-1804, or the DOE Final Environmental Impact Statement on Yucca Mountain should be expanded or modified to incorporate those subject areas that are ultimately deemed meritorious in the pending litigation.

*Response 1.* Subsequent to receipt of the comment, the State of Nevada petition for NRC rulemaking regarding

10 CFR Part 63 was denied (68 FR 9023, February 27, 2003). Federal litigation on 10 CFR Part 63 and on the DOE Final Environmental Impact Statement is still pending. The NRC will make appropriate changes to its regulations or guidance, if required, as a result of the outcome of such litigation.

*Comment 2.* The commenter stated that the second paragraph of "Purpose of the Regulatory Guide," under Section B, "Discussion," refers to the Pre-License Application Presiding Officer using the regulatory guide in evaluating petitions for access to the LSN. The commenter recommended deletion of this paragraph because it is not relevant to the current LSN rule.

*Response 2.* As previously noted in response to other commenters, the second paragraph of Section B, "Discussion," of the draft regulatory guide, which referred to an outdated regulation, has been removed from Revision 1 of Regulatory Guide 3.69.

*Comment 3.* The commenter stated that Sections C.1 and C.2 of the "Topical Guidelines" track the "Table of Contents" of the draft Yucca Mountain Review Plan and stated that this is an acceptable and efficient approach. The commenter requested that, when the Yucca Mountain Review Plan becomes final, the regulatory guide should be reviewed and, if necessary, revised, to remain consistent with that guidance document.

*Response 3.* Revision 1 of the Regulatory Guide 3.69 is consistent with the content of NUREG-1804, "Yucca Mountain Review Plan," Revision 2, dated July 2003.

*Comment 4.* The commenter noted that Section C.3 of the Regulatory Guide tracks the "Table of Contents" of the DOE "Yucca Mountain Environmental Impact Statement" and is consistent with the Commission's draft "Environmental Review Guidance for Licensing Actions Associated with NMSS Programs" (NUREG-1748). The commenter stated that this is an acceptable and efficient approach, notwithstanding the State of Nevada challenge to certain aspects of the legality of the DOE Yucca Mountain environmental impact statement. The commenter requested that the regulatory guide be reviewed for consistency with NUREG-1748 when NUREG-1748 becomes final.

*Response 4.* The environmental topical guidelines in Section C.3 of Revision 1 of Regulatory Guide 3.69 are based on the DOE Final Environmental Impact Statement and are consistent with the content of NUREG-1748, "Environmental Review Guidance for

Licensing Actions Associated with NMSS Programs," dated August 2003.

*Comment 5.* The commenter suggested that the third level headings from the "Table of Contents" of the DOE Final Environmental Impact Statement on Yucca Mountain be added to the first and second levels now in the draft revision of the regulatory guide.

*Response 5.* Section C.3 of the regulatory guide reflects the structure of the "Environmental Review Guidance for Licensing Actions Associated with NMSS Programs" (NUREG-1748). The "Topical Guidelines" are not intended to identify all the specific information that would be evaluated by NRC Staff during a licensing review. Rather, the "Topical Guidelines" identify categories of documentary material that should be identified in or made available via the LSN and is sufficiently detailed to encompass the suggested topics.

*Comment 6.* The commenter stated that Item 8.8 of Appendix A, "Types of Documents To Be Available Via the Licensing Support Network," should not be limited to environmental impact statement materials developed by DOE, because there are other agency environmental impact statements (similar to the environmental assessments of Item 8.1) that could be included in the LSN.

*Response 6.* Item 8.8 (now Item 7.9) of Appendix A encompasses any published draft or final environmental impact statements prepared under NEPA. The text of the Revision 1 of Regulatory Guide 3.69 has been modified to delete the word "DOE" to clarify that all relevant environmental documents are encompassed by Section C.3 of the "Topical Guidelines."

**Commenter: CP&L and Florida Power, Raleigh, North Carolina**

*Comment 1.* The commenter stated that the purpose of the regulatory guide should be clearly stated and supported with examples of types of documents that should be included in the LSN.

*Response 1.* The purpose of the regulatory guide is to provide guidance on the scope of documentary material that should be identified in or made available via the LSN. Appendix A already provides examples of types of documents that are encompassed. No additional detail is necessary.

*Comment 2.* The commenter stated that the regulatory guide should be consistent with the latest revision of the "Yucca Mountain Review Plan" (NUREG-1804).

*Response 2.* Revision 1 of Regulatory Guide 3.69 is consistent with the content of NUREG-1804, "Yucca

Mountain Review Plan," Revision 2, dated July 2003.

*Comment 3.* The commenter endorses the comments submitted by the Nuclear Energy Institute.

*Response 3.* This comment is addresses in the above responses to Nuclear Energy Institute comments on the regulatory guide.

**Commenter: U.S. Department of Energy**

*Comment 1.* The commenter recommended that the term "potentially" be deleted from the last sentence of the first paragraph of Section A, "Introduction," which states that the LSN is being designed and implemented to provide for the entry of and access to potentially relevant licensing information. The commenter stated that, although this term was used previously in conjunction with the LSN, it is not used in the current 10 CFR 2.1001 definition of documentary material.

*Response 1.* The phrase "potentially relevant licensing information" has been replaced with the phrase "relevant documentary material," consistent with changes made to 10 CFR 2.1001 in 1998, when the Commission adopted the current definition of "documentary material." In issuing that rulemaking, it was noted that the term "documentary material" defines the body of material that will be important for and relevant to the licensing proceeding. See 63 FR 71729, 71730 (December 30, 1998).

*Comment 2.* The commenter recommended that the first sentence of the first paragraph of "Use of the Regulatory Guide" under Section B, "Discussion," be modified to add the term "draft" before the reference to the "Yucca Mountain Review Plan" (NUREG-1804) to more accurately represent the current status of the "Yucca Mountain Review Plan."

*Response 2.* Revision 1 of Regulatory Guide 3.69 is consistent with the content of NUREG-1804, "Yucca Mountain Review Plan," dated July 2003, which was issued after this comment was received.

*Comment 3.* The commenter recommended that the third sentence of the second paragraph of "Use of the Regulatory Guide," under Section B, "Discussion," be modified, for clarity and consistency, to read: "Types of documents not included in Appendix A should also be included in the LSN if they are relevant to a topic in Section C of this regulatory guide."

*Response 3.* The suggested word changes were made to the third sentence of the second paragraph of "Use of the Regulatory Guide" under Section B, "Discussion," to clarify the scope of

LSN documentary material. The regulatory guide was also modified to reflect that under 10 CFR 2.1003 documentary material is either identified (by bibliographic header information only) or made available (in image or searchable full text) via the LSN.

*Comment 4.* The commenter noted that the last paragraph of "Use of the Regulatory Guide," under Section B, "Discussion," addresses information to be included for a geologic repository environmental impact statement, and that the last sentence states that "\* \* \* [o]nly information on transportation of high-level waste from a reactor, from an independent spent fuel storage facility, or from a monitored retrievable storage facility to a repository should be included under the transportation topical guideline." The commenter stated that it is not clear from this statement what information is meant to be included in the LSN. The commenter requests further clarification of this statement and guidance from the Commission on the type of information to be included in the LSN regarding transportation of high-level waste and spent nuclear fuel to a repository at Yucca Mountain, Nevada. The commenter further stated that such clarification would be useful, particularly with respect to interpreting the guidance in Item C.3.6 of the "Topical Guidelines," which identifies environmental impacts from transportation as a topic of information to be included in the LSN.

*Response 4.* Section C of the regulatory guide reflects the structure of the Yucca Mountain Review Plan, the DOE Final Environmental Impact Statement, and NUREG-1748, "Environmental Review Guidance for Licensing Actions Associated with NMSS Programs." These documents and the regulations in 10 CFR Parts 51 and 63 indicate the scope of transportation information encompassed by the various "Topical Guidelines." Consequently, the last sentence of the last paragraph of "Use of the Regulatory Guide," under Section B, "Discussion," has been deleted from Revision 1 of Regulatory Guide 3.69.

*Comment 5.* The commenter noted that Sections C.1 and C.2 of the "Topical Guidelines," appear to mirror the "Table of Contents" of the draft "Yucca Mountain Review Plan" and the draft "Yucca Mountain Review Plan," and that Section B, "Discussion," states that the "Topical Guidelines" have been kept broad and at a fairly high level of detail. The commenter recommended that the more detailed subcategories (e.g., 2.1.1.5.1 and 2.2.1.3.1) of Section

C of the "Topical Guidelines" be deleted for consistency with the more general categories in the document. The commenter stated that deleting many of the subcategories would not detract from the scope of the topics to be included in the Licensing Support Network, because the regulatory guide makes clear that " \* \* \* the user should consider each topic to be inclusive rather than exclusive with regard to documents germane to that topic. \* \* \* " The commenter also stated that maintaining the "Topical Guidelines" at a high level of detail provides flexibility to all parties or potential parties to the proceeding to include documents in a broad sense, and not to be constrained by detailed subtopics that may change in the final "Yucca Mountain Review Plan."

*Response 5.* Section C of the regulatory guide reflects the structure of Revision 2 of the "Yucca Mountain Review Plan," dated July 2003. Detailed subcategories such as 2.1.1.5.1 and 2.2.1.3.1 refer to 10 CFR Part 63 requirements, are consistent with the level of detail in other areas, and provide explanatory information useful to the reader. The suggested deletion is not necessary.

*Comment 6.* The commenter stated that Section C.3 of the "Topical Guidelines" appears to mirror the "Table of Contents" of the DOE Yucca Mountain environmental impact statement, including several subcategories of information. The commenter recommended that many of the subcategories could be deleted without impacting the scope or topics of documentary material to be included in the LSN.

*Response 6.* Section C.3 of the regulatory guide provides a listing of environmental impact statement topics. This is consistent with the level of detail in Sections C.1 and C.2, which are based on the Yucca Mountain Review Plan, and other areas of the regulatory guide. The subcategories provided useful information and no deletion is necessary.

*Comment 7.* The commenter recommended that the regulatory guide explicitly state whether Item 1 of Appendix A, "Types of Documents To Be Included in the Licensing Support Network," when read together with the 10 CFR 2.1001 definition of documentary material, should be interpreted to mean that the requirement to include circulated drafts in the LSN applies only to circulated drafts related to technical reports and analyses.

*Response 7.* Item 1 of Appendix A paraphrases the definition of

documentary material in 10 CFR 2.1001, which requires, in part, availability of all reports or studies, and all related "circulated drafts," relevant to both the license application and the Topical Guidelines in Regulatory Guide 3.69. No further clarification is necessary.

*Comment 8.* The commenter stated that several other items in Appendix A, "Types of Documents To Be Included in the Licensing Support Network," could be clarified, in addition to the item described in comment 7 above.

Specifically, the commenter noted that Items 8.12 and 8.13 indicate that public and agency comments on documents and responses to comments are to be included in the LSN. The commenter stated that it interprets these items to be specific to those public and agency comments received by DOE in response to a DOE request for comments (e.g., comments on the draft Yucca Mountain environmental impact statement or the Secretary of Energy's consideration of site recommendation). In addition, the commenter noted that Items 8.16 and 8.17 indicate that DOE project-decision schedules and program-management documents are to be included in the LSN. The commenter suggested that further clarification is appropriate to help identify documents covered by these categories.

*Response 8.* Items 8.12 and 8.13 (now Items 7.13 and 7.14) encompasses public comments by agencies, including by the DOE, that are relevant to the licensing of a repository at Yucca Mountain or bear on a party's position in the proceeding. The DOE, as the developer of a potential Yucca Mountain repository, is required by section 114(e) of the Nuclear Waste Policy Act, as amended, 42 U.S.C. 10134(e), to prepare a project decision schedule and is in the best position to identify documents encompassed by Items 8.16 and 8.17 (now Items 7.17 and 7.18). Further clarification is not necessary.

*Comment 9.* The commenter recommended that the term "relevant" be clarified in the regulatory guide, because it is used in the 10 CFR 2.1001 definition of documentary material and its clarification would be beneficial to all parties. Because it is the general practice of the Commission to follow the Federal Rules of Civil Procedure, the commenter recommended that the term be interpreted in light of Rule 26 of the Federal Rules of Civil Procedure and case law interpreting it.

*Response 9.* The term "relevant" does not need clarification in the regulatory guide. The regulatory guide includes the 10 CFR 2.1001 definition that was promulgated in 1998 (see 63 FR 71729,

71736-71737, December 30, 1998). The NRC has previously indicated that relevance is defined in terms of whether documentary material (1) has any possible bearing on a party's supporting information or a party's position in a proceeding or (2) is a report or study that has a bearing on the license application and any of the Topical Guidelines in Regulatory Guide 3.69. See 66 FR 29453, 29460 n.3. (May 31, 2001).

*Comment 10.* The commenter requested additional guidance on how potentially sensitive documents are to be handled in the LSN, because 10 CFR 2.790 and 10 CFR 2.1003(a)(4)(iii) do not cover all potentially sensitive information, such as sensitive homeland security information.

*Response 10.* Subsequent to receipt of this comment, the NRC revised 10 CFR Part 2 (69 FR 2182, January 14, 2004), and 10 CFR 2.790 is now 10 CFR 2.390. The purpose of the regulatory guide is to identify the scope of documentary that should be identified in or made available via the LSN. The regulatory guide also indicates that certain documents may be excluded or withheld from disclosure under 10 CFR 2.1003, 2.1005, and 2.1006. Under 10 CFR 2.1003(a)(4) documents withheld from disclosure are to be identified by a LSN bibliographic header only (for example, safeguards, privileged, or confidential financial information). No additional guidance is necessary. (5 U.S.C. 552(a))

Dated at Rockville, MD this 23rd day of June, 2004.

For the Nuclear Regulatory Commission,  
**John W. Craig,**  
 Deputy Director, Office of Nuclear Regulatory Research.  
 [FR Doc. 04-15172 Filed 7-2-04; 8:45 am]  
 BILLING CODE 7590-01-P

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for OMB Review; Comment Request for Review of a Revised Information Collection: RI 30- 10

**AGENCY:** Office of Personnel  
Management.  
**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 30-10,

Disabled Dependent Questionnaire, is used to collect sufficient information about the medical condition and earning capacity for OPM to be able to determine whether a disabled adult child is eligible for health benefits coverage and/or survivor annuity payments under the Civil Service Retirement System or the Federal Employees' Retirement System.

Approximately 2,500 RI 30-10 forms will be completed annually. The form takes approximately one hour to complete. The annual burden is 2,500 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606-8358, FAX (202) 418-3251 or via e-mail to [mbtoomey@opm.gov](mailto:mbtoomey@opm.gov). Please include a mailing address with your request.

**DATES:** Comments on this proposal should be received within 30 calendar days from the date of this publication.

**ADDRESSES:** Send or deliver comments to—Ronald W. Melton, Deputy Assistant Director, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415-3540; and Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

#### FOR INFORMATION REGARDING

**ADMINISTRATIVE COORDINATION—CONTACT:** Cyrus S. Benson, Team Leader, RIS Support Services/Support Group, Publications Team, (202) 606-0623.

Office of Personnel Management.

**Kay Coles James,**

*Director.*

[FR Doc. 04-15132 Filed 7-2-04; 8:45 am]

BILLING CODE 6325-30-P

#### OFFICE OF PERSONNEL MANAGEMENT

#### Submission for OMB Review; Comment Request for the Review of a Revised Information Collection: SF 2809

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for the review of a revised information collection. SF 2809,

Health Benefits Election Form, is used by Federal employees, annuitants other than those under the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS) [including individuals receiving benefits from the Office of Workers' Compensation Programs], former spouses eligible for benefits under the Spouse Equity Act of 1984, and separated employees and former dependents eligible to enroll under the Temporary Continuation of Coverage provisions of the FEHB law (5 U.S.C. 8905a). A different form (OPM 2809) is used by CSRS and FERS annuitants whose health benefit enrollments are administered by OPM's Retirement Services Program.

Approximately 18,000 SF 2809 forms are completed annually. Each form takes approximately 30 minutes to complete. The annual estimated burden is 9,000 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606-8358, or e-mail to [mbtoomey@opm.gov](mailto:mbtoomey@opm.gov). Please include your mailing address with your request. This proposal is not available electronically.

**DATES:** Comments on this proposal should be received within 30 calendar days from the date of this publication.

**ADDRESSES:** Send or deliver comments to—Frank D. Titus, Assistant Director, Insurance Services Program, Center for Retirement & Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3400, Washington, DC 20415; and Joseph F. Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

#### FOR INFORMATION REGARDING

**ADMINISTRATIVE COORDINATION—CONTACT:** Cyrus S. Benson, Team Leader, RIS Support Services/Support Group, Publications Team, (202) 606-0623.

Office of Personnel Management.

**Kay Coles James,**

*Director.*

[FR Doc. 04-15133 Filed 7-2-04; 8:45 am]

BILLING CODE 6325-38-P

#### OFFICE OF PERSONNEL MANAGEMENT

#### Proposed Collection; Comment Request for Review of an Expiring Information Collection: OPM Form 1644

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of an expiring information collection. OPM Form 1644, Child Care Provider Information: Child Care Tuition Assistance Program for Federal Employees, is used to verify that child care providers are licensed or regulated by local or State authorities, as appropriate. Public Law 106-58 passed by Congress on September 29, 1999, permits Federal agencies to use appropriated funds to help their lower income employees with their costs for child care provided by a contractor licensed or regulated by local or State authorities, as appropriate. Therefore, agencies need to verify that child care providers to whom they make disbursements in the form of child care subsidies meet the statutory requirement. We estimate approximately 2000 OPM 1644 forms will be completed annually. The form will take approximately 10 minutes to complete by each provider. The annual estimated burden is 333.3 hours.

*Comments are particularly invited on:*

- Whether the form adequately captures the information needed to verify child care provider local or State licensure and regulation;
- whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; and
- ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other information collection strategies.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606-8358, FAX (202) 418-3251 or e-mail to [mbtoomey@opm.gov](mailto:mbtoomey@opm.gov). Please provide a mailing address because this proposal is not available electronically.

**DATES:** Comments on this proposal should be received within 60 calendar days from the date of this publication.

**ADDRESSES:** Send or deliver comments to: Bonnie Storm, Manager, WorkLife Group, U.S. Office of Personnel Management, 1900E St., NW., Washington, DC 20415.

Office of Personnel Management.

**Kay Coles James,**

*Director.*

[FR Doc. 04-15134 Filed 7-2-04; 8:45 am]

BILLING CODE 6325-39-P

**RAILROAD RETIREMENT BOARD****Agency Forms Submitted for OMB Review**

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

*Summary of Proposal(s):*

- (1) *Collection title:* Investigation of Claim of Possible Days of Employment.
- (2) *Form(s) submitted:* ID-5S (SUP).
- (3) *OMB Number:* 3220-0196.
- (4) *Expiration date of current OMB clearance:* 8/31/2004.
- (5) *Type of request:* Extension of a currently approved collection.
- (6) *Respondents:* Business or other for-profit.
- (7) *Estimated annual number of respondents:* 80.
- (8) *Total annual responses:* 80.
- (9) *Total annual reporting hours:* 13.
- (10) *Collection description:* Under the Railroad Unemployment Insurance Act, unemployment or sickness benefits are not payable for any day in which remuneration is payable or accrues to the claimant. The collection obtains information about compensation credited to an employee during a period when the employee claimed unemployment or sickness benefits from their railroad employer.

**Additional Information or Comments:** Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer (312-751-3363) or [Charles.Mierzwa@rrb.gov](mailto:Charles.Mierzwa@rrb.gov).

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611-2092 or [Ronald.Hodapp@rrb.gov](mailto:Ronald.Hodapp@rrb.gov) and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,  
Clearance Officer.

[FR Doc. 04-15142 Filed 7-2-04; 8:45 am]

BILLING CODE 7905-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Investment Company Act Release No. 26489; 812-13087]

**Wells Fargo Funds Trust, et al.; Notice of Application**

June 29, 2004.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(f)(1)(A) of the Act.

*Summary of Application:* The requested order would permit Wells Fargo Funds Trust ("Funds Trust") not to reconstitute its board of trustees to meet the 75 percent non-interested director requirement of section 15(f)(1)(A) of the Act in order for Wells Fargo Funds Management, LLC ("Funds Management") to rely upon the safe harbor provisions of section 15(f).

*Applicants:* Funds Trust and Funds Management.

*Filing Dates:* The application was filed on May 17, 2004 and amended on June 29, 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 July 22, 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 may request notification of a hearing by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, 525 Market Street, 12th Floor, San Francisco, California 94105.

**FOR FURTHER INFORMATION CONTACT:** Deepak Pai, Senior Counsel, at (202) 942-0574, or Mary Kay Frech, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (tel. 202-942-8090).

**Applicants' Representations**

1. Funds Trust is an open-end management investment company registered under the Act and consists of approximately seventy series. Funds Management, a wholly owned subsidiary of Wells Fargo & Company ("Wells Fargo"), currently serves as investment adviser to all of the Funds Trust series, and will serve as investment adviser to certain newly created series of Funds Trust. Funds Management is registered under the Investment Advisers Act of 1940 ("Advisers Act").

2. The Advisors' Inner Circle Fund (the "AIC Trust") consists of 45 series and is registered under the Act as an open-end management investment company. Cooke & Bieler, L.P. ("C&B") serves as investment adviser to the three series of AIC Trust involved in the Reorganization (as defined below) (the "C&B Funds").<sup>1</sup> C&B is an investment adviser registered under the Advisers Act.

3. On March 9, 2004, Funds Management and C&B entered into an agreement providing for the reorganization of the C&B Funds with and into three newly created series of Funds Trust (the "Successor Funds") (the "Reorganization"). Funds Management will serve as investment adviser to the Successor Funds. C&B will remain independently owned and will serve as sub-adviser to the Successor Funds. Funds Management will pay a lump-sum cash fee to C&B on the date that the Reorganization is consummated. On February 18, 2004 and February 3, 2004, respectively, the boards of trustees (each a "Board") of AIC Trust and Funds Trust unanimously approved the Reorganization. The Board of AIC Trust has scheduled a special meeting of the C&B Funds' shareholders for July 9, 2004. Proxy materials for the special meeting were mailed to shareholders of the C&B Funds on May 28, 2004.

**Applicants' Legal Analysis**

1. Section 15(f) of the Act is a safe harbor that permits an investment adviser to a registered investment company (or an affiliated person of the investment adviser) to realize a profit on the assignment of an investment advisory contract if certain conditions are met. One of these conditions, set forth in section 15(f)(1)(A), provides that, for a period of three years after an assignment of an investment advisory contract, at least seventy-five percent of

<sup>1</sup> The remaining series of AIC Trust are not advised by C&B and are not a party to the transaction.

the board of directors of the investment company may not be "interested persons" with respect to either the predecessor or successor adviser of the investment company. Applicants believe that the assumption by Funds Management of the investment advisory responsibilities for the C&B Funds and the compensation to be paid by Funds Management to C&B in connection with the Reorganization constitute a transaction covered by section 15(f) of the Act. Applicants state that, without the requested exemption, following the Reorganization, Funds Trust would have to reconstitute its Board to meet the seventy-five percent non-interested director requirement of section 15(f)(1)(A).

2. Section 15(f)(3)(B) of the Act provides that if the assignment of an investment advisory contract results from the merger of, or sale of substantially all of the assets by, a registered company with or to another registered investment company with assets substantially greater in amount, such discrepancy in size shall be considered by the Commission in determining whether, or to what extent, to grant exemptive relief under section 6(c) from section 15(f)(1)(A).

3. Section 6(c) of the Act permits the Commission to exempt any person or transaction from any provision of the Act, or any rule or regulation under the Act, if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants request an exemption under section 6(c) of the Act from section 15(f)(1)(A) of the Act. Applicants state that, as of March 31, 2004, Funds Trust had approximately \$75 billion and C&B Funds had approximately \$500 million in aggregate net assets, respectively, making the C&B Funds' aggregate net assets less than 1% of the aggregate net assets of Funds Trust.

5. Applicants state that two of the seven trustees who serve on the Board of Funds Trust are "interested persons," within the meaning of section 2(a)(19) of the Act, of Funds Management. Applicants state that none of the trustees who serve on the Board of Funds Trust is an interested person of C&B or the C&B Funds.

6. Applicants state that to comply with section 15(f)(1)(A) of the Act, Funds Trust would have to alter the composition of its Board, either by asking an experienced trustee to resign or by adding a new non-interested trustee. Applicants state that either of

these solutions would be unfair to shareholders of Funds Trust, particularly in view of the amount of the assets of the C&B Funds being acquired relative to the amount of the assets of Funds Trust.

7. Applicants acknowledge that the Commission has adopted amendments to certain existing rules that will require that at least 75% of the board of directors of any registered investment company that relies on these rules not be "interested persons" of the investment company. Funds Trust intends to comply with this requirement by the compliance date of the rule amendments. Applicants are not requesting relief from these rule amendments and acknowledge that the requested relief from section 15(f)(1)(A) will not extend beyond the compliance date of the rule amendments.

8. For the reasons stated above, applicants submit that the requested relief is necessary and 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.

For the Commission, by the Division of Investment Management, under delegated authority.

Jill M. Peterson,  
Assistant Secretary.

[FR Doc. 04-15187 Filed 7-2-04; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of July 12, 2004:

An open meeting will be held on Wednesday, July 14, 2004, at 10 a.m., in room 1C30, the William O. Douglas Room.

-The subject matter of the Open Meeting scheduled for Wednesday, July 14, 2004, will be:

1. The Commission will consider whether to propose rule 203(b)(3)-2 under the Investment Advisers Act of 1940 to require hedge fund advisers to register with the Commission. The Commission also will consider whether to propose certain conforming and transitional amendments to rules 203(b)(3)-1, 204-2, 205-3, 206(4)-2 and Form ADV.

For further information, please contact Vivien Liu at (202) 942-0719.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: the Office of the Secretary at (202) 942-7070.

Dated: July 1, 2004.

Jonathan G. Katz,  
Secretary.

[FR Doc. 04-15446 Filed 7-1-04; 4:00 pm]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49921; File No. SR-Amex-2004-04]

### Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change and Amendment Nos. 1, 2, and 3 thereto Relating to Auto-Ex for Exchange Traded Funds and Nasdaq Securities Traded on an Unlisted Basis

June 25, 2004.

On January 20, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to revise its automatic execution ("Auto-Ex") procedures for Portfolio Depository Receipts, Index Fund Shares, Trust Issued Receipts (collectively referred to as "Exchange Traded Funds" or "ETFs"), and Nasdaq securities admitted to trading on an unlisted basis. On March 4, 2004, the Amex amended the proposed rule change.<sup>3</sup> On March 11, 2004, the Amex amended the proposed rule change.<sup>4</sup>

The proposed rule change and Amendment Nos. 1 and 2 were published for comment in the *Federal Register* on March 25, 2004.<sup>5</sup> The Commission received no comments on the proposal. On May 19, 2004, the Amex amended the proposed rule

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from William Floyd-Jones, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Office of Market Supervision ("OMS"), Commission, dated March 3, 2004 ("Amendment No. 1"). In Amendment No. 1, the Amex restated the proposed rule change in its entirety.

<sup>4</sup> See letter from William Floyd-Jones, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, OMS, Commission, dated March 11, 2004 ("Amendment No. 2"). In Amendment No. 2, the Amex restated the proposed rule change in its entirety.

<sup>5</sup> See Securities Exchange Act Release No. 49449 (March 19, 2004), 69 FR 15411.



change.<sup>6</sup> This order approves the proposed rule change.

The proposed rule change sets forth the Amex's proposed enhanced Auto-Ex technology, which would supersede the Exchange's earlier Auto-Ex systems and permit Auto-Ex to occur against orders on the book. Proposed Amex Rule 128A would govern Auto-Ex of both ETFs and Nasdaq stocks traded on the Exchange. The Exchange has represented that it does not intend to extend the proposed new Auto-Ex procedures to other Amex traded equities at this time, although it may do so in the future. The proposed new rule would not affect Auto-Ex for options.

In addition, the proposed rule change would amend Amex Rule 118 to create a new type of limit order, called an "institutional order," that would be used for customer orders of 10,000 shares or more in Nasdaq National Market Securities. This new order would be required either to be executed automatically in full at one price, or to be routed to the specialist for execution or partial execution. Unlike an all or none order, an institutional order would have standing on the book because it could be executed in part once it is on the book.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>7</sup> The Commission believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>9</sup> 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.

Specifically, the Commission believes that the Amex's proposal to enhance its Auto-Ex procedures should provide investors with faster execution of eligible orders. The proposed rule change should benefit the Nasdaq marketplace by providing faster executions of eligible Nasdaq orders, especially since all markets that trade Nasdaq securities at present provide some form of automatic execution. Likewise, speed of execution is important to trading of ETFs because they are derivative securities whose prices are based on baskets of other securities and can change rapidly in very short timeframes. The Commission notes, however, that while it believes the proposed rule change constitutes an improvement over the Amex's current Auto-Ex capabilities, the Amex's proposal would not be sufficient for Amex to be considered an "automated order execution facility," as defined in Rule 600(b)(3) of proposed Regulation NMS because, among other things, it would not provide for an immediate automated response to all incoming subject orders.<sup>10</sup>

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act<sup>11</sup>, that the proposed rule change (SR-Amex-2004-04), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

Jill M. Peterson,  
Assistant Secretary.

The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].

\* \* \* \* \*

**Trading in Nasdaq National Market Securities**

Rule 118 (a) through (k) no change.  
(l) & (m) (proposed in unapproved Amex rule filings).

<sup>10</sup> See Securities Exchange Act Release No. 49325 (February 26, 2004), 69 FR 11126 at 11203 (March 9, 2004).

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> 17 CFR 200.30-3(a)(12).

(n) *An institutional order is a limit order for a Nasdaq National Market Security of 10,000 shares or more transmitted to the order book electronically which is to be executed automatically in full at one price. If it is not executed automatically in full at one price, it is to be routed to the specialist for execution and may be partially executed. Unlike an all or none order, an institutional order has standing on the limit order book. An institutional order may not be entered for the proprietary account of a broker-dealer.*

\* \* \* \* \*

**[Automatic Execution for Nasdaq National Market Securities (Temporary)]**

[Rule 118A-T. (a) An Auto-Ex eligible order in a Nasdaq National Market System security will be executed automatically at the Amex Published Quote ("APQ") for such security in accordance with the provisions of this rule.]

[(b) An Auto-Ex eligible order for a Tier 1 Nasdaq National Market security must be a round lot, or partial round lot ("PRL"), market or marketable limit order for 1,000 shares or less received by the Exchange electronically. An Auto-Ex eligible order for a Tier 2 Nasdaq National Market security must be a round lot, or PRL, market or marketable limit order for 500 shares or less received by the Exchange electronically. For purposes of this Rule, a "Tier 1" Nasdaq National Market security is a stock with an average daily consolidated trading volume of over 10 million shares during the preceding calendar quarter, and a "Tier 2" Nasdaq National Market security is a stock with an average daily consolidated trading volume of 10 million shares or less during the preceding calendar quarter.]

[(c) The specialist will be the contra side to each Auto-Ex execution. In the event that the specialist trades as a result of an automatic execution at a price at which the specialist could have executed one or more limit orders on the book, the specialist shall immediately execute any such limit orders at the price of the Auto-Ex trade to the extent such booked orders would have been executed had the incoming order not been executed automatically.]

[(d) An Auto-Ex eligible order will be routed to the specialist and will not be automatically executed in the following situations:

(i) Auto-Ex will be turned-off for one or more securities when the specialist, in conjunction with a Floor Governor or two Floor Officials, determine that quotes are not reliable and the Exchange

<sup>6</sup> See letter from William Floyd-Jones, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, OMS, Commission, dated May 18, 2004 ("Amendment No. 3"). In Amendment No. 3, the Amex revised the proposed rule text to (i) replace the term "Nasdaq National Market Security" with "Nasdaq National Market Securities" in the definition of Auto-Ex Eligible Security in proposed Amex Rule 128A(b); (ii) replace the term "Order Book Freeze" with "Order Book Pause" in proposed Amex Rule 128A(g); (iii) delete the second paragraph of proposed Amex Rule 128(h); (iv) delete subparagraph (vii) of proposed Rule 128A(j); (v) replace the language "according to its terms" with "in full at one price" in subparagraph (ix) of proposed Amex Rule 128A(j); and (vi) make corresponding changes to the numbering within the proposed rule. This was a technical amendment and is not subject to notice and comment. The language of the proposed rule change is attached as Exhibit A.

<sup>7</sup> 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).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

or the Nasdaq Stock Market is experiencing communications or systems problems, "fast markets," or delays in the dissemination of quotes.

(ii) Auto-Ex will not occur if it would cause the election of a stop or stop limit order on the book, or it would cause a trade to occur through the price of an all or none order on the book.

(iii) Auto-Ex will not occur in a stock for 10 seconds after there has been an Auto-Ex trade in that security.

(iv) Auto-Ex will not occur in a stock when the spread in the Amex Published Quote in that security is equal to or greater than thirty cents.

(v) Auto-Ex will not occur in a stock when the Amex Published Quote on the opposite side of an incoming order is not at the NBBO for that security.

(vi) Auto-Ex will not occur when the size displayed in the APQ on the opposite side of an incoming order is less than the size of the incoming order.

(vii) Auto-Ex will not occur when an incoming order is larger than the applicable Tier 1 or Tier 2 size parameter for that stock.]

[(e) The Auto-Ex Enhancements Committee ("Committee") will review a request from a specialist with respect to one or more securities to:

(i) Increase the size of Auto-Ex eligible orders above 1,000 share Tier 1 or 500 share Tier 2 parameters,

(ii) Reduce the duration of the 10-second pause between Auto-Ex executions, and/or

(iii) Increase the number of trades before the implementation of the 10-second pause in Auto-Ex described in paragraph (d)(iii) above.

The Committee may approve, disapprove or conditionally approve such requests. The Committee will balance the interests of investors, the specialist, and the Exchange in determining whether to grant a specialist's request to modify the Auto-Ex parameters specified in (i) through (iii) of paragraph (e) of this Rule. The Committee also will consider a request from a specialist to reduce Auto-Ex parameters that previously had been increased, provided, however, that the Committee may not reduce the Auto-Ex parameters below the floors stated in paragraphs (b) and (d) of this Rule. The Committee may delegate its authority to one or more Floor Governors. The Committee will meet promptly to review a Governor's decision to modify Auto-Ex parameters in the event that a Governor acts pursuant to delegated authority.]

\* \* \* \* \*

#### [Automatic Execution for Exchange Traded Funds]

[Rule 128A. The Exchange shall determine the size and other parameters of orders eligible for execution by its Automatic Execution System (Auto-Ex). An Auto-Ex eligible order for any account in which the same person is directly or indirectly interested may only be entered at intervals of no less than 10 seconds between entry of each such order on the same side of the market in a security. Members and member organizations are responsible for establishing procedures to prevent orders in a security on the same side of the market for any account in which the same person is directly or indirectly interested from being entered at intervals of less than 10 seconds.]

#### [s s s Commentary]

.[01 Auto-Ex eligible orders for Exchange Traded Funds ("ETFs") must be round lot, market or marketable limit orders for 2,000 shares or less received by the Exchange electronically. Orders for an account in which a market maker in ETFs registered as such on another market has an interest are ineligible for Auto-Ex for ETFs. Notice concerning Auto-Ex eligibility criteria will be provided to members periodically via Exchange circulars and will be posted on the Exchange's web site.]

.[02 Upon the request of a specialist, the Auto-Ex Enhancements Committee ("Committee") will review and approve, disapprove or conditionally approve requests to increase the size of Auto-Ex eligible orders above 2,000 shares. The Committee will balance the interests of investors, the specialist, Registered Options Traders in the crowd, and the Exchange in determining whether to grant a request to increase the size of Auto-Ex eligible orders above 2,000 shares. The Committee also will consider a request from a specialist to reduce the size of Auto-Ex eligible orders balancing the same interests that the Committee would consider in determining whether to increase the size of Auto-Ex eligible orders.]

.[03 Upon the request of a specialist, a Floor Governor may reduce the size of Auto-Ex eligible orders below 2,000 shares or increase the size of Auto-Ex eligible orders up to 5,000 shares if such action is appropriate in view of system problems or unusual market conditions. Any such change in the size of Auto-Ex eligible orders will be temporary and will only last until the end of the unusual market condition or the correction of the system problem.

Auto-Ex eligible orders will be routed to the specialist and will not be

automatically executed in situations where the specialist in conjunction with a Floor Governor or two Floor Officials determine that quotes are not reliable and if the Exchange is experiencing communications or systems problems, "fast markets," or delays in the dissemination of quotes.

Members and member organizations will be notified when the size of Auto-Ex eligible orders is adjusted due to system problems or unusual market conditions. Members and member organizations also will be notified when the Exchange has determined that quotes are not reliable and the Exchange is experiencing communications or systems problems, "fast markets," or delays in the dissemination of quotes prior to disengaging Auto-Ex.]

.[04 When the Amex establishes the NBBO (National Best Bid or Offer), Auto-Ex will be programmed to execute eligible incoming ETF orders at the Amex Published Quote ("APQ") plus a programmable number of trading increments with respect to the Amex bid (with respect to incoming sell orders), and less a programmable number of trading increments with respect to the Amex offer (with respect to incoming buy orders). The amount of price improvement relative to the APQ will be determined by the Committee.

When the Amex does not establish the NBBO, Auto-Ex will be programmed to execute eligible incoming ETF orders at or better than the NBBO up to a specified number of trading increments relative to the APQ. Auto-Ex will execute eligible incoming orders at an improved price relative to the APQ unless a trade through would result of an away ITS participant market. If a trade through would result, the orders will be routed to the Amex specialist for execution. The extent to which Auto-Ex will better the APQ in order to match or improve the NBBO (if the Amex does not establish the NBBO) will be determined by the Committee.

Auto-Ex will be unavailable (i) with respect to incoming sell orders when the published bid on the Amex is for 100 shares, and (ii) with respect to incoming buy orders when the published offer on the Amex is for 100 shares. Auto-Ex also will be unavailable when the spread between the bid and offer on the Amex exceeds a specified minimum or maximum value. The Committee will determine the spread in the APQ at which Auto-Ex will be unavailable.

The Committee will act upon the request of a specialist and will balance the interests of investors, the specialist, Registered Options Traders in the crowd, and the Exchange in determining (i) the amount of price improvement

that will be programmed into Auto-Ex when the Amex establishes the NBBO, (ii) the extent to which Auto-Ex will better the APQ in order to match or improve the NBBO (if the Amex does

not establish the NBBO), and (iii) the spread in the APQ at which Auto-Ex will be unavailable.]

[.05 Specialists and Registered Options Traders that sign-on to Auto-Ex

will be automatically allocated the contra side of Auto-Ex trades for ETFs according to the following schedule:

Number of ROTs signed on to Auto-Ex in a crowd	Approximate number of trades allocated to the specialist throughout the day ("target ratio") (percent)	Approximate number of trades allocated to ROTs signed on to Auto-Ex throughout the day ("target ratio") (percent)
1 .....	60	40
2-4 .....	40	60
5-7 .....	30	70
8-15 .....	25	75
16 or more .....	20	80

At the start of each trading day, the sequence in which trades will be allocated to the specialist and Registered Options Traders signed-on to Auto-Ex will be randomly determined. Auto-Ex trades then will be automatically allocated in sequence on a rotating basis to the specialist and to the Registered Options Traders that have signed-on to the system so that the specialist and the crowd achieve their "target ratios" over the course of a trading session. If an Auto-Ex eligible order is greater than 100 shares, Auto-Ex will divide the trade into lots of 100 shares each. Each lot will be considered a separate trade for purposes of determining target ratios and allocating trades within Auto-Ex.]

[.06 The Committee may delegate its authority to one or more Floor Governors. The Committee will meet promptly to review a Governor's decision in the event that a Governor acts pursuant to delegated authority.]

\* \* \* \* \*

**Automatic Execution**

*Rule 128A. (a) An Auto-Ex Eligible Order for an Auto-Ex Eligible Security will be executed automatically in accordance with the provisions of this rule.*

*(b) Definitions: Amex Published Quote ("APQ"). The Amex Published Quote is the highest bid and lowest offer disseminated by the American Stock Exchange.*

*Best Bid and Offer ("BBO"). The Best Bid and Offer is the highest bid and lowest offer disseminated by the national securities exchanges and facilities of national securities associations other than the Amex. Auto-Ex will disregard a bid or offer of less than 200 shares disseminated by any national securities exchange or facility*

*of a national securities association in determining the BBO.*

*Auto-Ex Eligible Order. An Auto-Ex Eligible Order is a round lot or partial round lot market or marketable limit order delivered to the order book electronically. An Auto-Ex Eligible Order does not include an order update (e.g., a "cancel/replace" and "cancel/leaves" order) An Auto-Ex Eligible Order does not include an order entered into the order book by the specialist. Orders on the book may be automatically matched against incoming Auto-Ex Eligible Orders as provided in this Rule.*

*Auto-Ex Eligible Security. Auto-Ex Eligible Securities consist of Portfolio Depository Receipts, Index Fund Shares, Trust Issued Receipts and Nasdaq National Market Securities traded on the Exchange together with such other securities as may be designated as Auto-Ex Eligible Securities from time to time by the Exchange.*

*Auto-Ex. Auto-Ex is the system for automatically executing Auto-Ex Eligible Orders.*

*Auto-Ex Step-Up. Auto-Ex Step-Up is a functionality that allows Auto-Ex Eligible Orders to be automatically executed against the Specialist/Registered Trader Quantity at the APQ plus (in the case of a bid) or minus (in the case of an offer) a specified number of trading increments designated by the Auto-Ex Enhancements Committee necessary to match the BBO when the APQ is inferior to the BBO. Auto-Ex Step-Up is not available to orders for the proprietary account of a broker-dealer.*

*Auto-Ex Step-Up Amount. The Auto-Ex Step-Up Amount is the specified maximum number of trading increments necessary to attempt to match the BBO when the APQ is inferior to the BBO.*

*Auto-Ex Step-Up Size: The Auto-Ex Step-Up Size is the maximum size of an Auto-Ex Eligible Order that is eligible for Auto-Ex Step-Up.*

*Specialist/Registered Trader Quantity: The Specialist/Registered Trader Quantity is the number of shares that the specialist and registered traders in a crowd signed on to Auto-Ex will purchase or sell through Auto-Ex executions.*

*Available Book Quantity: The Available Book Quantity is the number of shares on the order book at the APQ plus additional orders on the book that can be executed at or within the APQ minus shares on the book priced at or within the APQ that cannot be executed by their terms (e.g., all or none orders and tick sensitive orders).*

*Trade Threshold: The Trade Threshold is the number of Auto-Ex trades that the specialist and crowd will execute through Auto-Ex.*

*Maximum Spread Value: The Maximum Spread Value is the size of the spread at which Auto-Ex is automatically turned-off because the quote is too wide.*

*(c) Hours of Operation: Auto-Ex will be available for an Auto-Ex Eligible Security following the opening or reopening of a security on the Exchange once a trade has occurred and a quote has been disseminated in the security. Auto Ex will be turned-off at 3:59 p.m.. For securities that trade until 4:15 p.m., Auto-Ex will be re-enabled at 4:01 p.m. and will continue to be available until 4:14 p.m.*

*(d) Interaction of Auto-Ex and Auction Market. (i) A bid or offer incorporated in the APQ shall not be deemed accepted by a member in the trading crowd and, as the result, no contract shall be created, until the*

specialist begins to enter the member's acceptance into the order book.

(ii) Auto-Ex will be turned-off on the bid or offer side of the market (as appropriate) in the event that (1) one or more brokers or registered traders in the trading crowd make a bid or offer within the APQ (a priority bid or offer), or (2) one or more brokers in the crowd make a bid or offer that is on parity with the APQ (a parity bid or offer). Auto-Ex will be turned-on again when all members signed-on to Auto-Ex in the crowd are on parity and no broker is making a parity bid or offer.

(e) Auto-Ex Enhancements Committee. The Auto-Ex Enhancements Committee will review, approve, disapprove, or conditionally approve specialist requests to take the following actions:

- (i) Establish the Trade Threshold;
- (ii) Establish the Specialist/Registered Trader Quantity;
- (iii) Limit the size of Available Book Quantity;
- (iv) Establish the Auto-Ex-Step-Up Size and Auto-Ex-Step-Up Amount in securities where there are Registered Traders in the crowd;
- (v) Establish the Maximum Spread Value;
- (vi) Establish the di-minimis trade through amount for securities that are listed in markets that have trade through rules.

The Committee will balance the interests of investors, the specialist, registered traders signed on to Auto-Ex, and the Exchange in considering such requests. In the event that the Committee changes one or more Auto-Ex parameters, the minutes of the Committee's meetings will state the change in market conditions, competitive environment or other circumstance(s) that caused the Committee to change the parameter(s). The Committee may delegate its authority to one or more Floor Governors. The Committee will meet promptly to review a Governor's decision in the event that a Governor acts pursuant to delegated authority.

(f) Determination of Execution Price: The price at which an Auto-Ex Eligible Order will be executed by Auto-Ex will be determined as follows:

(i) Auto-Ex will execute an Auto-Ex eligible order at the APQ (or better, as provided for in this Rule) when the APQ is equal to or better than the BBO as determined by the Exchange's order processing systems. Auto-Ex will not execute an order, and the order will be routed to the specialist for execution, if execution of the order at the APQ would result in a trade through of the BBO;

(ii) In the event that Auto-Ex Step-Up is engaged to match the BBO, Auto-Ex will execute an Auto-Ex eligible order against the available Specialist/Registered Trader Quantity at the APQ plus (in the case of a bid) or minus (in the case of an offer) the lesser of (1) the Auto-Ex Step-Up Amount, or (2) the minimum number of trading increments necessary to match the BBO where the APQ is inferior to the BBO as determined by the Exchange's order processing systems. Auto-Ex will not execute an order, and the order will be routed to the specialist for execution, if (1) execution of the order at the APQ plus (or minus) the Auto-Ex Step-Up amount would result in a trade through of the BBO, or (2) the incoming order is larger than the Auto-Ex Step-Up size;

(iii) If programmed to do so, Auto-Ex will execute an Auto-Ex eligible order at the APQ when the APQ is inferior to the BBO as determined by the Exchange's order processing systems by a specified number of trading increments (the "di-minimis trade through amount"). Auto-Ex will not execute an order, and the order will be routed to the specialist for execution, if execution of the order at the APQ would result in a trade through of the BBO by more than the di-minimis trade through amount.

Notwithstanding the foregoing, in the event that there are one or more executable limit orders on the order book on the opposite side of an Auto-Ex Eligible Order priced between the APQ, Auto-Ex will execute the incoming order against the order(s) on the order book at their limit price(s). In the event that there are one or more executable market orders in the order book on the opposite side of the incoming Auto-Ex-Eligible Order and the APQ spread is greater than the minimum trading variation, Auto-Ex will execute the incoming order against the resident market order(s) at the mid point between the best limit bid and offer or APQ (whichever is better), and, if this mid point value is not a trading interval, the price will be rounded up to the nearest trading interval.

(g) Auto-Ex Coming out of an Order Book Pause. During an Order Book Pause, messages coming into the order book (e.g., orders, status requests, cancels, cancel/replaces) queue and do not enter the order book. When the Order Book Pause ends, Auto-Ex will be re-enabled immediately if all incoming orders are on the same side of the market. Auto-Ex will not be re-enabled, however, if there are orders on both sides of the market to allow the specialist to pair-off the orders to the extent possible. Automatic execution

will resume once all messages in the queue are processed.

(h) Auto-Ex Size: Auto-Ex will execute Auto-Ex Eligible Orders up to the lesser of: (1) the size displayed in the APQ plus executable orders on the book within the APQ, or (2) the sum of the remaining Specialist/Registered Trader Quantity and Available Book Quantity. Notwithstanding the foregoing, Auto-Ex trades executed by the Auto-Ex Step-Up functionality are limited to the Auto-Ex Step-Up Size.

The round lot portion of a partial round lot order will be executed as if it were a round lot order and the odd lot portion of the order will be executed as if it were an odd lot order.

(i) Contra Parties to Auto-Ex Trades. Auto-Ex will first allocate the contra side to an Auto-Ex trade to the Available Book Quantity in price/time priority. Auto-Ex will then allocate any portion of the Auto-Ex Eligible Order that remains unexecuted to the available Specialist/Registered Trader Quantity in accordance with participation percentages ("target ratios") determined by the ETF Trading Committee.

At the start of each trading day, the sequence in which shares will be allocated to the specialist and Registered Traders signed-on to Auto-Ex will be randomly determined. Auto-Ex shares then will be automatically allocated in sequence on a rotating basis to the specialist and to the Registered Traders that have signed-on to the system so that the specialist and the crowd achieve their "target ratios" over the course of a trading session. If an Auto-Ex eligible order is greater than 100 shares, Auto-Ex will divide the trade into lots of 100 shares each. Each lot will be considered a separate trade for purposes of determining target ratios and allocating shares within Auto-Ex.

(j) Auto-Ex Unavailability. Auto-Ex will be unavailable in the following situations.

(i) Auto-Ex will not occur when the APQ is crossed with the BBO unless Auto-Ex is programmed to disregard the BBO in the case of a "di-minimis trade through" amount.

(ii) Auto-Ex will not occur when the Trade Threshold is exhausted and there is no Available Book Quantity.

(iii) Auto-Ex will not occur when the Specialist/Registered Trader Quantity is exhausted and there is no Available Book Quantity.

(iv) Auto-Ex will not occur when there is an open outgoing ITS commitment on behalf of a customer order.

(v) Auto-Ex will not occur on the Amex bid or offer (as appropriate) in the event that (1) one or more brokers or

registered traders in the trading crowd make a bid or offer within the APQ (a priority bid or offer), or (2) one or more brokers in the crowd make a bid or offer that is on parity with the APQ (a parity bid or offer). Auto-Ex will be turned-on again when all members signed-on to Auto-Ex in the crowd are on parity and no broker is making a parity bid or offer.

(vi) Auto-Ex will not occur on the bid or offer (as appropriate) in the event that the APQ on that side of the market is for less than 200 shares.

(vii) Auto-Ex will not occur when the order book on the Amex is locked or crossed with the APQ.

(viii) Auto-Ex will not occur with respect to an incoming Auto-Ex Eligible All Or None or Institutional Order in the event that there is insufficient size to execute the order in full at one price.

(ix) Auto-Ex will not occur if the execution of the incoming order would elect a stop order on the order book.

(x) Auto-Ex will not occur if the specialist is in the process of executing an order in the security.

(xi) Auto-Ex will not occur in one or more securities when the specialist, in conjunction with a Floor Governor or two Floor Officials, determine(s) that (1) quotes are not reliable, (2) the Exchange is experiencing communications or systems problems, "Unusual Market Conditions" as described in Amex Rule 115, or delays in the dissemination of quotes, or (3) the market(s) where the underlying securities trade (or Nasdaq with respect to Nasdaq National Market Securities) are experiencing communications or systems problems, "Unusual Market Conditions" as described in SEC Rule 11Ac1-1, or delays in the dissemination of quotes.

(xii) Auto-Ex will not occur if it would cause a trade to occur through the price of an all or none order on the book.

(xiii) Auto-Ex will not occur if there are orders on both sides of the market when the order book comes out of a "Pause" condition to allow the specialist to pair-off the orders.

(xiv) Auto-Ex will not occur if the spread exceeds the Maximum Spread Value.

Auto-Ex Eligible Orders that are not automatically executed will be routed to the specialist for handling.

[FR Doc. 04-15190 Filed 7-2-04; 8:45 am]

BILLING CODE 8010-01-P

\* The Commission corrected the proposed rule text to replace "Freeze" with "Pause." Telephone conversation between William Floyd-Jones, Associate General Counsel, Amex, and Ann E. Leddy, Special Counsel, Division of Market Regulation ("Division"), Commission (June 25, 2004).

## SECURITIES AND EXCHANGE COMMISSION

[Release 34-49940; File No. 600-23]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Order Approving an Extension of Temporary Registration as a Clearing Agency

June 29, 2004.

The Securities and Exchange Commission ("Commission") is publishing this notice and order to solicit comments from interested persons and to extend the Fixed Income Clearing Corporation's ("FICC") temporary registration as a clearing agency through June 30, 2005.<sup>1</sup>

On May 24, 1988, pursuant to sections 17A(b) and 19(a) of the Act<sup>2</sup> and Rule 17Ab2-1 promulgated thereunder,<sup>3</sup> the Commission granted the Government Securities Clearing Corporation ("GSCC") registration as a clearing agency on a temporary basis for a period of three years.<sup>4</sup> The Commission subsequently extended GSCC's registration through June 30, 2003.<sup>5</sup>

On February 2, 1987, pursuant to sections 17A(b) and 19(a) of the Act<sup>6</sup> and Rule 17Ab2-1 promulgated thereunder,<sup>7</sup> the Commission granted MBS Clearing Corporation ("MBSCC") registration as a clearing agency on a temporary basis for a period of 18 months.<sup>8</sup> The Commission subsequently extended MBSCC's registration through June 30, 2003.<sup>9</sup>

<sup>1</sup> On January 1, 2003, MBS Clearing Corporation ("MBSCC") was merged into the Government Securities Clearing Corporation ("GSCC") and GSCC was renamed the Fixed Income Clearing Corporation. Securities Exchange Act Release No. 47015 (December 17, 2002), 67 FR 78531 (December 24, 2002) File Nos. [SR-GSCC-2002-07 and SR-MBSCC-2002-01].

<sup>2</sup> 15 U.S.C. 78q-1(b) and 78s(a).

<sup>3</sup> 17 CFR 240.17Ab2-1.

<sup>4</sup> Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19639.

<sup>5</sup> Securities Exchange Act Release Nos. 25740 (May 24, 1988), 53 FR 19639; 29236 (May 24, 1991), 56 FR 24852; 32385 (June 3, 1993), 58 FR 32405; 35787 (May 31, 1995), 60 FR 30324; 36508 (November 27, 1995), 60 FR 61719; 37983 (November 25, 1996), 61 FR 64183; 38698 (May 30, 1997), 62 FR 30911; 39696 (February 24, 1998), 63 FR 10253; 41104 (February 24, 1999), 64 FR 10510; 41805 (August 27, 1999), 64 FR 48682; 42335 (January 12, 2000), 65 FR 3509; 43089 (July 28, 2000), 65 FR 48032; 43900 (January 29, 2001), 66 FR 8988; 44553 (July 13, 2001), 66 FR 37714; 45164 (December 18, 2001), 66 FR 66957; and 46135 (June 27, 2002), 67 FR 44655.

<sup>6</sup> *Supra* note 2.

<sup>7</sup> *Supra* note 3.

<sup>8</sup> Securities Exchange Act Release No. 24046 (February 2, 1987), 52 FR 4218.

<sup>9</sup> Securities Exchange Act Release Nos. 25957 (August 2, 1988), 53 FR 29537; 27079 (July 31, 1989), 54 FR 34212; 28492 (September 28, 1990), 55 FR 41148; 29751 (September 27, 1991), 56 FR

On July 1, 2003, the Commission issued an order extending FICC's temporary registration through June 30, 2004.<sup>10</sup>

On June 9, 2004, FICC requested that the Commission extend FICC's temporary registration until such time as the Commission is prepared to grant FICC permanent registration.<sup>11</sup>

The Commission today is extending FICC's temporary registration as a clearing agency in order that FICC may continue to provide its users clearing and settlement services as a registered clearing agency. During the third quarter of 2004, the Commission expects to publish a release requesting comment on granting FICC permanent registration as a clearing agency. FICC acts as the central clearing entity for the U.S. Government securities trading and financing marketplaces and provides for the safe and efficient clearance and settlement of transactions in mortgage-backed securities. 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](mailto:rule-comments@sec.gov). Please include File Number 600-23 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 600-23. 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/>

50602; 31750 (January 21, 1993), 58 FR 6424; 33348 (December 15, 1993), 58 FR 68183; 35132 (December 21, 1994), 59 FR 67743; 37372 (June 26, 1996), 61 FR 35281; 38784 (June 27, 1997), 62 FR 36587; 39776 (March 20, 1998), 63 FR 14740; 41211 (March 24, 1999), 64 FR 15854; 42568 (March 23, 2000), 65 FR 16980; 44089 (March 21, 2001), 66 FR 16961; 44831 (September 21, 2001), 66 FR 49728; 45607 (March 20, 2002), 67 FR 14755; and 46136 (June 27, 2002), 67 FR 44655.

<sup>10</sup> Securities Exchange Act Release No. 48116 (July 1, 2003), 68 FR 41031.

<sup>11</sup> Letter from Jeffrey Ingber, Managing Director, General Counsel, and Secretary, FICC (June 3, 2004).

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 600-23 and should be submitted on or before July 27, 2004.

It is therefore ordered that FICC's temporary registration as a clearing agency (File No. 600-23) be and hereby is extended through June 30, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 04-15188 Filed 7-2-04; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49931; File No. SR-ISE-2004-24]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the International Securities Exchange, Inc. Relating to the Interaction of Market Maker Quotations

June 28, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 21, 2004, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in

Items I and II below, which Items have been prepared by the Exchange. This order approves the proposal on an accelerated basis and publishes notice of the proposed rule change to solicit comments from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to codify in its rules a one-second "timer" that it employs before the quotations of ISE market makers interact. Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are in [brackets].

\* \* \* \* \*

#### Rule 804. Market Maker Quotations

\* \* \* \* \*

(d) Firm Quotes. (1) Market maker bids and offers are firm for orders and Exchange market maker quotations both under this Rule and Rule 11Ac1-1 under the Exchange Act ("Rule 11Ac1-1") for the number of contracts specified according to the requirements of paragraph (b) above. Market maker bids and offers are not firm under this Rule and Rule 11Ac1-1 if:

(i) a system malfunction or other circumstance impairs the Exchange's ability to disseminate or update market quotes in a timely and accurate manner;

(ii) the level of trading activities or the existence of unusual market conditions is such that the Exchange is incapable of collecting, processing, and making available to quotation vendors the data for the option in a manner that accurately reflects the current state of the market on the Exchange, and as a result, the market in the option is declared to be "fast" pursuant to Rule 704;

(iii) during trading rotations; or

(iv) any of the circumstances provided in paragraph (c)(3) of Rule 11Ac1-1 exist.

(2) *Notwithstanding Paragraph (1) above, if a market maker's bid (offer) can trade with the offer (bid) of another market maker, no execution shall occur between such quotations for a period of no more than one second. During this period, the System will update quotations that may be received; provided however, that during this period all quotations shall otherwise remain firm and the System will automatically execute all incoming orders against such quotations.*

(3) [(2)] Within thirty seconds of receipt of an order to buy or sell an option in an amount greater than the Order Execution Size, or within thirty seconds of another Exchange market maker entering a quotation at a price

executable against the market maker's quotation, that portion of the order equal to the Order Execution Size, or the Quotation Execution Size, as the case may be, will be executed and the bid or offer price will be revised.

\* \* \* \* \*

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant 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 ISE proposes to codify in its rules a one-second "timer" that it employs before the quotations of ISE market makers interact. The ISE treats orders and quotations differently, with ISE Rule 804(a) stating that only market makers may enter quotations on the ISE. Market makers use quotations to input and update prices on multiple series of options at the same time. Quotations generally are based on pricing models that rely on various factors, including the price and volatility of the underlying security. As these variables change, a market maker's pricing model automatically updates quotations for some or all of an option's series. In contrast, an order is an interest to buy a stated number of contracts of one specific options series. All ISE members, including ISE market makers, can enter orders.<sup>3</sup>

When stock prices change, ISE market makers update quotations in multiple series at the same time. The ISE represents that it promptly processes such quotation changes when it receives them. However, there is invariably a lag between the time the stock price first changes and the time by which the ISE can process all the corresponding option quotation changes. During this short period, the ISE may update one market maker's bid price to be the same as

<sup>3</sup> ISE Rule 717 imposes various limitations on orders that Electronic Access Members may enter on the ISE, while ISE Rule 805 governs market maker orders.

<sup>12</sup> 17 CFR 200.30-3(a)(1506).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

another market maker's asked price, resulting in a temporary market "lock." In addition, quotations may also "cross" each other. The ISE believes that if it were to permit executions at such prices, they would not properly reflect the true nature of the market. Rather, they would result in executions against quotations that simply were in the processing queue awaiting updating. According to the ISE, without there being some protection against this happening, the ISE would execute multiple market-maker-to-market-maker trades, subjecting market makers to multiple execution and clearing fees, with no real economic justification behind the trades. In addition, in the ISE's view, to avoid such executions and the attendant costs, market makers would widen their quotations or limit their size, to the detriment of customers and other market participants.

In order to address this concern, the ISE has established a one-second "timer" pursuant to which locked or crossed market maker quotations would not trade against each other. During this brief period, market maker quotations would remain firm for all orders the ISE may receive. That is, all orders would be executed at the "locked" or "crossed" price up to the full size of the quotations, effectively resulting in a "zero spread" (or, for crossed markets, a "negative spread") during this time period. This includes orders from customers, broker-dealers and even other market makers. The only exclusion is for executions against other market maker quotes.

The ISE believes that, the timer allows (1) market makers to update their quotations and (2) the ISE to process these updates, without effecting multiple executions during the update process. If a market maker has not entered a new quotation price during this brief period, trades would occur in all locked or crossed series up to the full size of the quotations upon the expiration of the time. In the ISE's view, this brief timer allows market prices to reach true pricing equilibrium without the execution of trades lacking economic substance.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act<sup>4</sup> in general, and furthers the objectives of section 6(b)(5)<sup>5</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of

trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the Exchange believes that the proposed rule change will enhance the pricing efficiency on the ISE.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition.

### 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. 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](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2004-24 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-ISE-2004-24. 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 ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2004-24 and should be submitted on or before July 27, 2004.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>6</sup> In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act, which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.<sup>7</sup>

The Commission notes that the ISE believes that, without the proposed one-second "timer" function, pricing inefficiencies would result on the Exchange and ISE market makers would widen their quotations or limit size to avoid multiple executions against other market makers. The Commission also notes that the ISE would continue to require its market makers to be firm for their quotations for the same size to customers and broker-dealer orders, including orders for the account of other ISE market makers. Further, if a market maker does not revise its quotation during the one-second period, trades would execute against the quotations of other ISE market makers. Based on the foregoing, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the *Federal Register*.

<sup>6</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(5).

To implement this proposal, the ISE would require a limited exemption from Rule 11Ac1-1 under the Act (the "Quote Rule")<sup>9</sup> to permit the Exchange to relieve an ISE market maker from its obligation under the Quote Rule to trade with matching quotations from another ISE market maker.<sup>10</sup> In connection with the approval of this proposal, the Commission granted ISE's request for a limited exemption from the Quote Rule. Specifically, the Commission granted ISE market makers an exemption from their obligations under paragraph (c)(2) of the Quote Rule with respect to trades with matching ISE market maker quotations for no more than one second, provided that the quotations are locked or crossed for no more than one second, and that such ISE market maker is firm to all other customer and broker-dealer orders, including orders for the accounts of other ISE market makers.<sup>11</sup>

## V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-ISE-2004-24), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04-15192 Filed 7-2-04; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49927; File No. SR-NASD-2004-093]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the National Association of Securities Dealers, Inc. Establishing a Revised Effective Date for Amendments to the Order Audit Trail System Rules Relating to Execution Reports

June 28, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

<sup>9</sup> 17 CFR 240.11Ac1-1.

<sup>10</sup> The ISE submitted a separate letter requesting a limited exemption from the Quote Rule. See letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Annette Nazareth, Director, Division of Market Regulation ("Division"), Commission, dated June 14, 2004.

<sup>11</sup> See letter from Robert Colby, Deputy Director, Division, Commission, to Michael Simon, Senior Vice President and General Counsel, ISE, dated June 24, 2004.

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 15, 2004, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. NASD has filed this proposed rule change pursuant to section 19(b)(3)(A)(i) of the Act<sup>3</sup> and Rule 19b-4(f)(1) thereunder,<sup>4</sup> 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

NASD is proposing to establish October 4, 2004 as the effective date of the amendments to NASD Rule 6954(d) approved by the Commission in April 2004.<sup>5</sup> As amended, NASD Rule 6954(d) requires members to record and report the execution price and firm capacity in the Order Audit Trail System ("OATS") Execution Reports.

#### 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

NASD is proposing to establish October 4, 2004 as the effective date for the amendments to NASD Rule 6954(d) approved by the Commission in April 2004.<sup>6</sup> As amended, NASD Rule 6954(d) requires that members record and report the execution price and firm capacity in OATS Execution Reports. As explained in NASD's proposed rule change SR-

NASD-2004-023, the amendments to NASD Rule 6954(d) would go into effect ninety days following publication of the Notice to Members announcing Commission approval. That proposed rule change further stated that NASD would issue such Notice to Members within 60 days of Commission approval. Under this implementation schedule, NASD represents that the effective date of the new requirements would have been no later than September 27, 2004.

NASD, however, intends to include the new requirements set forth in the SR-NASD-2004-023 as part of its OATS third quarter 2004 release, which is now scheduled to occur on October 4, 2004. Accordingly, NASD seeks to delay implementation of the recently approved amendments to NASD Rule 6954(d) until October 4, 2004. NASD staff believes that having the implementation date of the amendments to NASD Rule 6954(d) coincide with the OATS third quarter release, which includes other changes to OATS technical specifications, is the most cogent approach for both member firms and NASD. Among other things, the NASD believes that this approach will allow NASD to roll out the necessary systems changes in one comprehensive release, thereby resulting in fewer burdens on member firms having to comply with the revised OATS reporting requirements and ensuring that there is sufficient time for all parties to make the necessary system changes. NASD will publish a Notice to Members announcing the effective date within 5 business days of the filing of this rule change.

###### 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,<sup>7</sup> which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD also believes that the proposed rule change will enhance OATS information and will improve NASD's ability to conduct surveillance and investigations relating to compliance with NASD and other applicable rules. Furthermore, NASD believes that extending the implementation date to October 4, 2004 to coincide with OATS third quarter release, which includes other changes to OATS technical specifications, will benefit both NASD and member firms by providing adequate time to make all

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>4</sup> 17 CFR 240.19b-4(f)(1).

<sup>5</sup> See Securities Exchange Act Release No. 49628 (April 29, 2004), 69 FR 25651 (May 7, 2004).

<sup>6</sup> *Id.*

<sup>7</sup> 15 U.S.C. 78o-3(b)(6).



necessary system changes and enabling members to comply with OATS changes in a comprehensive manner.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A)(i) of the Act<sup>8</sup> and Rule 19b-4(f)(1) thereunder,<sup>9</sup> because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule series of the NASD. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments

- Use the Commission's Internet comment for (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2004-093 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-2004-093. This file

number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASD-2004-093 and should be submitted on or before July 27, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 04-15155 Filed 7-2-04; 8:45 am]  
BILLING CODE 8010-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49935; File No. SR-NASD-2004-079]

#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by National Association of Securities Dealers, Inc. To Provide for the Web Publication of Summaries of Interpretations Issued Under NASD Rule 4550

June 29, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 14, 2004 the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq

Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. On June 18, 2004, the Commission received Amendment No. 1 to the proposed rule change.<sup>3</sup> Nasdaq submitted Amendment No. 2 on June 25, 2004.<sup>4</sup> 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 the Substance of the Proposed Rule Change

Nasdaq proposes to provide by rule for the publication of all interpretations issued under NASD Rule 4550.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

\* \* \* \* \*

#### 4550. Written Interpretations of Nasdaq Listing Rules

(a) through (d) No change.

(e) *Nasdaq shall publish on its website a summary of each interpretation within 90 days from the date such interpretation is issued.*

\* \* \* \* \*

#### 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.

<sup>3</sup> See letter from Edward S. Knight, Executive Vice President, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated June 17, 2004 ("Amendment No. 1"). Amendment No. 1 replaced and superseded the original filing in its entirety. In Amendment No. 1, Nasdaq added the 90-day publication date requirement and changed the filing from one under Section 19(b)(3)(A) of the Act to one under Section 19(b)(2) of the Act.

<sup>4</sup> See letter from T. Eric Lai, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated June 25, 2004 ("Amendment No. 2"). In Amendment No. 2, Nasdaq removed a sentence relating to the timing for the implementation of the proposal.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>9</sup> 17 CFR 240.19b-4(f)(1).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Nasdaq's present practice is to publish anonymous summaries of all written interpretations issued pursuant to NASD Rule 4550 on its website. These interpretations currently appear at <http://www.nasdaq.com/about/LegalCompliance.stm>. This rule filing provides public notice of that practice and codifies it as a rule. Publication of the interpretations benefits investors, issuers, the Commission and the public in that it makes public all Nasdaq's official interpretations and thus helps ensure consistency and fairness. In addition, the publication of interpretations should serve investors, issuers, and the public by reducing the need for additional interpretations.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>5</sup> in general and with Section 15A(b)(6) of the Act,<sup>6</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest.

*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:

*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](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2004-079 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-2004-079. 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-2004-079 and should be submitted on or before July 27, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 04-15189 Filed 7-2-04; 8:45 am]

BILLING CODE 8010-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-49926; File No. SR-NYSE-2004-11]

**Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendments No. 1 and No. 2 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 Thereto Amending NYSE Rule 122 Concerning Orders With More Than One Broker**

June 28, 2004.

**I. Introduction**

On February 20, 2004, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend NYSE Rule 122 to provide that a Floor Broker may send a portion of an order to a specialist's Display Book for representation by the specialist either manually or via a hand-held terminal while retaining the remainder of the same order, as long as the broker does not bid (offer) or execute the retained portion of the order at a price at which the booked order may also be represented in a bid (offer) or executed. The Exchange submitted Amendment No. 1 to the proposed rule change on April 5, 2004.<sup>3</sup> The Exchange submitted Amendment No. 2 to the proposed rule change on April 20, 2004.<sup>4</sup> The proposed rule change and Amendments No. 1 and 2 were published for comment in the **Federal Register** on

<sup>7</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 2, 2004 ("Amendment No. 1"). In Amendment No. 1, the NYSE replaced and superseded the Exchange's original filing in its entirety.

<sup>4</sup> See letter from Mary Yeager, Assistant Secretary, NYSE, to Nancy J. Sanow, Division, Commission, dated April 19, 2004 ("Amendment No. 2"). In Amendment No. 2, the NYSE clarified and expanded its rule text.

<sup>5</sup> 15 U.S.C. 78o-3.

<sup>6</sup> 15 U.S.C. 78o-3(b)(6).

May 5, 2004.<sup>5</sup> The Commission received no comment letters on the proposal, as amended. The Exchange submitted Amendment No. 3 to the proposed rule change on June 18, 2004.<sup>6</sup> This order approves the proposed rule change and Amendments No. 1 and 2. Simultaneously, the Commission provides notice of filing of Amendment No. 3 and grants accelerated approval of Amendment No. 3.

## II. Discussion and Commission Findings

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<sup>7</sup> and, particularly, section 6(b)(5) of the Act.<sup>8</sup> The Commission believes that the proposed amendments to NYSE Rule 122 setting forth conditions under which a Floor Broker may send a portion of an order to a specialist either manually or via a hand-held terminal for representation by the specialist while retaining the remainder of the same order are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Commission believes that the ability to send orders from the Floor Broker's hand-held device directly to the specialist's limit order book may improve a broker's efficiency by allowing greater order management capabilities, while retaining the goals of the rule which, according to the NYSE, are to negate the possibility that the same customer could have unequal representation in the auction in parity situations, and to deter creating the appearance that there is greater trading interest in a stock. The Commission notes that the Exchange has represented that the proposed rule change, as amended, does not impose any new requirements or obligations and is consistent with current Exchange practice.

The Commission finds good cause for approving Amendment No. 3 to the proposed rule change prior to the

<sup>5</sup> See Securities Exchange Act Release No. 49625 (April 28, 2004), 69 FR 25160.

<sup>6</sup> See letter from Darla C. Stuckey, NYSE, to Nancy J. Sanow, Division, Commission, dated June 17, 2004 ("Amendment No. 3"). In Amendment No. 3, the NYSE corrected a typographical error in the proposed rule text.

<sup>7</sup> In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

thirtieth day after the amendment is published in the *Federal Register*, pursuant to section 19(b)(2) of the Act.<sup>9</sup> Amendment No. 3 deleted reference to "an order" from the first sentence of the language proposed to be added to NYSE Rule 122. The Commission believes that the proposed change in Amendment No. 3, which only makes a technical change to the proposed rule text, raises no new issues of regulatory concern and, therefore, believes that good cause exists, consistent with Section 6(b)(5)<sup>10</sup> and Section 19(b)<sup>11</sup> of the Act, to accelerate approval of Amendment No. 3.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 3 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2004-11 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-NYSE-2004-11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be

available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2004-11 and should be submitted on or before July 27, 2004.

## IV. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-NYSE-2004-11) and Amendments No. 1 and 2 thereto are approved, and that Amendment No. 3 thereto is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04-15157 Filed 7-2-04; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49922; File No. SR-PCX-2003-51]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change, and Amendments No. 1, 2, and 3 Thereto, by the Pacific Exchange, Inc. Relating to Conditions of PCX Membership

June 28, 2004.

On October 29, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend its rules regarding the Exchange's conditions to membership. Specifically the Exchange proposes to: (1) Modify rules relating to PCX administered examinations for Floor Brokers and Market Makers; and (2) adopt a rule permitting waiver of the examination requirements by the Membership Committee. The PCX filed

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b).

Amendments No. 1,<sup>3</sup> No. 2,<sup>4</sup> and No. 3,<sup>5</sup> on December 18, 2003, March 15, 2004, and April 23, 2004, respectively. The proposed rule change, as amended, was published for comment in the **Federal Register** on May 19, 2004.<sup>6</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change, as amended.

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<sup>7</sup> and, in particular, the requirements of Section 6 and Section 15 of the Act.<sup>8</sup> Specifically, Section 6(c)(3)(A) of the Act provides that a national securities exchange may deny membership to, or condition the membership of, a registered broker-dealer if any natural persons associated with the broker or dealer do not meet the standards of training, experience and competence as are prescribed by the rules of the exchange.<sup>9</sup> Moreover, Section 15(b)(7)(C) of the Act provides that the Commission may rely on the registered securities associations and national securities exchanges to "require registered brokers and dealers and persons associated with such brokers and dealers to pass tests administered by or on behalf of any such association or exchange."<sup>10</sup> To further the goals of Section 15(b)(7) of the Act, the Commission in 1993 adopted Rule 15b7-1,<sup>11</sup> which prohibits registered broker-dealers from effecting any transaction in, or inducing the purchase or sale of, any security unless any natural person associated with such broker or dealer who effects or is involved in effecting such transaction is registered or approved in accordance with the standards of training, experience, competence, and other

qualification standards (including but not limited to submitting and maintaining all required forms, paying all required fees and passing any required examinations) established by the rules of any national securities exchange of which such broker or dealer is a member.

The Commission believes that the Exchange should be able to maintain the integrity and competency of securities industry personnel in its market under the proposed rule change. The proposed rule change will extend the time period when a former member of the PCX or another self-regulatory organization ("SRO") may have taken an examination from two years to five years if the applicant has been a member of an SRO within six months of the application date for Exchange membership. In addition, the proposal allows the Membership Committee to waive the examination requirement if the Committee believes the applicant is qualified based upon the applicant's industry experience, the type of registration requested, the previous history of the applicant with the PCX and any other examinations the applicant has successfully completed that may be considered acceptable substitutes.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change and Amendments No. 1, 2, and 3 thereto (File No. SR-PCX-2003-51) are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04-15156 Filed 7-2-04; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49933; File No. SR-PCX-2004-57]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the System Phase-In of PCX Plus

June 28, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 28, 2004, the Pacific Exchange, Inc.

("Exchange" or "PCX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. 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

PCX proposes to amend PCX Rule 6.90, governing PCX Plus, in order to extend the system phase-in period from June 30, 2004 until December 31, 2004.

Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

#### \* \* \* \* \*

#### Rule 6—Options Trading

#### \* \* \* \* \*

##### PCX Plus

Rule 6.90(a)—No Change.

(b) System Phase-In and Applicability of the Rules. The PCX estimates that the rules applicable to PCX Plus will be implemented gradually on an issue-by-issue basis beginning October 6, 2003, and will become completely operative and applicable to all options issues by [June 30, 2004] *December 31, 2004*. At that time, the rules relating to PCX Plus will supercede existing rule that are inapplicable to the new trading environment.

(c)-(h)—No change.

\* \* \* \* \*

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend PCX Rule 6.90(b) governing the PCX Plus

<sup>3</sup> See Letter from Steven B. Maitlin, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 17, 2003 ("Amendment No. 1").

<sup>4</sup> See Letter from Steven B. Maitlin, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division, Commission, dated March 12, 2004 ("Amendment No. 2").

<sup>5</sup> See Letter from Steven B. Maitlin, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division, Commission, dated April 22, 2004 ("Amendment No. 3").

<sup>6</sup> See Securities Exchange Act Release No. 49681 (May 11, 2004), 69 FR 75010.

<sup>7</sup> In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f and 78o.

<sup>9</sup> 15 U.S.C. 78f(c)(3)(A).

<sup>10</sup> 15 U.S.C. 78o(b)(7)(C).

<sup>11</sup> 17 CFR 240.15b7-1.

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>14</sup> 15 U.S.C. 78s(b)(1).

<sup>15</sup> 17 CFR 240.19b-4.

system<sup>3</sup> phase-in date. PCX Plus is the Exchange's electronic order delivery, execution and reporting system for designated option issues through which orders and Quotes with Size<sup>4</sup> are consolidated for execution and/or display. The trading system includes an electronic communications network that enables registered Market Makers to enter orders/Quotes with Size and execute transactions from remote locations or the trading floor. As proposed, the Exchange seeks to extend the date by which it expects to have PCX Plus completely operative and applicable to all options issues from June 30, 2004 until December 31, 2004. The Exchange represents that this extension is warranted in order to afford the PCX sufficient time to address any capacity issues the system may have as a result of phasing in issues currently traded on the Exchange and adding new issues to be traded on the Exchange.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>5</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5),<sup>6</sup> in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition and to protect investors and the public interest.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition that is not necessary in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>7</sup> and subparagraph (f)(3) of Rule 19b-4<sup>8</sup>

thereunder because it is concerned solely with the administration of the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-PCX 2004-57 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-PCX 2004-57. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference 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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make

available publicly. All submissions should refer to File Number SR-PCX 2004-57 and should be submitted on or before July 27, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04-15191 Filed 7-2-04; 8:45 am]

BILLING CODE 8010-01-P

## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster #3588]

#### State of Louisiana; Amendment #1

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective June 24, 2004, the above numbered declaration is hereby amended to include Jefferson Davis Parish as a disaster area due to damages caused by severe storms and flooding occurring on May 12 through May 19, 2004.

In addition, applications for economic injury loans from small businesses located in the contiguous parishes of Beauregard, Calcasieu, and Cameron in the State of Louisiana may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary parishes have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is August 9, 2004, and for economic injury the deadline is March 8, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 24, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04-15165 Filed 7-2-04; 8:45 am]

BILLING CODE 8025-01-P

## SMALL BUSINESS ADMINISTRATION

### Notice; Small Business Administration Interest Rates

The Small Business Administration publishes an interest rate called the optional "peg" rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>3</sup> Securities Exchange Act Release No. 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003) (order approving PCX Plus).

<sup>4</sup> See PCX Rule 6.1(b)(33) (definition of Quotes with Size).

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78f(b)(3)(A)(iii).

<sup>8</sup> 17 CFR 240.19b-4(f)(3).

rate will be 4.625 (4<sup>5</sup>/<sub>100</sub>) percent for the July—September quarter of FY 2004.

LeAnn M. Oliver,

Deputy Associate Administrator for Financial Assistance.

[FR Doc. 04-15168 Filed 7-2-04; 8:45 am]

BILLING CODE 8025-01-P

## DEPARTMENT OF STATE

[Public Notice 4756]

### Culturally Significant Objects Imported for Exhibition Determinations: "Passion for Drawing: Poussin to Cezanne, Works From the Prat Collection"

AGENCY: Department of State.

ACTION: Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Passion for Drawing: Poussin to Cezanne, Works from the Prat Collection," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at the Los Angeles County Museum of Art, Los Angeles, CA, from on or about November 7, 2004, to on or about January 16, 2005; Toledo Museum of Art, Toledo, OH, from on or about February 5, 2005, to on or about April 3, 2005; Naples Museum of Art, Naples, FL, from on or about April 23, 2005, to on or about June 19, 2005; Philadelphia Museum of Art, Philadelphia, PA, from on or about July 16, 2005, to on or about September 25, 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice

of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619-6529). The address is U.S. Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: June 22, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04-15216 Filed 7-2-04; 8:45 am]

BILLING CODE 4710-08-P

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Generalized System of Preferences (GSP): Notice of the Results of the 2003 Annual Product Review and 2002 Annual Country Practices Review, and Certain Previously-Deferred Product and Country Practice Decisions

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

**SUMMARY:** This notice announces the disposition of the product petitions accepted for review in the 2003 GSP Annual Product Review and the 2002 GSP Country Practices Review, the results of the 2003 De Minimis Waiver and Redesignation Reviews, the 2003 Competitive Need Limitation removals, and certain previously-deferred product and country practice decisions.

**FOR FURTHER INFORMATION CONTACT:** The GSP Subcommittee, Office of the United States Trade Representative (USTR), Room F-220, 1724 F Street, NW., Washington, DC 20508. The telephone number is (202) 395-6971 and the facsimile number is (202) 395-9481.

**SUPPLEMENTARY INFORMATION:** The GSP program provides for the duty-free importation of designated articles when imported from beneficiary developing countries. The GSP program is authorized by Title V of the Trade Act of 1974 (19 U.S.C. 2461, *et seq.*), as

amended (the "Trade Act"), and is implemented in accordance with Executive Order 11888 of November 24, 1975, as modified by subsequent Executive Orders and Presidential Proclamations.

In the 2003 Annual Review, the GSP Subcommittee of the Trade Policy Staff Committee reviewed petitions to change the product coverage of the GSP. The disposition of those petitions is described in Annex I of this notice.

The disposition of certain previously deferred product decisions is described in Annex II.

The disposition of petitions reviewed in the 2002 Country Practices Review is described in Annex III. The Trade Policy Staff Committee previously decided not to initiate a full review of the country practice petitions submitted in the 2003 Annual GSP Review. 69 FR 8514 (February 24, 2003).

In the 2003 *De Minimis* Waiver and Redesignation Review, the GSP Subcommittee reviewed the appraised import values of each GSP-eligible article in 2003 to determine whether an article from a GSP beneficiary developing country exceeded the GSP Competitive Need Limitations (CNLs). *De minimis* waivers were granted to certain articles that exceeded the 50 percent import share CNL, but for which the aggregate value of the imports of that article was below the 2003 *de minimis* level of \$16.5 million. Annex IV to this notice contains a list of the articles and countries granted *de minimis* waivers. A certain article from a GSP-eligible country that had previously exceeded one of the CNLs, but had fallen below the CNLs in 2003 (\$110 million and 50 percent of U.S. imports of the article), was redesignated for GSP eligibility. This article and country are listed in Annex V.

Articles that exceeded one of the GSP CNLs in 2003, and that are newly excluded from GSP eligibility for specific countries, are listed in Annex VI.

Steven Falken,

Executive Director for GSP, Chairman, GSP Subcommittee.

BILLING CODE 3190-W4-P

**Annex I. Decisions on Product Petitions in the 2003 GSP Annual Review**

Case #		Product	Decision
		<b>A. Petitions to Add Products to GSP</b>	
2003-01	8708.92.50	Vehicle mufflers and exhaust pipes	Denied
2003-02	8714.92.10	Bicycle wheel rims	Denied
		<b>B. Petition to Remove Product from GSP</b>	
2003-03	3907.60.0010	Polyethylene terephthalate (PET) bottle-grade resins in primary forms	Denied
2003-04	2917.12.10	Adipic acid	Granted
2003-05	3901.10.00(pt) 3901.20.00(pt)	Ultra-high molecular weight polyethylene resins	Granted
2003-06	3920.62.00	PET film (remove from Thailand only)	Granted
		<b>C. Petitions to Waive Competitive Need Limits for [Country]</b>	
2003-07	4107.11.80	Fancy leather [Argentina]	Denied
2003-08	7615.11.80	Stamped aluminum cookware [Thailand]	Denied
2003-09	8525.40.80	Camcorders [Indonesia]	Granted

**Annex II. Decisions on Previously Deferred Product Petitions in the 2001/02 Reviews**

Case #		Product	Decision
		<b>A. Petition to Add Products to GSP</b>	
			Waiver of Competitive Need Limits also requested
2001-23	2009.41.20 2009.49.20	Pineapple juice	✓ Denied
		<b>B. Petitions to Remove Products From GSP</b>	
2001-AGOA-2	2008.40.00	Canned pears	Continue ongoing review

Case #		Product		Decision
2002-33	8108.90.60	Wrought titanium	(removal of CNL waiver for Russia also requested)	Continue ongoing review

### Annex III. Decisions on Country Practice Petitions in the 2002 GSP Annual Review

Case No.	Petitioner(s)	Country	Subject*	Decision
001-CP-02	AFL-CIO	Bangladesh	WR	Continue ongoing review
005-CP-02 and 006-CP-02	AFL-CIO and International Labor Rights Fund	Guatemala	WR	Close reviews
009-CP-02	AFL-CIO	Swaziland	WR	Continue ongoing review
011-CP-02	International Intellectual Property Rights Alliance (IIPA)	Brazil	IPR	Continue ongoing review for 90 days
012-CP-02 and 013-CP-02	IIPA and Pharmaceutical Research and Manufacturers of America	Dominican Republic	IPR	Close reviews
015-CP-02	IIPA	Kazakhstan	IPR	Continue ongoing review
016-CP-02	IIPA	Lebanon	IPR	Continue ongoing review
017-CP-02	IIPA	Pakistan	IPR	Accept for review
019-CP-02	IIPA	Russia	IPR	Continue ongoing review
022-CP-02	IIPA	Uzbekistan	IPR	Continue ongoing review
025-CP-02	Distilled Spirits Council of the United States	Bulgaria	RPT	Continue ongoing review

\* WR= Worker Rights; IPR = Intellectual Property Rights; RPT = Reverse Preferential Treatment.



## Annex IV. De Minimis Waivers

HTSUS subheading	Trading partner	2003 U.S. imports (dollars)	Share of total	Article description (truncated)
3027020	Russia	8,000	100	Sturgeon roe, fresh or chilled
3051040	Thailand	13,962	61.6	Flours, meals and pellets of fish, fit for human consumption, other than in bulk or
3056960	Philippines	649,350	52.5	Fish, nesi, in brine or salted but not dried or smoked, other than in immediate containers
4100000	Indonesia	8,358,114	61.9	Edible products of animal origin, nesi
7102915	India	75,141	100	Lentils, uncooked or cooked by steaming or boiling in water, frozen
7114000	India	5,045,922	77.8	Cucumbers including gherkins, provisionally preserved but unsuitable in that state for
7129070	Egypt	377,656	57.1	Dried fennel, marjoram, savory and tarragon nesi, whole, cut, sliced, broken or in
8025020	Turkey	767,227	87.5	Pistachios, fresh or dried, in shell
8045080	Philippines	8,669,844	56.1	Guavas, mangoes, and mangosteens, dried
8106000	Thailand	1,009,778	100	Durians, fresh
8134010	Thailand	2,535,135	97.3	Papayas, dried
11023000	Thailand	2,920,966	50.7	Rice flour
12021040	Egypt	75,186	100	Peanuts (ground-nuts), not roasted or cooked, in shell, subject to add. US note 2 to Ch. 12
15159060	Argentina	1,129,704	52	Joboba oil and its fractions, whether or not refined, not chemically modified
16041450	Fiji	2,279,762	58.6	Tunas and skipjack, not in airtight containers, not in bulk or in immediate containers
18061043	Brazil	36,853	100	Cocoa powder, o/90% by dry wt of sugar, subject to gen. note 15 of the HTS
18062022	Brazil	5,806	100	Chocolate, ov 2kg, cont. milk solids, not in blocks 4.5 kg or more, subj. to gen. note
18069015	Russia	19,036	52.6	Cocoa preps, o/5.5% butterfat by wt, not in blocks/slabs/bars, subj. to add US note 2 to
19012002	Argentina	36,919	80.6	Mixes for bakers wares, o/25% butterfat, not retail, subject to gen. note 15 of the HTS
19012030	Argentina	12,271	100	Mixes for bakers wares, o/25% bf, not retail, descr in add US note 1 to Ch. 19: subj. to
19012045	Argentina	24,399	100	Mixes for bakers wares (dairy prod. of Ch4 US note 1), n/o 25% bf, not retail, subj. to
20019045	India	302,930	53.4	Mangoes, prepared or preserved by vinegar or acetic acid
20081930	Turkey	1,209,275	56.5	Pignolia and pistachio nuts, otherwise prepared or preserved, nesi
20089935	Thailand	3,648,389	83.4	Lychees and longans, otherwise prepared or preserved, nesi
20089950	Thailand	1,896,201	53.8	Papayas, other than pulp, otherwise prepared or preserved, nesi
23050000	Argentina	1,121,641	96.3	Oilcake and other solid residues, resulting from the extraction of peanut (ground-nut) oil
23063000	Argentina	4,602,976	100	Oilcake and other solid residues, resulting from the extraction of vegetable fats or oils,
25151220	Turkey	867,285	64	Travertine, merely cut into blocks or slabs of a rectangular (including square) shape
28042900	Russia	8,646,202	66	Rare gases, other than argon
28401100	Turkey	14,556	77.3	Anhydrous disodium tetraborate (refined borax)
28401900	Turkey	3,986,661	94.9	Disodium tetraborate (refined borax) except anhydrous
28500020	Russia	115,080	55.1	Hydride, nitride, azide, silicide and boride of vanadium
29035100	Romania	685,788	86	1,2,3,4,5,6-Hexachlorocyclohexane
29036908	Brazil	1,703,923	94	p-Chlorobenzotrifluoride; and 3,4-Dichlorobenzotrifluoride
29095040	Indonesia	4,549,450	65.2	Odoriferous or flavoring compounds of ether-phenols, ether-alcohol-phenols & their
29102000	Brazil	1,237,937	72.7	Methyloxirane (Propylene oxide)
29151200	Turkey	3,118,341	50.1	Salts of formic acid
29153500	Brazil	70,860	51.2	2-Ethoxyethyl acetate (Ethylene glycol, monoethyl ether acetate)
29310025	Brazil	544,958	98.8	Pesticides of aromatic organo-inorganic (except organo-sulfur) compounds
29349918	Brazil	1,430,996	67.6	Aromatic or modified aromatic pesticides neso, of other heterocyclic compounds, neso
29381000	Brazil	917,670	62.1	Rutoside (Rutin) and its derivatives
36030030	Brazil	1,868,024	57.6	Safety fuses or detonating fuses
40121180	India	160,559	61	Retreaded pneumatic tires (nonradials), of rubber, of a kind used on motor cars

41019040	Argentina	7,057	90.1	Raw bovine hides and skins (other than whole), vegetable pretanned but not further
41041150	Brazil	1,937,580	55.1	Full grain unsplit/grain split bovine (except buffalo) nesoï and equine hides/skins, w/o
41062200	Pakistan	724,185	56.7	Hides and skins of goats or kids, without hair on, tanned but not further prepared, in
41071140	India	59,654	74.2	Full grain unsplit whole buffalo leather, without hair on, surface over 2.6 sq m, prepared
41071160	Brazil	981,752	55.7	Full grain unsplit upper & sole leather of bovines (not buffalo) nesoï or equine, w/o hair
41079240	India	41,882	65.7	Grain splits buffalo leather (not whole), without hair on, prepared after tanning or
42022235	Philippines	84,601	69.5	Handbags with or without shoulder strap or without handle, with outer surface of textile
42029204	Philippines	1,673,858	93.9	Insulated beverage bags, outer surface of textile materials, interior only flexible plastic
46021023	Philippines	85,444	85.3	Articles of a kind normally carried in the pocket or in the handbag, of rattan or of palm
50071030	India	2,916,040	64.4	Woven fabrics of noil silk, containing 85 percent or more by weight of silk or silk waste
52083120	India	218,016	88.5	Dyed plain weave certified hand-loomed fabrics of cotton, containing 85% or more
52083210	India	99,337	54.2	Dyed plain weave certified hand-loomed fabrics of cotton, cont. 85% or more cotton by
52084120	India	342,556	99.2	Plain weave certified hand-loomed fabrics of cotton, 85% or more cotton by weight,
52084210	India	128,549	81.5	Plain weave certified hand-loomed fabrics of cotton, 85% or more cotton by weight, over
52093130	India	2,484,551	97.7	Dyed, plain weave certified hand-loomed fabrics of cotton, containing 85% or more
52094130	India	1,761,891	85.7	Plain weave certified hand-loomed fabrics of cotton, cont. 85% or more cotton by
56079035	Philippines	2,692,702	51.6	Twine, cordage, rope & cables of abaca or other hard (leaf) fibers, other than stranded
64061072	Brazil	1,056	71.7	Uppers for footwear, nesoï, of cotton, w/external surface area less than 50% textile
81121900	Kazakhstan	2,061,965	93	Beryllium, articles nesoï
85281244	Thailand	39,775	78.4	High definition color television reception apparatus, nonprojection, with cathode-ray
86061000	India	2,086	100	Railway or tramway tank cars and the like, not self-propelled
95072040	Philippines	2,156,188	50.9	Fish hooks, snelled
96142060	Turkey	115,879	88.3	Smoking pipes and bowls, wholly of clay, and other smoking pipes w/bowls wholly of

### Annex V. Redesignation

HTSUS	Trading partner	2003 U.S. imports (dollars)	Share of total	Article description (truncated)
85254080	Indonesia	106,905,359	5.5	Still image video cameras (other than digital) and other video camera recorders

### Annex VI. Articles Removed from GSP for Exceeding Competitive Need Limitations

HTSUS	Trading partner	2003 U.S. imports (dollars)	Share of total	Article description (truncated)
17039050	Dominican R	10,324,145	52.5	Molasses nesi
68029125	Turkey	115,179,686	54.2	Monumental or building stone & arts. thereof, of travertine, further worked

[FR Doc. 04-15361 Filed 7-2-04; 8:45 am]  
BILLING CODE 3190-W4-C

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### Aviation Proceedings, Agreements Filed the Week Ending June 18, 2004

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

*Docket Number:* OST-2004-18084.  
*Date Filed:* June 14, 2004.

*Parties:* Members of the International Air Transport Association.

*Subject:* PTC2 EUR 0561 dated 15 June 2004, Mail Vote 382—Resolution 010d-TC2 Special Passenger Amending Resolution from Algeria to Europe, Intended effective date: 1 July 2004.

*Docket Number:* OST-2004-18086.  
*Date Filed:* June 14, 2004.

*Parties:* Members of the International Air Transport Association.

*Subject:* PTC2 EUR-AFR 0203 dated 15 June 2004, Mail Vote 383—Resolution 010e-TC2 Special Passenger Amending Resolution from Algeria to Africa, Intended effective date: 8 July 2004.

*Docket Number:* OST-2004-18087.  
*Date Filed:* June 14, 2004.

*Parties:* Members of the International Air Transport Association.

*Subject:* PTC2 EUR-ME 0183 dated 15 June 2004, Mail Vote 384—Resolution 010f-TC2 Special Passenger Amending Resolution from Algeria to Middle East, Intended effective date: 8 July 2004.

*Docket Number:* OST-2004-18171.  
*Date Filed:* June 14, 2004.

*Parties:* Members of the International Air Transport Association.

*Subject:* CTC COMP 0483 dated 11 June 2004, Composite Resolutions, CTC COMP 0485 dated 11 June 2004, Worldwide Area Resolutions to/from USA/US Territories except Alliance Countries, CTC COMP 0486 dated 11 June 2004, Worldwide Area Resolutions, Alliance Countries r1-r23, Minutes—

CTC COMP 0488 dated 15 June 2004, Intended effective date: 1 October 2004.

*Docket Number:* OST-2004-18180.

*Date Filed:* June 14, 2004.

*Parties:* Members of the International Air Transport Association.

*Subject:* CTC COMP 0484 dated 11 June 2004, Worldwide Area Resolutions except to/from USA/US Territories r1-r9, Minutes—CTC COMP 0488 dated 15 June 2004, Intended effective date: 1 October 2004.

*Docket Number:* OST-2004-18182.

*Date Filed:* June 14, 2004.

*Parties:* Members of the International Air Transport Association.

*Subject:* CTC COMP 0487 dated 11 June 2004, Composite Resolutions 002, 033a r1-r3, Minutes—CTC COMP 0488 dated 15 June 2004, Intended effective date: 1 February 2005.

*Docket Number:* OST-2004-18304.

*Date Filed:* June 15, 2004.

*Parties:* Members of the International Air Transport Association.

*Subject:* PTC2 EUR 0563 dated 18 June 2004, Mail Vote 385—Resolution 010g—TC2 Within Europe Special Amending Resolution from Switzerland to Europe, Intended effective date: 1 July 2004.

*Docket Number:* OST-2004-18405.

*Date Filed:* June 17, 2004.

*Parties:* Members of the International Air Transport Association.

*Subject:* PTC1 0291 dated 18 June 2004, Mail Vote 388—Resolution 010j, TC1 Special Passenger Amending Resolution Within South America r1-r4, Intended effective date: 2 July 2004.

*Docket Number:* OST-2004-18406.

*Date Filed:* June 17, 2004.

*Parties:* Members of the International Air Transport Association.

*Subject:* PTC3 0756 dated 18 June 2004, Mail Vote 386—Resolution 010h, TC3 Special Passenger Amending Resolution r1-r4, Intended effective date: 1 August 2004.

*Docket Number:* OST-2004-18408.

*Date Filed:* June 17, 2004.

*Parties:* Members of the International Air Transport Association.

*Subject:* PTC2 EUR 0564 dated 18 June 2004, Mail Vote 387—Resolution 010i, TC2 Special Passenger Amending Resolution from Spain to Europe, Intended effective date: 1 July 2004.

*Docket Number:* OST-2004-18462.

*Date Filed:* June 18, 2004.

*Parties:* Members of the International Air Transport Association.

*Subject:* PTC12 USA-EUR 0170 dated 22 June 2004, Mail Vote 389, TC12 North Atlantic USA-Europe, Expedited Resolution 015h, Add-ons in USA

between USA and UK r1, Intended effective date: 1 July 2004.

**Andrea M. Jenkins,**

*Program Manager, Docket Operations, Federal Register Liaison.*

[FR Doc. 04-15244 Filed 7-2-04; 8:45 am]

BILLING CODE 4910-62-P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending June 18, 2004

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (see 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* OST-2004-11658.

*Date Filed:* June 15, 2004.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* June 30, 2004.

*Description:* Application of Linea Aerea Puertorriquena, Inc. (LAP) requesting a waiver from the revocation for dormancy provisions so that it may resume air transportation operations.

**Andrea M. Jenkins,**

*Program Manager, Docket Operations, Federal Register Liaison.*

[FR Doc. 04-15245 Filed 7-2-04; 8:45 am]

BILLING CODE 4910-62-P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### Senior Executive Service Performance Review Boards Membership

**AGENCY:** Office of the Secretary, Department of Transportation (DOT).

**ACTION:** Notice of Performance Review Board (PRB) appointments.

**SUMMARY:** DOT publishes the names of the persons selected to serve on the various Departmental PRBs as required by 5 U.S.C. 4314(c)(4).

#### FOR FURTHER INFORMATION CONTACT:

Patricia A. Prosperi, Departmental Director, Office of Human Resource Management, (202) 366-4088.

**SUPPLEMENTARY INFORMATION:** The persons named below have been selected to serve on one or more Departmental PRBs.

Issued in Washington, DC, on June 29, 2004.

Vincent T. Taylor,

*Assistant Secretary for Administration.*

#### Federal Railroad Administration

Jane H. Bachner

Deputy Associate Administrator for Industry and Intermodal Policy

Federal Railroad Administration

Mark Yachmetz

Associate Administrator for Railroad Development

Federal Railroad Administration

Margaret Reid

Associate Administrator for Administration and Finance

Federal Railroad Administration

Christopher W. Strobel

Assistant to the Secretary for Policy Office of the Secretary

Judy Kaleta

Senior Counsel for Dispute Resolution Office of the Secretary

Delmas Johnson

Associate Administrator for Administration National Highway Traffic Safety Administration

Jerry Hawkins

Director, Office of Human Resources Federal Highway Administration

#### Federal Transit Administration

Patricia G. Smith

Associate Administrator for Commercial Space Transportation

Federal Aviation Administration

Drucella A. Andersen

Deputy Assistant Administrator for Public Affairs

Federal Aviation Administration

Thomas Herlihy

Assistant General Counsel for Legislation Office of the Secretary

#### Office of Inspector General

Mark Woods

Assistant Inspector General for Investigations Department of Agriculture

Anthony Mayo

Assistant Inspector General for Investigations Department of Commerce

Judith Gordon

Assistant Inspector General for Systems Evaluation

Department of Commerce

Dennis Duquette

Deputy Inspector General for Audit Services Department of Health and Human Services

Adrienne Rish

Assistant Inspector General for Investigations Agency for International Development

Joseph R. Willever

Deputy Inspector General  
Office of Personnel Management

Elissa Karpf  
Assistant Inspector General for Planning,  
Analysis, & Results  
Environmental Protection Agency  
Eugene Wesley  
Assistant Inspector General for Auditing  
General Services Administration

#### National Highway Traffic Safety Administration

Delmas Johnson  
Associate Administrator for Administration  
National Highway Traffic Safety Administration

Scott Brenner  
Associate Administrator for External Affairs  
National Highway Traffic Safety Administration

Susan White  
Chief Information Officer  
National Highway Traffic Safety Administration

John Hill  
Assistant Administrator/Chief Safety Officer  
Federal Motor Carrier Safety Administration

George Ostensen  
Associate Administrator for Safety  
Federal Highway Administration

#### Federal Highway Administration

Dennis C. Judycki  
Associate Administrator for Research,  
Development, and Technology  
Federal Highway Administration

Cynthia Burbank  
Associate Administrator for Planning,  
Environment and Realty  
Federal Highway Administration

D.J. Gribbin  
Chief Counsel  
Federal Highway Administration

Michael J. Vecchiatti  
Associate Administrator for Administration  
Federal Highway Administration

Eileen Roberson  
Associate Administrator for Administration  
Maritime Administration

#### Maritime Administration

Robert B. Ostrom  
Chief Counsel  
Maritime Administration  
Eileen Roberson  
Associate Administrator for Administration  
Maritime Administration

James E. Caponiti  
Associate Administrator for National  
Security  
Maritime Administration

Jean E. McKeever  
Associate Administrator for Shipbuilding  
Maritime Administration

Jerry A. Hawkins  
Director, Office of Human Resources  
Federal Highway Administration

#### Office of the Secretary, Bureau of Transportation Statistics

Sean M. Moss  
Director, Office of Small and Disadvantaged  
Business Utilization

Office of the Secretary

William J. Chang  
Associate Director for Information Systems  
Bureau of Transportation Statistics

Phyllis F. Scheinberg  
Deputy Assistant Secretary for Budget and  
Programs

Office of the Secretary

Paul Gretch  
Director, Office of International Aviation  
Office of the Secretary

Randall Bennett  
Director, Office of Aviation and International  
Economics  
Office of the Secretary

Roberta D. Gabel  
Assistant General Counsel for Environmental,  
Civil Rights, and General Law  
Office of the Secretary

Margaret Reid  
Associate Administrator for Administration  
and Finance  
Federal Railroad Administration

Delmas Johnson  
Associate Administrator for Administration  
National Highway Traffic Safety Administration

Jean E. McKeever  
Associate Administrator for Shipbuilding  
Maritime Administration

#### Research and Special Programs Administration

Robert McGuire  
Associate Administrator for Hazardous  
Materials Safety  
Research and Special Programs Administration

Sean M. Moss  
Director, Office of Small and Disadvantaged  
Business Utilization  
Office of the Secretary

Lisa Schlosser  
Associate Chief Information Officer  
Office of the Secretary

Richard Kowalewski  
Deputy Director  
Bureau of Transportation Statistics

James J. Zok  
Associate Administrator for Ship Analysis  
and Cargo Preference  
Maritime Administration

Jane Bachner  
Deputy Associate Administrator for Industry  
and Intermodal Policy  
Federal Railroad Administration

#### Federal Motor Carrier Safety Administration

Rose McMurray  
Associate Administrator for Policy and  
Program Development  
Federal Motor Carrier Safety Administration

Stacy Gerard  
Associate Administrator for Pipeline Safety  
Research and Special Programs Administration

Linda J. Washington  
Deputy Assistant Secretary for  
Administration  
Office of the Secretary

Daniel P. Matthews  
Chief Information Officer

Office of the Secretary

Claudio Manno  
Director, Emergency Operations and  
Communications  
Federal Aviation Administration

[FR Doc. 04-15246 Filed 7-2-04; 8:45 am]

BILLING CODE 4910-62-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Proposed Advisory Circular (AC) 20-DO-254, RTCA, INC., Document No. (RTCA/DO)-254, Design Assurance Guidance For Airborne Electronic Hardware.

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

**ACTION:** Notice of availability and request for public comment.

**SUMMARY:** This notice announces the availability of and requests comments on a proposed Advisory Circular (AC) 20-DO-254, Design Assurance Guidance for Airborne Electronic Hardware. This proposed AC provides guidance for manufacturers of aircraft products appliances incorporating custom micro-coded components in the design of their aircraft systems and equipment. In it, we recommend how you get design and airworthiness approval for your equipment.

**DATES:** Comments must be received on or before August 2, 2004.

**ADDRESSES:** Send all comments on the proposed AC to: Federal Aviation Administration (FAA), Aircraft Certification Service, Aircraft Engineering Division, Technical Programs and Continued Airworthiness Branch, AIR-120, 800 Independence Avenue, SW., Washington, DC 20591. ATTN: Mr. John Lewis. Or deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Lewis, AIR-120, Room 815, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, 800 Independence Avenue, SW., Washington, DC 20591. Telephone (202) 493-4841, FAX: (202) 267-5340. Or, via e-mail at: [john.lewis@faa.gov](mailto:john.lewis@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested persons are invited to comment on the proposed AC listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address.

Comments received on the proposed AC may be examined, before and after the comment closing date, in Room 815, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date will be considered by the Director of the Aircraft Certification Service before issuing the final Advisory Circular.

#### Background

When following the guidance and procedures outlined in RTCA/DO-254, Design Assurance Guidance For Airborne Electronic Hardware, dated April 19, 2000, you are assured that the hardware design will perform its intended functions in its specified environment, and will meet its airworthiness requirements. RTCA.D-254 distinguishes between complex and simple electronic hardware; recognizes five levels of failure effects ranging from catastrophic to no effect; and provides guidance for each hardware design assurance level. Although the guidance in RTCA/DO-254 is applicable to five categories of hardware items (e.g., Line Replaceable Units (LRUs), Circuit Board Assemblies, etc.), this AC recognizes the guidance in RTCA/DO-254 is applying specifically to custom micro-coded components, rather than LRUs and other types of electronic hardware items described in RTCA/DO-254.

#### How to Obtain Copies

You may get a copy of the proposed AC form the Internet at: [www.airweb.faa.gov/rgl](http://www.airweb.faa.gov/rgl). Once on the RGL Web site, select "Advisory Circular", then select the document by number. See section entitled **FOR FURTHER INFORMATION CONTACT** for the complete address if requesting a copy by mail. You may inspect the RTCA document at the FAA office location listed under **ADDRESSES**. Note however, RTCA documents are copyrighted and may not be reproduced without the written consent of RTCA, Inc. You may purchase copies of RTCA, Inc. documents from: RTCA, Inc., 1828 L Street, NW., Suite 815, Washington, DC 20036, or directly from their Web site: <http://www.rtca.org>.

Dated: Issued in Washington, DC, on June 29, 2004.

Susan J. M. Cabler,

Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 04-15251 Filed 7-2-04; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Docket No. FAA-2001-9852]

#### High Density Airports; Notice of Extension of the Lottery Allocation at LaGuardia Airport

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of extension of the lottery allocation for takeoff and landing times at LaGuardia Airport.

**SUMMARY:** This notice announced a twelve month extension of the current slot exemption allocation at LaGuardia Airport (LaGuardia) through October 29, 2005. This action maintains the current operating environment at LaGuardia pending the adoption of a long-term solution for demand management, which the FAA and the Department of Transportation (Department) are undertaking in anticipation of the expiration of the High Density Rule at LaGuardia on January 1, 2007.

**DATES:** Effective upon July 6, 2004.

**FOR FURTHER INFORMATION CONTACT:** Lorelei Peter, Operations and Air Traffic Law Branch, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone number 202-267-3134.

#### SUPPLEMENTARY INFORMATION:

##### Background

The FAA has broad authority under Title 49 of the United States Code (U.S.C.), Subtitle VII, to regulate and control the use of the navigable airspace of the United States. In particular, 49 U.S.C. § 40103 authorizes the agency to develop plans and policies regarding the use of the navigable airspace and to assign by rule, regulation, or order the use of that airspace under such terms, conditions, and limitations as may be deemed necessary to ensure the safe and efficient use of the navigable airspace. Section 40103 also authorizes and directs the FAA to prescribe air traffic rules and regulations governing the efficient use of the navigable airspace.

In 1968, the FAA promulgated the High Density Traffic Airports Rule (High Density Rule), 14 CFR part 93, subpart K, to reduce delays at five congested airports: John F. Kennedy International Airport (JFK), LaGuardia, O'Hare International Airport (O'Hare), Ronald Reagan Washington National Airport, and Newark International Airport (Newark) (33 FR 17896; December 3, 1968). The regulation limited the

number of instrument flight rules (IFR) operations at each airport during certain hours of each day. It did so by allocating operational authority to air carriers in the form of a "slot," for each IFR takeoff or landing during a specified 30- or 60-minute period. The FAA lifted the restrictions at Newark in the early 1970s.

##### "AIR-21"

On April 5, 2000, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21) became law. Section 231 of AIR-21 significantly amended 49 U.S.C. 41714 and added a new section 41715. 49 U.S.C. § 41715 eliminated slots at O'Hare as of July 1, 2002, and will eliminate slots at LaGuardia and JFK on January 1, 2007. AIR-21 also included new provisions 49 U.S.C. 41716, 41717, and 41718 that enabled air carriers meeting specified criteria to obtain exemptions from the slot requirements of 14 CFR part 93, subparts K and S. As a result of this legislation, the Department issued eight orders implementing the slot exemptions authorized by the statute. DOT Order 2000-4-11 implemented 49 U.S.C. 41716(a) by providing that, under specific conditions, a slot exemption must be granted to any air carrier using Stage 3 aircraft with fewer than 71 seats for nonstop service between LaGuardia and an airport that was designated as a small hub or nonhub airport in 1997. The exemption must be granted if: (1) The air carrier was not providing nonstop service between the small hub or nonhub airport and LaGuardia during the week of November 1, 1999; (2) the proposed service between the small hub or nonhub airports and LaGuardia exceeds the number of flights provided between the airports during the week of November 1, 1999; or (3) if the air transportation pursuant to the exemption would be provided with a regional jet in replacement of turboprop service that was provided during the week of November 1, 1999.

Under AIR-21 and the related DOT Orders, an air carrier meeting one of the statutory criteria automatically received approval for a slot exemption, provided that the air carrier filed various certifications and a written request for authority to begin service. The air carrier was required to certify that the aircraft used to provide the proposed service would be Stage 3 compliant and would have fewer than 71 seats. The air carrier was further required to certify that the airport receiving service to or from LaGuardia was designated a small hub or nonhub airport in 1997. In addition, the air carrier was required to certify that the proposed service, when

compared to service provided during the week of November 1, 1999, was new service, was an additional frequency between the airports, or was regional jet service that replaced a turboprop flight. The air carrier was required to specify the number of slot exemptions needed, the slot times needed to provide the proposed service, the frequency of service and the effective date.

DOT Order 2000-4-10 implemented the provisions of 49 U.S.C. § 41716(b), which required that a slot exemption be granted to any new entrant or limited incumbent air carrier using Stage 3 aircraft that proposed to provide air transportation to or from LaGuardia if the number of slot exemptions granted under this subsection to an air carrier combined with the number of slots held at the airport by that carrier does not exceed 20. The order further required applications submitted under this provision to identify the airports to be served, the slot exemption times requested, the frequency of service and the effective date.

Despite the statute's exemption of certain flights from the FAA's regulatory slot limits, 49 U.S.C. 41715(b)(1) expressly provides that the slot exemption provisions are not to affect the FAA's authority over safety and the movement of air traffic. The reallocation of slot exemption times by the lottery procedures described in this Notice was based on the FAA's statutory authority and did not rescind the exemptions issued by the Department under orders 2000-4-10 and 2000-4-11. As provided in those orders, air carriers that filed the necessary certifications also needed to obtain an allocation of slot exemption times from the FAA. The FAA's limitation and reallocation of these slot exemptions recognized that it was not possible to add an unlimited number of new operations at LaGuardia during peak hours, even if those operations qualified for exemptions under AIR-21.

14 CFR 93.225 sets forth the process for lotteries under the High Density Rule. The process described in the regulations is similar to the lottery process followed for allocating AIR-21 slot exemptions and allows for specific conditions to be included when circumstances warrant special consideration.

#### Extension of Lottery Allocation

On June 12, 2001, the FAA published a Notice of Alternative Policy Options for Managing Capacity at LaGuardia and Proposed Extension of the Lottery Allocation in the Federal Register. Through the notice, the FAA sought comment on both long-term policy options and a short-term extension of

the cap on slot exemptions at LaGuardia (66 FR 31731). The notice proposed to continue a cap on scheduled flight operations that the FAA implemented in January 2001, limiting scheduled operations to 75 per hour between the hours of 7 a.m. and 9:59 p.m., in addition to the six reservations per hour for "other" nonscheduled operations, which included general aviation, charter, and military operations. The FAA achieved this operational cap by limiting the number of AIR-21 slot exemptions that could operate at the airport to 159 operations per day and allocated the slot exemptions via a lottery on December 4, 2000.

On August 2, 2001, the FAA extended the lottery allocation through October 26, 2002, set the date of August 15, 2001 for a second lottery, and established procedures for subsequent allocations of slot exemptions in the event that slot exemptions were returned or withdrawn by the FAA for non-use (66 FR 41294; August 7, 2001).

Following the terrorist attacks of September 11, 2001, and an ensuing downturn in commercial air travel, the FAA extended the closing date for the comment period regarding the Notice of Policy Alternatives for Managing Capacity at LaGuardia Airport (66 FR 52170; October 12, 2001). On March 22, 2002, the FAA announced that the comment period on the demand management alternatives for LaGuardia would close on June 20, 2002 (67 FR 13401). The FAA subsequently extended the limitation on AIR-21 slot exemptions through October 30, 2004, and proposed modifications to the allocation procedures (67 FR 45170; July 8, 2002). The FAA adopted these modifications on October 28, 2002 (67 FR 65826).

Even with the operational cap in place, LaGuardia is operating at its capacity. In April 2004, LaGuardia averaged 1,254 daily operations on peak weekdays. Despite the improvement brought about by the operational cap, delays at LaGuardia remain among the highest in the country and, recently, only two U.S. airports have incurred a higher percentage of delayed flights.

A long-term demand management solution cannot be implemented at LaGuardia prior to the expiration of the current AIR-21 slot exemption restrictions on October 30, 2004. As a result of the continuing flight delays, however, maintaining the cap on total operations at LaGuardia is imperative during the intervening period. If the cap on AIR-21 slot exemptions was lifted, it is anticipated that air carriers would add qualifying operations at the airport in such volume as to trigger a repetition

of the precipitous increase in exempted flight operations, in the fall of 2000, leading to an unacceptable level of delay. Significant delays and operational disruptions at LaGuardia have a negative effect on the national air traffic control system and result in a ripple effect on delays and operations nationwide. The airport cannot accommodate, nor can the FAA permit, such unconstrained growth in operations at this time.

The FAA and the Department have reviewed and analyzed all comments submitted by the public on the FAA's June 2001 notice of the policy options under consideration. Among the options under continuing review are long-term solutions that could introduce significant market-based elements into the allocation process. The development of such solutions requires further consideration of complex statutory, regulatory, and policy issues. Because some form of operational cap is necessary pending the FAA's implementation of a long-term solution to LaGuardia's congestion, the FAA is extending the current allocation and hourly limits an additional twelve months, through October 20, 2005.

#### Allocation Procedures

The reallocation procedures that the FAA previously adopted in the Federal Register notice published on October 28, 2002 (67 FR 65926) will be followed for the reallocation of returned or withdrawn slot exemptions and are restated as follows with one minor modification. In allocating AIR-21 slot exemptions in accordance with the provisions in paragraph 3 below, we are formalizing the current practice followed by the majority of the affected air carriers. New carriers eligible for slot exemptions that are not conducting service at the airport will now be required to file the certification with the Department in accordance with Order 2000-4-10 and to have a written request on file with the Slot Administration Office when seeking available slot exemptions. While carriers typically have filed this documentation with the Department and the FAA, these filings were not previously required for air carrier eligibility to receive an available slot exemption. We are now including this provision, and as it reflects current practice and represents minimal change, we are adopting this policy without public comment. We find that requiring this documentation is a minor administrative change and will provide the FAA with necessary information when slot exemptions become available for reallocation.

1. The cap on AIR-21 slot exemptions (7 a.m. through 9:59 p.m.) will remain in effect through October 29, 2005.

2. The FAA may approve the transfer of slot exemption times between carriers only on a temporary one-for-one basis for the purpose of conducting the operation in a different time period. Carriers must certify to the FAA that no other consideration is involved in the transfer.

3. If any slot exemptions become available for reallocation and there is an air carrier seeking slot exemptions that currently is not conducting operations at the airport, has certified to the Department in accordance with OST Order 2000-4-10 and has a written request on file with the Slot Administration Office, then the available slot exemptions would be offered to that carrier first, provided that the total number of slot exemptions allocated to carriers providing small hub/nonhub service is not fewer than 76. If an eligible new entrant air carrier does not select the slot exemptions, then the FAA will offer the slot exemptions to air carriers in the new entrant category or the small hub/nonhub service category, whichever AIR-21 category is below parity. Once parity is achieved, or the opportunity to achieve parity has been afforded, any remaining available slot exemptions will be offered to carriers in the same AIR-21 category from which the slot exemptions came. The FAA will follow the rank orders for each category, as established in the December 4, 2000, lottery for small hub/nonhub service and the August 15, 2001, lottery for new entrants, as amended.

4. An air carrier will have three business days after an offer from the Slot Administration Office to accept the offered slot exemption. The air carrier's acceptance must be in writing to the Slot Administration Office. If the Slot Administration Office does not receive an acceptance to an offer within three business days, the air carrier will be recorded as rejecting the offer and the FAA will offer the available slot exemptions to the next eligible air carrier.

5. Any air carrier that selects slot exemptions must file with the Department a current certification under Order 2400-4-10 or 2000-4-11, as appropriate, and prior to conducting any flight operations under the exemption. In addition, the FAA will not allocate a slot exemption time to an air carrier until the air carrier first provides the Department and the FAA with the markets to be served, the frequency of the service, the number of slot exemptions to be use, the time

when the operations will occur and the effective date.

6. All operations authorized under AIR-21 must commence within 120 days of a carrier's acceptance of an available slot exemption.

7. The Chief Counsel will be the final decisionmaker concerning eligibility of carriers to participate in the allocation process.

Issued on June 29, 2004, in Washington, DC.

**James Whitlow,**

*Deputy Chief Counsel.*

[FR Doc. 04-15250 Filed 7-2-04; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Summary Notice No. PE-2004-54]

#### Petitions for Exemption; Summary of Petitions Received

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

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before July 26, 2004.

**ADDRESSES:** You may submit comments [identified by DOT DMS Docket Number FAA-200X-XXXXX] by any of the following methods:

- *Web Site:* <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- *Fax:* 1-202-493-2251.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.

- *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

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

**FOR FURTHER INFORMATION CONTACT:** Tim Adams (202) 267-8033, Sandy Buchanan-Sumter (202) 267-7271, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on June 29, 2004.

**Anthony F. Fazio,**

*Director, Office of Rulemaking.*

#### Petitions for Exemption

*Docket No.:* FAA-2004-17232.

*Petitioner:* Raytheon Aircraft Charter & Management.

*Section of 14 CFR Affected:* 14 CFR 91.501.

*Description of Relief Sought:* To permit Raytheon Aircraft Charter & Management to transport customers and aircraft parts for owners of Raytheon Aircraft Company-manufactured aircraft for a nominal fee.

*Docket No.:* FAA-2004-17666.

*Petitioner:* Gleim Publications, Inc. *Section of 14 CFR Affected:* 14 CFR 141.45 and 141.55(c)(1).

*Description of Relief Sought:* To permit Gleim Publications, Inc., to apply for a part 141 provisional pilot school certificate without the need of a classroom since all the pilot training will be conducted via Internet.

[FR Doc. 04-15248 Filed 7-2-04; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Proposed Order 8110.ICA, Instructions for Continued Airworthiness, Responsibilities, Requirements, and Content.

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice extending the public comment period.

**SUMMARY:** This notice announces the time extension we are offering to the public to submit comments on proposed Order 8110.ICA. This time extension is necessary to give all interested persons an opportunity to present their views on the proposed policy.

**DATES:** Comments must be received on or before August 20, 2004.

**ADDRESSES:** Send all comments on the proposed policy to: Michael Reinert, Delegation and Airworthiness Programs Branch, P.O. Box 26460, Oklahoma City, OK 73125. Comments may be faxed to (405) 954-4104 or e-mailed to: [mike.reinert@faa.gov](mailto:mike.reinert@faa.gov).

**FOR FURTHER INFORMATION CONTACT:** Michael Reinert, Aircraft Engineering Division, Airworthiness Programs Branch (AIR-140), P.O. Box 26460, Oklahoma City, OK 73125. Telephone: (405) 954-4815, or FAX: (405) 954-4104.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

You are invited to comment on the proposed Order by submitting such written data, views, or arguments to the address or FAX number listed above. Your comments should identify "Order 8110.ICA." The Associated Administrator for Regulation and Certification will consider all communications received on or before the closing date before issuing the final Order.

**Background**

This proposed Order explains to the Aircraft/Engine Certification office (AEO/ECO) and Aircraft Evaluation Group (AEG) personnel their responsibilities and methods on how to review and accept Instructions for Continued Airworthiness (ICA). The contents of this order supplements the regulatory requirements contained in 14 CFR 21.50(b), 23.1529 Appendix G, 25.1529 Appendix H, 27.1529 Appendix A, 31.82 Appendix A, 33.4 Appendix A, and 35.4 Appendix A.

The guidance contained in this proposed Order cancels the following documents in their entirety:

- Order 8110.50, Submitting Instruction for Continued Airworthiness for Type Certificates, Amended Type Certificates and Supplemental Type Certificates, dated October 20, 2003.
- Office of Airworthiness Policy Memorandum, Interpretation of FAR 21.50B, dated August 3, 1982.

- Office of Airworthiness Policy Memorandum, Interpretation of FAR 21.50B, dated August 8, 1983.

**How To Obtain Copies**

You may get a copy of the proposed Order from the Internet at: [http://www.airweb.faa.gov/Regulatory\\_and\\_Guidance\\_Library/rgDAC.nsf/MainFrame?OpenFrameSet](http://www.airweb.faa.gov/Regulatory_and_Guidance_Library/rgDAC.nsf/MainFrame?OpenFrameSet). You may also request a copy from Michael Reinert. See the section entitled **FOR FURTHER INFORMATION CONTACT** for the complete address.

Issued in Washington, DC, on June 25, 2004.

Susan J.M. Cabler,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 04-15041 Filed 7-2-04; 8:45 am]

BILLING CODE 4910-13-M

**DEPARTMENT OF TRANSPORTATION**

**Federal Railroad Administration**

[Waiver Petition Docket Number FRA-2003-16439]

**Canadian Pacific Railway; Notice of Postponement of Public Hearing**

On December 11, 2003, FRA published a notice in the *Federal Register* announcing Canadian Pacific Railway Company's (CPR) intent to be granted a waiver of compliance from certain provisions of the Railroad Locomotive Safety Standards, 49 CFR Part 229, on behalf of themselves, their U.S. subsidiaries the Delaware & Hudson and the Soo Line Railroads, and the New York Air Brake Corporation (NYAB). See 68 FR 69122. Specifically, CPR requested relief from the requirements of 49 CFR 229.27(a)(2) Annual Tests and 49 CFR 229.29(a) Biennial Tests, in order to evaluate extending the required periodic maintenance time intervals for NYAB generation II Computer Controlled Brake (CCB) equipment.

As a result of the comments received by FRA concerning this waiver petition, FRA determined that a public hearing was necessary before a final decision could be made on this petition.

Accordingly, on June 14, 2004, FRA issued a notice in the *Federal Register* announcing that a public hearing was set to begin at 1 p.m. on July 13, 2004, at the Washington Plaza Hotel, 10 Thomas Circle, NW., Washington DC 20005. See 69 FR 33097.

Subsequent to the issuance of that notice, FRA was informed by parties in a related waiver proceeding (Docket No. FRA-2003-16306), scheduled for a public hearing on same date and

location as the present proceeding, that they would like to postpone the scheduled public hearing in that matter in order to engage in additional outreach with the involved labor organizations. Due to the similarities between the two proceeding and in an effort to conserve time and resources, FRA has decided to postpone the public hearing scheduled in this matter. CPR and the commenter in this matter have informally agreed to the postponement of the scheduled public hearing. Consequently, FRA is postponing the public hearing in this matter until further notice. A new public hearing will be rescheduled if any interested party notifies FRA, in writing, within 45 days of the date of this notice of its desire to have an opportunity for oral comment and specifies the basis for their request. Furthermore, no decision will be rendered in this matter without conducting a public hearing unless the party or parties originally requesting the public hearing formally withdraws that request. FRA will issue a notice in the *Federal Register* at least 30 days prior to the date of any new public hearing scheduled in this matter.

All communications concerning these proceedings should identify the appropriate docket number (FRA-2003-16439) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL-401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://dms.dot.gov>.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the *Federal Register* published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78). The Statement may also be found at <http://dms.dot.gov>.

Issued in Washington, DC, on June 29, 2004.

Grady C. Cothen, Jr.,

Acting Associate Administrator for Safety.

[FR Doc. 04-15253 Filed 7-2-04; 8:45 am]

BILLING CODE 4910-06-P



## DEPARTMENT OF TRANSPORTATION

## Federal Railroad Administration

[Waiver Petition Docket Number FRA-2003-16306]

Union Pacific Railroad Company;  
Notice of Postponement of Public  
Hearing

On December 11, 2003, FRA published a notice in the *Federal Register* announcing the Union Pacific Railroad Company's (UP) intent to be granted a waiver of compliance from certain provisions of the Railroad Locomotive Safety Standards, 49 CFR Part 229. See 68 FR 69123. Specifically, UP requests relief from the requirements of 49 CFR 229.27(a)(2) Annual Tests and 49 CFR 229.29(a) Biennial Tests, applicable to all existing and future installations of electronic air brake equipment furnished by Wabtec Corporation of Wilmerding, Pennsylvania on UP locomotives.

As a result of the comments received by FRA concerning this waiver petition, FRA determined that a public hearing was necessary before a final decision could be made on this petition. Accordingly, on June 14, 2004, FRA issued a notice in the *Federal Register* announcing that a public hearing was set to begin at 10 a.m. on July 13, 2004, at the Washington Plaza Hotel, 10 Thomas Circle, NW., Washington DC 20005. See 69 FR 33097. Subsequent to the issuance of that notice, FRA was informed by UP that it would like to postpone the scheduled public hearing in order to engage in additional outreach with the involved labor organizations. The commenter in this matter has informally agreed to postponement of the scheduled public hearing. Consequently, FRA is postponing the public hearing in this matter until further notice. A new public hearing will be rescheduled if any interested party notifies FRA, in writing, within 45 days of the date of this notice of its desire to have an opportunity for oral comment and specifies the basis for their request. Furthermore, no decision will be rendered in this matter without conducting a public hearing unless the party or parties originally requesting the public hearing formally withdraws that request. FRA will issue a notice in the *Federal Register* at least 30 days prior to the date of any new public hearing scheduled in this matter. All communications concerning these proceedings should identify the appropriate docket number (FRA-2003-16306) and must be submitted to the Docket Clerk, DOT Docket Management

Facility, Room PL-401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://dms.dot.gov>.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the *Federal Register* published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78). The Statement may also be found at <http://dms.dot.gov>.

Issued in Washington, DC on June 29, 2004.

Grady C. Cothen, Jr.,

Acting Associate Administrator for Safety.

[FR Doc. 04-15252 Filed 7-2-04; 8:45am]

BILLING CODE 4910-06-P

## DEPARTMENT OF TRANSPORTATION

## Federal Transit Administration

[FTA Docket No. FTA-2004-18530]

Notice of Request for Extension of a  
Currently Approved Collection

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to extend the following currently approved information collection: United We Ride State Coordination Grants.

**DATES:** Comments must be submitted before September 7, 2004.

**ADDRESSES:** All written comments must refer to the docket number that appears at the top of this document and be submitted to the United States Department of Transportation, Central Dockets Office, Pub. L. 401, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 10 a.m. to 5 p.m., e.t., Monday through Friday, except federal holidays. Those desiring notification of receipt of

comments must include a self-addressed, stamped postcard/envelope.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Solomon, United We Ride Initiative, (202) 366-0242.

**SUPPLEMENTARY INFORMATION:** Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

*Title:* United We Ride State Coordination Grants.

*Background:* The U.S. Departments of Transportation (DOT), Health and Human Services (HHS), Labor (DOL) and Education (DoED), have launched United We Ride (UWR), a five part initiative to enhance the coordination on human service transportation. UWR intends to break down the barriers between programs and set the stage for local and state partnerships that generate common sense solutions and deliver A-plus performance for those individuals who depend on transportation services to participate fully in community life. The UWR five initiatives include: (1) The Framework for Action, (2) A National Leadership Forum on Human Service Transportation Coordination, (3) State Leadership Awards, (4) State Coordination Grants, and (5) Help Along the Way.

The Congress and the Executive Branch are interested in ensuring that various human service transportation activities funded by various federal programs are better coordinated. The General Accounting Office (GAO) issued a report on "Transportation Disadvantaged Populations" (June 2003) that identified 62 different federal programs across eight federal agencies that provide funding that may be used to support community transportation services. The report points out that there are multiple public and private agencies that provide human service transportation in any one community, and services vary greatly in terms of eligibility requirements, hours or scope of operation, specific destinations and quality. Given the multiplicity of programs and the significant dollar amounts spent, more effective

coordination is needed to ensure better service to more people. This is especially true when federal, state, and local budgets for human service activities are under extreme financial pressure.

As also indicated by GAO, many objectives have been achieved; however, the fragmentation and lack of coordination within supporting agencies continue to be a challenge. On February 24, 2004, President Bush signed an Executive Order Number 13330 on Human Service Transportation Coordination establishing the Federal Interagency Coordinating Council on Access and Mobility and requiring attention to the obstacles outlined by GAO. The President's Executive Order requires agencies to identify and implement strategies for enhancing coordinated services within a one-year period. The United We Ride initiative includes a State Coordination Grant that provides support to help states address the issues outlined both by GAO and by the President in the Executive Order.

FTA requested an emergency approval from OMB for the United We Ride State Coordination Grant Initiative in a **Federal Register** Notice dated May 21, 2004. OMB approved the request on June 22, 2004. The OMB Control Number is 2132-0562. FTA will publish a **Federal Register** Notice soliciting proposals for the State Coordination Grants shortly.

*Respondents:* State government.

*Estimated Annual Burden on*

*Respondents:* 10 hours for each of the 50 respondents.

*Estimated Total Annual Burden:* 500 hours.

*Frequency:* Annual.

*Issued:* June 29, 2004.

Rita L. Wells,

Associate Administrator for Administration.  
[FR Doc. 04-15120 Filed 7-2-04; 8:45 am]

BILLING CODE 4910-57-P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2004-18541; Notice 1]

#### Michelin North America, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

Michelin North America, Inc. (Michelin) has determined that certain tires it manufactured in 2004 do not comply with S6.5(f) of Federal Motor Vehicle Safety Standard (FMVSS) No. 119, "New pneumatic tires for vehicles other than passenger cars." Michelin

has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports."

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Michelin has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Michelin's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Michelin produced approximately 278 Uniroyal Laredo HD/H Load Range D size LT215/85R16 tires during the period from March 30, 2004, to April 30, 2004, that do not comply with FMVSS No. 119, S6.5(f). These tires were marked "tread plies: 2 polyester + 2 steel + 1 nylon; sidewall plies: 2 polyester." They should have been marked "tread plies: 2 polyester + 2 steel; sidewall plies: 2 polyester."

S6.5(f) of FMVSS No. 119 requires that each tire shall be marked on each sidewall with "the actual number of plies and the composition of the ply cord material in the sidewall and, if different, in the tread area."

Michelin believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Michelin cites a number of cases in which NHTSA granted exemption petitions for similar ply labeling noncompliances, located at 66 FR 63009 (actually 66 FR 63090) (12/04/2001), 66 FR 49254 (09/26/2001), 66 FR 47518 (02/12/2001), 66 FR 41931 (08/02/2001), 67 FR 1399 (01/10/2002), and 69 FR 12195 (03/15/2004). Michelin states:

The Agency has reviewed the impact of tire label information on safety in the context of its rulemaking efforts under the Transportation Recall, Enhancement, Accountability and Documentation (TREAD) Act. This analysis concluded that tire construction information is not relied upon by dealers and consumers in the purchasing or selling of tires and has an inconsequential impact on motor vehicle safety \* \* \* [Comments on the Agency's NPRM] indicated that the tire construction labeling requirements \* \* \* provide little or no safety value to the general public since most consumers do not understand tire construction technology \* \* \* The Agency concluded \* \* \* that it is likely that few consumers are influenced by the tire construction labeling information when making a motor vehicle or tire purchase decision, and that such information is not relied upon by consumers in evaluating the strength and durability of tires.

Michelin also states that, because the tire sidewalls are not of steel cord

construction, but are actually polyester, there is no potential safety concern for people working in the tire retreat, repair, and recycling industries.

Michelin asserts that the tires meet or exceed all performance requirements of FMVSS No. 119, and that the noncompliance has no effect on the performance of the tires or motor vehicle safety. Michelin has corrected the problem.

Interested persons are invited to submit written data, views, and arguments on the petition described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. Mail: Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room Pub. L. 401, 400 Seventh Street, SW., Washington, DC 20590-0001. Hand delivery: Room Pub. L. 401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at <http://dms.dot.gov>. Click on "Help" to obtain instructions for filing the document electronically. Comments may be faxed to 1-202-493-2251, or may be submitted to the Federal eRulemaking Portal: go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

*Comment closing date:* August 5, 2004.

*Authority:* 49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8.

*Issued on:* June 28, 2004.

**Kenneth N. Weinstein,**

Associate Administrator for Enforcement.  
[FR Doc. 04-15160 Filed 7-2-04; 8:45 am]

BILLING CODE 4910-59-P

## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

[Docket No. NHTSA-2004-17437; Notice 2]

## PACCAR, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

PACCAR, Inc. (PACCAR), has determined that the trailer antilock brake system (ABS) warning lights on certain vehicles that were produced by Peterbilt Motors Company (Peterbilt), a division of PACCAR, from April 3, 2003, to November 28, 2003, do not comply with S5.1.6.2(b) of Federal Motor Vehicle Safety Standard (FMVSS) No. 121, "Air brake systems." Pursuant to 49 U.S.C. 30118(d) and 30120(h), PACCAR has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Notice of receipt of the petition was published with a 30 day comment period on April 20, 2004, in the *Federal Register* (69 FR 21189). NHTSA received no comments.

Approximately 4009 Peterbilt models 378, 379, 385, and 387 are affected. S5.1.6.2(b) of FMVSS No. 121 requires that "Each \* \* \* truck tractor \* \* \* shall \* \* \* be equipped with an indicator lamp \* \* \* which is activated whenever the [antilock brake system] malfunction signal circuit \* \* \* receives a signal indicating an ABS malfunction on one or more towed vehicles(s)."

The affected vehicles have two types of fluorescent lights installed in the cab sleeper. These lights create an electromagnetic interference (EMI) with the trailer ABS malfunction signal manufactured by Power Line Carrier (PLC). The fluorescent lights, when on, can interfere with the proper operation of the PLC signal, preventing the telltale from functioning. The PLC signal and the telltale operate correctly when the fluorescent light in the sleeper is off.

PACCAR believes that the noncompliance is inconsequential to motor vehicle safety, and that no corrective action is warranted. PACCAR states that the in-cab warning lamp will not function only if the fluorescent light in the sleeper is on. PACCAR asserts that this is not likely to occur while the vehicle is being driven and if so, it would be a small percentage of the time.

PACCAR explains that not all suspect vehicles will exhibit the behavior, because due to manufacturing variances, some fluorescent lights emit more EMI

than others. PACCAR states that the PLC signal strength from the trailer is also a factor. PACCAR explains that the telltale will operate normally in most cases with a strong trailer PLC signal and only marginal EMI; however the telltale will not operate with a normal to marginal trailer PLC signal and high EMI. In addition, the indicator on the exterior of the trailer is not affected by this defect and would continue to warn the driver in the event of a trailer ABS malfunction. PACCAR also states that the foundation brakes on the trailer are not impacted.

The agency agrees with PACCAR that this noncompliance will not have an adverse effect on vehicle safety. For the in-cab warning lamp malfunction to occur, first the fluorescent light in the sleeper must be on while the vehicle is being driven, which is not likely to occur often, and second, even when this occurs, there must be also be a high EMI from the cab-sleeper fluorescent lights combined with a normal to marginal trailer signal. Even in these cases, the ABS malfunction indicator lamp on the exterior of the trailer will continue to function and is visible from the driver side mirror. In addition, the foundation brakes on the trailer are not affected. Paccar has fixed the problem.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, PACCAR's petition is granted and the petitioner is exempted from the obligation of providing notification of and a remedy for the noncompliance.

**Authority:** 49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8.

Issued on: June 28, 2004.

**Kenneth N. Weinstein,**  
Associate Administrator for Enforcement.  
[FR Doc. 04-15161 Filed 7-2-04; 8:45 am]  
BILLING CODE 4910-59-P

## DEPARTMENT OF TRANSPORTATION

## Surface Transportation Board

[STB Finance Docket No. 34464]

Wisconsin & Southern Railroad Co.—  
Acquisition Exemption—Iowa, Chicago  
& Eastern Railroad Corporation**AGENCY:** Surface Transportation Board.**ACTION:** Notice of exemption.

**SUMMARY:** Under 49 U.S.C. 10502, the Board is granting a petition for exemption from the prior approval

requirements of 49 U.S.C. 10902 for Wisconsin & Southern Railroad Co. (WSOR), a Class II carrier, to acquire from Iowa, Chicago & Eastern Railroad Corporation (IC&E) 7.33 miles of railroad in Janesville, Rock County, WI, owned by IC&E.<sup>1</sup> The line being acquired consists, as described by petitioner, of the following track segments: (1) Between the division of ownership at milepost 94.49 on Buyer's line to Fox Lake, IL, and the division of ownership at milepost 11.02 on Buyer's line to Monroe, WI; (2) between milepost 98.27 and milepost 46.75 on Buyer's line to Milton Jct., WI; (3) between milepost 9.96 and milepost 46.08, consisting generally of the north leg of the wye track at Janesville; and (4) the connecting track between milepost 45.23 and the connection with the leased premises at milepost 46.08.

**DATES:** The exemption will be effective 60 days after WSOR certifies that it has complied with Board regulations at 49 CFR 1121.4(h). Petitions to stay must be filed by July 12, 2004. Petitions to reopen must be filed by July 20, 2004.

**ADDRESSES:** An original and 10 copies of all pleadings referring to STB Finance Docket No. 34464 must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, one copy of all pleadings must be served on petitioner's representative, John D. Heffner, John D. Heffner, PLLC, 1920 N Street, NW., Suite 800, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:**

Joseph H. Dettmar (202) 565-1609.  
[Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

**SUPPLEMENTARY INFORMATION:**

Additional information is contained in the Board's decision. Copies of the decision may be purchased from ASAP Document Solutions by calling (301) 577-2600 (assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339) or by visiting Suite 103, 9332 Annapolis Road, Lanham, MD 20706.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: June 29, 2004.

<sup>1</sup> WSOR states that it already leases and operates over approximately 6.48 miles of railroad and that it would acquire .85 miles of connecting track in addition to the lines over which it currently operates.

By the Board, Chairman Nober, Vice Chairman Mulvey, and Commissioner Burrey.

Vernon A. Williams,  
Secretary.

[FR Doc. 04-15200 Filed 7-2-04; 8:45 am]  
BILLING CODE 4915-01-P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Docket No. AB-400 (Sub-No. 4)]

#### Seminole Gulf Railway, L.P.—Adverse Abandonment—in Lee County, FL

On June 16, 2004, Lee County, FL (Lee County or applicant) filed an adverse application under 49 U.S.C. 10903 requesting that the Surface Transportation Board authorize the abandonment by Seminole Gulf Railway, L.P. (SGLR) of a portion of the Baker Spur, which consists of a rail line beginning at engineering station 36+35+, which is approximately 100 feet southwest of where the line crosses Alico Road, directly west of Alico Center Road, approximately 1 mile east of U.S. Hwy. 41, and parallel to Alico Road station 79+00, continuing across Alico Road and then running parallel to and north of Alico Road for approximately 4,260 feet to the eastern terminus of the line at engineering station 79+95.<sup>1</sup> The line traverses United States Postal Service ZIP Codes 33912 and 33913 and includes no stations.

Lee County states that it is in the process of widening Alico Road, a heavily traveled thoroughfare between Interstate Hwy. 75 and U.S. Hwy. 41. This expansion project will require a new grade crossing where the Baker Spur crosses Alico Road. Applicant indicates that the cost of installing the required grade crossing would exceed \$1 million, and that the cost of removing the grade crossing if the line were later abandoned would be approximately \$300,000. Applicant seeks to avoid the expenditure of public funds to construct and remove this crossing. According to Lee County, the sole shipper on the line, J.J. Taylor Distributors Ft. Myers/Naples, Inc. (J.J. Taylor), is in the process of relocating its operations, at which point there will be no shippers requiring rail service on this line. Lee County requests that the

<sup>1</sup> Originally the proposed abandonment began approximately 300 feet to the west of Alico Road station 79+00 at Alico Road Station 76+00, but to accommodate nearby shipper Florida Power and Light's (FP&L) use of the Baker Spur, Lee County has moved the western terminus of the abandonment to Alico Road Station 79+00.

abandonment authority become effective one day after J.J. Taylor has either departed its Alico Road facility or converted its operations so as not to require rail service. Applicant asserts that the abandonment will not adversely impact SGLR as it will be able to realize the net salvage value of the line and save on any maintenance costs. Lee County adds that FP&L, which uses an adjacent portion of the Baker Spur, will also not be harmed as SGLR will be able to transload shipper's equipment to a paved section of the service road to the south of the Baker Spur.<sup>2</sup> In support of the proposal, applicant attaches to its application statements from shipper J.J. Taylor, nearby shippers FP&L and Airport Industrial Holdings, LLC, and applicant's landlord, Alico Industries, Inc.

In decisions served in this proceeding on June 9, 2004, and June 15, 2004, Lee County was granted exemptions and waivers from various statutory provisions governing rail line abandonments and several of the Board's related regulations that were not relevant to its adverse abandonment application or that sought from applicant information not available to it. Specifically, Lee County was granted waivers from the notice of intent requirements at 49 CFR 1152.20(a)(2)(xii), (a)(3), and (b)(1), and 1152.21, and was granted exemptions and waivers from the application requirements at 49 U.S.C. 10903(a)(3)(B) and (c), and 49 CFR 1152.22(a)(4), (b)-(d) and (i) and 1105.7(b).<sup>3</sup>

Lee County states that, based on the information it possesses, the line does not contain federally granted rights-of-way. Any documentation in Lee County's possession will be made available promptly to those requesting it. Applicant's entire case-in-chief for abandonment was filed with the application.

The interests of affected railroad employees will be protected by the

<sup>2</sup> In its application, Lee County again requests that the Board grant an exemption from the public use provisions at 49 U.S.C. 10905 and a waiver from the public use and trail use provisions at 49 CFR 1152.28-29. However, as stated in the June 9, 2004, decision in this proceeding, such requests need not be addressed at this time and can be addressed, if necessary, in the final decision on the merits of this application. Also applicant apparently believes that the Board granted it an exemption/waiver from the offer of financial assistance (OFA) requirements at 49 U.S.C. 10904 and 49 CFR 1152.27. *Application*, p.5, n.5. Applicant is incorrect. As with the public use and trail use requests, the Board also reserved judgment on the OFA request at that time and will continue to do so.

<sup>3</sup> Because Lee County had already satisfied a number of provisions for which it had requested a waiver, some of its waiver requests were denied as unnecessary. A fee waiver request had been granted earlier by the Board's Secretary.

conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

Any interested person may file written comments concerning the proposed abandonment or protests (including protestant's entire opposition case) by August 2, 2004.

Persons opposing the proposed adverse abandonment who wish to participate actively and fully in the process should file a protest. Persons who may oppose the abandonment but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments. Parties seeking information concerning the filing of protests should refer to § 1152.25.

All filings in response to this notice must refer to STB Docket No. AB-400 (Sub-No. 4) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001; and (2) Robert P. vom Eigen, Foley & Lardner, 3000 K Street, NW., Suite 500, Washington, DC 20008. Filings may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should comply with the instructions found on the Board's <http://www.stb.dot.gov> Web site, at the "E-FILING" link. Any person submitting a filing in the traditional paper format should send an original and 10 copies of the filing to the Board with a certificate of service. Except as otherwise set forth in section 1152, every document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).

The waiver decision noted that Lee County had sought a waiver from the environmental requirements at 49 CFR 1152.22(f), arguing that the proposed adverse abandonment would not cause a departure from the volume of railroad traffic when it becomes effective. However, the Board denied this request. It noted that, because Lee County had already submitted the required environmental documentation to the Board's Section of Environmental Analysis (SEA), a waiver was not needed.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact SEA. EAs in abandonment or discontinuance proceedings normally will be made available within 33 days of the filing of the application. The

deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565-1592 or refer to the full abandonment regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to SEA at (202) 565-1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: June 28, 2004.

By the Board, David M. Kunschik,  
Director, Office of Proceedings.

Vernon A. Williams,  
Secretary.

[FR Doc. 04-15199 Filed 7-2-04; 8:45 am]

BILLING CODE 4915-01-P

## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

#### Proposed Information Collection; Comment Request

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau, as part of their continuing effort to reduce paperwork and respondent burden, invite the 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. 3501 *et seq.*). Currently, we are seeking comments on TTB Form 5000.19 titled "Tax Authorization Information."

**DATES:** We must receive your written comments on or before September 7, 2004.

**ADDRESSES:** You may send comments to Sandra Turner, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

- P.O. Box 14412, Washington, DC 20044-4412;
- 202-927-8525 (facsimile); or
- [formcomments@ttb.gov](mailto:formcomments@ttb.gov) (e-mail).

Please reference the information collection's title, form or recordkeeping

requirement number, and OMB number (if any) in your comment. If you submit your comment via facsimile, send no more than five 8.5 x 11 inch pages in order to ensure electronic access to our equipment.

**FOR FURTHER INFORMATION CONTACT:** To obtain additional information, copies of the information collection and its instructions, or copies of any comments received, contact Sandra Turner, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044-4412; or telephone 202-927-8210.

#### SUPPLEMENTARY INFORMATION:

*Title:* Tax Authorization Information.

*OMB Number:* 1513-0001.

*TTB Form Number:* 5000.19.

*Abstract:* TTB F 5000.19 is required by TTB to be filed when a respondent's representative, not having power of attorney, wishes to obtain confidential information regarding the respondent. After proper completion of the form, information can be released to the representative.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 50.

*Estimated Total Annual Burden Hours:* 50.

#### Request for Comments

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of this information collection. All comments are part of the public record and subject to disclosure. Please not do include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether this information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Dated: June 15, 2004.

William H. Foster,  
Chief, Regulations and Procedures Division.  
[FR Doc. 04-15183 Filed 7-2-04; 8:45 am]  
BILLING CODE 4810-31-P

## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

#### Proposed Information Collection; Comment Request

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau, as part of their continuing effort to reduce paperwork and respondent burden, invite the 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. 3501 *et seq.*). Currently, we are seeking comments on TTB Form 5000.21 titled "Referral of Information."

**DATES:** We must receive your written comments on or before September 7, 2004.

**ADDRESSES:** You may send comments to Sandra Turner, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

- P.O. Box 14412, Washington, DC 20044-4412;
- 202-927-8525 (facsimile); or
- [formcomments@ttb.gov](mailto:formcomments@ttb.gov) (e-mail).

Please reference the information collection's title, form or recordkeeping requirement number, and OMB number (if any) in your comment. If you submit your comment via facsimile, send no more than five 8.5 x 11 inch pages in order to ensure electronic access to our equipment.

**FOR FURTHER INFORMATION CONTACT:** To obtain additional information, copies of the information collection and its instructions, or copies of any comments received, contact Sandra Turner, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044-4412; or telephone 202-927-8210.

#### SUPPLEMENTARY INFORMATION:

*Title:* Referral of Information.

*OMB Number:* 1513-0003.

*TTB Form Number:* 5000.21.

*Abstract:* This form is used to internally refer potential violations of TTB administered statutes and to externally refer to the appropriate

Federal, State or local enforcement/regulatory agency potential violations of other statutes. The information is voluntary and pertinent only to the Federal or State agency that has information referred to it.

**Current Actions:** There are no changes to this information collection and it is being submitted for extension purposes only.

**Type of Review:** Extension.

**Affected Public:** Federal Government, State, Local or Tribal Government.

**Estimated Number of Respondents:** 500.

**Estimated Total Annual Burden Hours:** 500.

#### Request for Comments

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of this information collection. All comments are part of the public record and subject to disclosure. Please not do include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether this information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Dated: June 15, 2004.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 04-15184 Filed 7-2-04; 8:45 am]

BILLING CODE 4810-31-P

#### DEPARTMENT OF THE TREASURY

##### Alcohol and Tobacco Tax and Trade Bureau

##### Proposed Information Collection; Comment Request

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury and its Alcohol and Tobacco

Tax and Trade Bureau, as part of their continuing effort to reduce paperwork and respondent burden, invite the 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. 3501 *et seq.*). Currently, we are seeking comments on TTB Form 5640.1 titled "Offer of Compromise of liability incurred under the provisions of Title 26 U.S.C. enforced and administered by the Alcohol and Tobacco Tax and Trade Bureau."

**DATES:** We must receive your written comments on or before September 7, 2004.

**ADDRESSES:** You may send comments to Sandra Turner, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

- P.O. Box 14412, Washington, DC 20044-4412;
- 202-927-8525 (facsimile); or
- [formcomments@ttb.gov](mailto:formcomments@ttb.gov) (e-mail).

Please reference the information collection's title, form or recordkeeping requirement number, and OMB number (if any) in your comment. If you submit your comment via facsimile, send no more than five 8.5 × 11 inch pages in order to ensure electronic access to our equipment.

**FOR FURTHER INFORMATION CONTACT:** To obtain additional information, copies of the information collection and its instructions, or copies of any comments received, contact Sandra Turner, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044-4412; or telephone 202-927-8210.

#### SUPPLEMENTARY INFORMATION:

**Title:** Offer of Compromise of liability incurred under the provisions of Title 25 U.S.C. enforced and administered by the Alcohol and Tobacco Tax and Trade Bureau.

**OMB Number:** 1513-0054.

**TTB Form Number:** 5640.1.

**Abstract:** TTB Form 5640.1 is used by persons who wish to compromise criminal and/or civil penalties for violations of the Internal Revenue Code. If accepted, the offer in compromise is a settlement between the government and the party in violation in lieu of legal proceedings or prosecution. The form identifies the party making the offer, violations, amount of offer and circumstances concerning the violations.

**Current Actions:** There are no changes to this information collection and it is being submitted for extension purposes only.

**Type of Review:** Extension.

**Affected Public:** Business or other for-profit.

**Estimated Number of Respondents:** 40.

**Estimated Total Annual Burden Hours:** 80.

#### Request for Comments

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of this information collection. All comments are part of the public record and subject to disclosure. Please not do include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether this information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Dated: June 15, 2004.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 04-15185 Filed 7-2-04; 8:45 am]

BILLING CODE 4810-31-P

#### DEPARTMENT OF THE TREASURY

##### Alcohol and Tobacco Tax and Trade Bureau

##### Proposed Information Collection; Comment Request

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau, as part of their continuing effort to reduce paperwork and respondent burden, invite the 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. 3501 *et seq.*). Currently, we are seeking comments on TTB Form 5300.27 titled "Federal Firearms and Ammunition Excise Tax Deposit."

**DATES:** We must receive your written comments on or before September 7, 2004.

**ADDRESSES:** You may send comments to Sandra Turner, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

- P.O. Box 14412, Washington, DC 20044-4412;

- 202-927-8525 (facsimile); or
- [formcomments@ttb.gov](mailto:formcomments@ttb.gov) (e-mail).

Please reference the information collection's title, form or recordkeeping requirement number, and OMB number (if any) in your comment. If you submit your comment via facsimile, send no more than five 8.5 x 11 inch pages in order to ensure electronic access to our equipment.

**FOR FURTHER INFORMATION CONTACT:** To obtain additional information, copies of the information collection and its instructions, or copies of any comments received, contact Sandra Turner, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044-4412; or telephone 202-927-8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Federal Firearms and Ammunition Excise Tax Deposit.  
*OMB Number:* 1513-0096.

*TTB Form Number:* 5300.27.

*Abstract:* A federal excise tax is imposed by 26 U.S.C. 4181 on the sale of pistols and revolvers, other firearms, shells and cartridges sold by firearms, manufacturers, producers, and importers. Sections 6001, 6301, and 6302 of Title 26 U.S.C. establish the authority for a deposit of excise tax to be made. The information on the form identifies the taxpayer and establishes the taxpayer's deposit.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit, individuals or households.

*Estimated Number of Respondents:* 283.

*Estimated Total Annual Burden Hours:* 770.

**Request for Comments**

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of this information collection. All comments are part of the public record and subject to disclosure. Please not do include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether this information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Dated: June 15, 2004.

**William H. Foster,**

*Chief, Regulations and Procedures Division.*

[FR Doc. 04-15186 Filed 7-2-04; 8:45 am]

**BILLING CODE 4810-31-P**

**DEPARTMENT OF VETERANS AFFAIRS**

**VETERANS' ADVISORY COMMITTEE ON EDUCATION; NOTICE OF MEETING**

The Department of Veterans Affairs (VA) gives notice under Public Law 92-463 (Federal Advisory Committee Act) that the Veterans' Advisory Committee on Education will meet on Monday, July 26, 2004, from 8:30 a.m. to 10 a.m.; Tuesday, July 27, 2004, from 8:30 a.m. to 4 p.m.; and Wednesday, July 28,

2004, from 8:30 a.m. to 11 a.m. The meeting will be held at the Roosevelt Hotel, Conference Level, Riverside Room, Madison Avenue at 45th Street, New York, New York. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of education and training programs for veterans and servicemembers, reservists, and dependents of veterans under Chapters 30, 32, 35, and 36 of Title 38 and Chapter 1606 of Title 10, United States Code.

On July 26, the Committee will host a town hall-style meeting with VA Education Liaison Representatives, certifying officials, veteran students, and State Approving Agency Directors. On July 27, the meeting will begin with opening remarks and an overview by Mr. James Bombard, Committee Chair. In addition, this session will include discussions on pending and new legislation, and briefings from subcommittees on accelerated payment issues, the Veterans' Education Outreach Program, Chapter 1606 restructuring, and other Chapter 1606 reserve issues. On July 28, the Committee will review and summarize issues addressed during this meeting.

Interested parties may file written statements to the Committee before the meeting, or within 10 days after the meeting, with Mr. Stephen Dillard, Designated Federal Officer, Department of Veterans Affairs, Veterans Benefits Administration (225B), 810 Vermont Avenue, NW, Washington, DC 20420. Oral statements will be heard on Wednesday, July 28, 2004, at 9:15 a.m. Any member of the public wishing to attend the meeting should contact Mr. Stephen Dillard or Mr. Michael Yunker at (202) 273-7187.

Dated: June 24, 2004.

**E. Philip Riggan,**

*Committee Management Office.*

[FR Doc. 04-15138 Filed 7-2-04; 8:45 am]

**BILLING CODE 8320-01-M**

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**Corrections**

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Federal Register

Vol. 69, No. 128

Tuesday, July 6, 2004

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This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

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**DEPARTMENT OF AGRICULTURE****Forest Service****Evaluating Applications and Issuing Easements for Certain Water Development Facilities on National Forest System Lands That Qualify Under the Act of October 27, 1986***Correction*

In notice document 04-14859 beginning on page 39404 in the issue of

Wednesday, June 30, 2004, make the following correction:

On the same page, in the first column, under **DATES**, in the second line, "July 30, 2004" should read, "June 30, 2004."

[FR Doc. C4-14859 Filed 7-2-04; 8:45 am]

BILLING CODE 1505-01-D





# Federal Register

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Tuesday,  
July 6, 2004

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Part II

## Department of Labor

Veterans' Employment and Training  
Service

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20 CFR Part 1001  
Funding Formula for Grants to States;  
Proposed Rule

**DEPARTMENT OF LABOR****Veterans' Employment and Training Service****20 CFR Part 1001**

RIN 1293-AA11

**Funding Formula for Grants to States**

**AGENCY:** Veterans' Employment and Training Service (VETS), Department of Labor.

**ACTION:** Notice of proposed rulemaking; request for comments.

**SUMMARY:** The Department of Labor is issuing a Notice of Proposed Rulemaking (NPRM) with a request for comments to implement section 4(a)(1) of the Jobs for Veterans Act (Act). This proposed rule closely adheres to the interim final rule (IFR) published June 30, 2003, which expires September 30, 2004. Like the IFR, this proposed rule establishes formula criteria for making funds available for veterans' employment services and the Transition Assistance Program (TAP). Minor changes to section 1001.151 of title 20 appear in this proposed rule to clarify funding issues related to TAP. This proposed rule adds a new subpart F to 20 CFR part 1001. This rule, once it becomes final, will replace the IFR that expires September 30, 2004.

**DATES:** To ensure consideration, comments must be received on or before September 7, 2004.

**ADDRESSES:** You may submit comments, identified by RIN number 1293-AA11, by any of the following methods: Federal Rulemaking Portal: <http://www.regulations.gov>.

Follow the instructions for submitting comments.

Comments may also be sent to Paul Robertson, Legislative Analysis Division, VETS. Electronic mail (e-mail) is the preferred method for submitting comments. Comments must be clearly identified as pertaining to this Notice of Proposed Rulemaking. E-mail may be sent to [robertson.paul@dol.gov](mailto:robertson.paul@dol.gov). Brief comments, limited to ten pages or fewer may be transmitted by facsimile (FAX) at (202) 693-4754 (this is not a toll free number). Individuals with hearing impairments may call (800) 670-7008 (TTY/TDD).

Where necessary, hard copies of comments also may be mailed or delivered to Paul Robertson, Legislative Analysis Division, VETS, U.S. Department of Labor, Room S-1325, 200 Constitution Avenue NW., Washington, DC 20210. Because of heightened security measures, mail in Washington,

DC is sometimes delayed. We will only consider comments postmarked on or before the deadline for comments.

Receipt of submissions, whether by e-mail, FAX transmittal, or U.S. Mail, will not be acknowledged; however, the sender may request confirmation that a submission has been received, by telephoning VETS at (202) 693-4714 (individuals with hearing impairments may call (800) 670-7008 (TTY/TDD)), or by making a request for confirmation (separate from the submission) via the above e-mail.

Comments will be available for public inspection during normal business hours at the above address. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. Copies of this Notice of Proposed Rulemaking will be made available in the following formats: large print, electronic file on computer disk, and audiotape. To schedule an appointment to review the comments and/or to obtain the Notice of Proposed Rulemaking in an alternate format, contact VETS at the e-mail address, telephone number, or mail address listed above.

**FOR FURTHER INFORMATION:** Contact Paul Robertson, Legislative Analysis Division, VETS, U.S. Department of Labor, Room S-1325, 200 Constitution Avenue NW., Washington, DC 20210, or by e-mail at [robertson.paul@dol.gov](mailto:robertson.paul@dol.gov) or call 202-693-4714.

**SUPPLEMENTARY INFORMATION:** The Preamble to this Notice of Proposed Rulemaking is organized as follows:

- I. Background—provides a brief description of the development of the Notice of Proposed Rulemaking.
- II. Authority—cites the statutory provisions for the Notice of Proposed Rulemaking.
- III. Section-by-Section Review of the Rule—summarizes pertinent aspects of the regulatory text, describes its purposes and application, and summarizes and responds to comments received on the Interim Final Rule published June 30, 2003 (68 FR 39000).
- IV. Administrative Information—sets forth the applicable information as required by law.

**I. Background**

The President signed the Jobs for Veterans Act (Pub. L. 107-288) into law on November 7, 2002. The Act amends title 38 of the United States Code to revise and improve employment, training, and placement services furnished to veterans. This rule implements the provisions of 38 U.S.C. 4102A(c) as amended by section 4 of the Act that establishes a new funding formula for making funds available to each State, with an approved State Plan,

to support the Disabled Veterans Outreach Program (DVOP) and the Local Veterans Employment Representative (LVER) programs. Additionally, funding will be made available to support TAP and respond to exigent circumstances.

On June 30, 2003, an Interim Final Rule with a request for comments during a 60-day comment period was published in the *Federal Register*, at 68 FR 39000 through 39003. We thoroughly reviewed every comment received during the comment period. These comments are summarized and responded to in section III of this Preamble.

Congress allowed for the phasing in of the new statutory funding formula "over the three fiscal-year period" beginning in fiscal year 2003, which started on October 1, 2002 (38 U.S.C. 4102A(c)(2)(B)(ii)). Because of the late enactment of the law, funding for year one of the phase-in had already occurred by the date of enactment. Congress intended that the formula be phased-in and fully implemented by the beginning of fiscal year 2006, which is October 1, 2005. The phase-in provision was not intended to delay the anticipated date of full implementation of the formula. In order to adhere to the implementation expectations of Congress, the phase-in process began in fiscal year 2004, through publication of an Interim Final Rule for one year. In order to ensure full public comment and adequate public notice of the new funding criteria applicable after fiscal year 2004, the Department issues this Notice of Proposed Rulemaking and requests comments.

**II. Authority**

The statutory authority for this Notice of Proposed Rulemaking is 38 U.S.C. 4102A(c)(2)(B), as amended by the Jobs for Veterans Act, enacted November 7, 2002, as Public Law 107-288.

**III. Section-by-Section Review of the Rule****A. Funding Formula—Basic Grant**

The Act requires the Secretary to make funds available to each State, upon approval of an "application" (i.e., a State Plan), to support the DVOP and LVER programs designed to provide employment services to veterans and transitioning servicemembers (38 U.S.C. 4102A(c)(2)(B)). The Act further allows the Secretary to use such criteria as the Secretary may establish in regulation, including civilian labor force and unemployment data in determining the funding levels (38 U.S.C. 4102A(c)(B)(i), as amended by the Act). The statute requires that the amount of funding

available to each State reflect the ratio of: (1) The total number of veterans residing in the State who are seeking employment; to (2) the total number of veterans seeking employment in all States (38 U.S.C. 4102A(c)(B)(i)(I) and (II)). Additionally, the Act permits the Secretary to establish minimum funding levels and hold harmless criteria, in order to mitigate the impact upon States whose funding levels may be significantly affected by the implementation of the new formula (38 U.S.C. 4102A(c)(B)(iii)).

The Act states that the use of this formula will be phased-in over the three fiscal-year period beginning October 1, 2002. Since the statute was not enacted until November 7, 2002, after the beginning of fiscal year 2003, we interpret this to mean that the first phase-in year for the funding formula will be fiscal year 2004, which began on October 1, 2003. This will only allow a two-year phase-in period, fiscal years 2004 and 2005, instead of the three years as contemplated by the statute. To give the States the maximum phase-in period possible, an Interim Final Rule was published on July 30, 2003, which expires September 30, 2004. Once this regulation becomes a Final Rule, it will replace the Interim Final Rule.

#### 1. Basic Grant Funding Formula and Data and Methodology

We propose to use the same data sources as those used in the FY 2004 formula established by the IFR. The ratio of the number of veterans seeking employment in each State to the number of veterans seeking employment in all States is best determined using data collected through the Current Population Survey (CPS) and the Local Area Unemployment Statistics (LAUS), both of which are administered by the Bureau of Labor Statistics (BLS). We are using LAUS data to determine the number of unemployed persons in the civilian labor force because LAUS data are considered to be the most reliable data on the levels of general unemployment at the State level; and the Office of Management and Budget (OMB) requires Agencies allocating federal funds that include unemployment as a factor to use LAUS as the indicator of unemployment, unless the authorizing statute specifies otherwise (OMB Statistical Policy Directive 11). We are using the CPS data to determine the number of veterans in the civilian labor force because the CPS is considered to be the most reliable source of data on the levels of veteran participation in the civilian labor force at the State level. A subset of the CPS data on veterans in the civilian labor

force does provide State level estimates of the number of unemployed veterans. However, because the sample size of veterans at the State level is so small, these estimates are subject to large sampling errors. Therefore, the funding levels would be subject to undue variability/volatility if that subset of the CPS data were used alone to determine the number of unemployed veterans at the State level.

Because LAUS data are based on the total unemployment level for a State, we concluded that LAUS data are the best available measure of persons who are seeking work. Accordingly, we concluded the number of unemployed veterans in each State can be best determined by using a ratio of the general unemployment level in each State compared to the general unemployment level in all States (LAUS for the individual States/LAUS for all States) and the number of veterans in the civilian labor force in each State compared to the number of veterans in the civilian labor force in all States (CPS for the individual States/CPS for all States). The result of these two ratios will be averaged and converted to a single ratio of the number of veterans seeking employment in each State compared to the number of veterans seeking employment in all States. Three-year averages of the CPS and LAUS data are used in calculating the funding formula to stabilize the effect of annual fluctuations in the data in order to avoid undue fluctuations in the annual amounts allocated to States.

We received seven comments on the use of these data sources in response to the issuance of the Interim Final Rule. One commenter expressed the concern that stakeholders were asked to comment on the rule without being given the data for analysis.

*Response:* CPS and LAUS data are in the public domain and can be obtained through information requests to the Bureau of Labor Statistics, Division of Local Area Unemployment Statistics, 2 Massachusetts Avenue, NE., Room 4675, Washington, DC 20212 or by e-mail request [LAUSInfo@bls.gov](mailto:LAUSInfo@bls.gov).

We have determined that our choice of data sources provides the most meaningful and reliable data on veterans seeking employment, given the factors that are required by statute.

Three commenters objected to the use of LAUS data based on a concern that too many veterans who use employment services are excluded from the LAUS computation such as veterans who are either ineligible for or have exhausted their unemployment benefits. Additionally, three commenters requested the use of DOL's Employment

and Training Administration data from the ETA 9002 report rather than LAUS.

*Response:* The Jobs for Veterans Act mandates the use of State civilian labor force and unemployment data. See 38 U.S.C. 4102A(c)(2)(B)(i). The Office of Management and Budget requires Agencies allocating federal funds that include unemployment as a factor to use LAUS as the indicator of unemployment, unless the authorizing statute specifies otherwise (OMB Statistical Policy Directive 11). In addition, LAUS unemployment data includes all individuals who had no employment and had looked for work, whether or not they drew unemployment benefits.

We are not using data from the ETA 9002 report on labor exchange services provided to job seekers instead of LAUS data. The ETA 9002 would not provide a reliable measure of the unemployed in each State because many of those registering for those labor exchange services are employed. Our proposed analysis considers both unemployment statistics and civilian labor force data. The LAUS data are considered the most reliable source available for area unemployment statistics. For civilian labor force data, the CPS household survey is the official measure of the labor force for the nation. Annual average labor force data for all States and the District of Columbia are currently derived directly from the CPS. BLS has published detailed descriptions of the concepts and methodology used on their website at [www.bls.gov](http://www.bls.gov). Based on the foregoing, we propose to make no change from the Interim Final Rule on this issue.

Two commenters expressed the concern that the new funding formula does not take into account States with large landmass. It was suggested that we include a provision providing extra funding for those States or that we identify such a situation as a per se exigent circumstance warranting additional funds from the monies set aside for exigent circumstances.

*Response:* The Jobs for Veterans Act mandates that the proportion of funding reflect the ratio between the total number of veterans residing in the State who are seeking employment to the total number of veterans seeking employment in all States (38 U.S.C. § 4102A(c)(2)(B)(i)). The authorization for setting criteria for the funding formula relates to how we determine the number of veterans seeking employment, not how or where they are served. Although we are sympathetic that coverage in a large geographical area can present unique challenges to States, we have not included this

criterion in the new Proposed Rule because we believe that, as written, the Proposed Rule complies with the law while maintaining much needed flexibility within the formula. Furthermore, we have not proposed to create a per se category for geographically large States in order to maintain flexibility and maximize the most effective use of limited resources. Exigent circumstances can vary from State to State and year to year; therefore we believe the best course is to review each situation on a case-by-case basis. Funds will be distributed based on need as supported by an approved State Plan or a modification to the State Plan.

Four commenters also articulated the concern that the formula would not include "underemployed" veterans, e.g., a veteran who is employed by necessity in a job that pays less than the veteran should receive based on his/her education, skills, and/or experience. Additionally, one commenter was concerned that neither survey asks the question "are you looking for work?" in the context of a veteran who is currently employed but seeking alternative employment.

*Response:* With respect to the question, "Are you looking for work?" not being asked of those who are employed, the commenter is correct that this question is not asked of those CPS survey respondents who are employed. The question, "Are you looking for work?" is only included in a series of questions asked of those respondents identified as "not employed" to determine those who are "unemployed." Furthermore, the comment applies to the LAUS data because the CPS survey is an important foundation of the LAUS data, which are derived by supplementing the CPS survey data with data from a variety of other sources.

While there is no direct measure of the underemployed, veterans or other workers, in the CPS or LAUS data, underemployed veterans are taken into account in the funding formula. Those veterans who are considered to be underemployed because they seek alternative employment while currently employed are counted among the employed veterans in the civilian labor force. Thus, they are included in the data used to determine the funding allocations.

## 2. Minimum Funding Levels and Hold Harmless Criteria

The Act authorizes the Secretary to establish hold harmless criteria and minimum funding levels (38 U.S.C. 4102A(c)(2)(B)(iii)). This Notice of Proposed Rulemaking establishes a hold

harmless rate of eighty percent for the second phase-in year (fiscal year 2005) to mitigate the impact of the most significant reductions to States' prior funding levels. This is the same rate as that set forth in the Interim Final Rule. With the eighty percent hold harmless during fiscal year 2005 each State will be provided no less than eighty percent of its previous year's allocation. The eighty percent hold harmless rate will allow the reduction of funding, to those States impacted, to be implemented incrementally. After the funding phase-in period is completed in fiscal year 2005, we propose that a ninety percent hold harmless rate be applied, ensuring each State will receive at least ninety percent of their previous year's allocation. This will align the hold harmless level with the hold harmless level established by Section 6 of the Wagner-Peyser Act (29 U.S.C. 49e(b)(2)). In addition to the hold harmless provisions in any year, a State minimum funding level of 0.28 percent (.0028) of the prior year's total funding level for all States will be applied, meaning that no State may receive less than that amount. This is the same percentage applied in Section 6 of the Wagner-Peyser Act (29 U.S.C. 49e(b)(3)).

One commenter requested that the hold harmless provision be applied to amounts actually received (e.g., including additional money received due to reallocation from another State) rather than the funds allocated.

*Response:* The existence of reallocated funds is usually due to unusual circumstances experienced by States such as hiring freezes that result in vacant positions, which, in turn, may lead to the reallocation of funds. If the hold harmless provision were applied to the larger amount, States would receive more than their fair share of funding since the allocation would no longer be based on the service population. Furthermore, such a scheme may result in penalizing a State that was unable to expend its full allocation due to unforeseen circumstances. No changes have been made on this basis.

### B. Other Funding Criteria

In addition to requiring the Secretary to use civilian labor force and unemployment data in establishing States' funding levels, the Act states that the Secretary "shall make available to each State \* \* \* an amount of funding \* \* \* using such criteria as the Secretary may establish in regulation \* \* \*" (38 U.S.C. 4102A(c)(2)(B)(i)). Accordingly, the proposed rule provides that in addition to the amount awarded based on the basic grant funding formula, described in section IV.A.1 of

this document, the Secretary may distribute up to four percent of the total amount available for allocation based on TAP workload and exigent circumstances (38 U.S.C. 4102, 4102A(b), and 10 U.S.C. 1141). These other funding criteria are discussed more fully below.

### 1. Transition Assistance Program (TAP) Workload

The Act requires the Secretary to implement programs to ease the transition of servicemembers to civilian careers (38 U.S.C. 4102. See also 10 U.S.C. 1141). TAP workshops provide such employment services for transitioning servicemembers. Because active military personnel are not included in the CPS civilian labor force data, or in the LAUS unemployment data, the level of need for TAP workshops is not reflected in the funding formula for the basic grant. Therefore, supplemental funding is needed in order to ensure adequate funding is available to provide TAP workshops. In the proposed rule, the allocation to the States will be proportional to each State's TAP workload as identified in its State Plan. Policy guidance will be provided to States to assist them in determining the amounts needed for this additional workload, which will be calculated on a per workshop basis as identified in the State Plan.

We received two comments supporting the proposed funding formula, particularly the method for allocating TAP workshop funds. One comment requested clarification of whether overseas TAP workshops would be covered by the four percent set aside proposed.

*Response:* The set aside fund will be available to help support TAP workshops, including TAP workshops overseas. The Act requires the Secretary to implement programs to ease the transition of servicemembers to civilian careers. (38 U.S.C. 4102. See also 10 U.S.C. 1141). There are approximately 20,000 servicemembers and their spouses who are eligible to participate in TAP workshops at overseas locations annually. In order to clarify that the four percent funds may be available for TAP, we have changed the proposed language contained in § 1001.151 by deleting "to the States" from subsection (a). That section, as currently proposed in this Notice of Proposed Rulemaking, now reads "[f]our percent of the total amount available at the national level will be available based on Transition Assistance Program (TAP) workload and other exigencies." For similar reasons we propose to modify section (b) as follows:

"[f]unding for TAP workshops will be allocated on a per workshop basis. Funding to the States will be provided based on the workload shown in the approved State Plan".

## 2. Exigent Circumstances

Supplemental funding will be made available for exigencies, including but not limited to, needs based on sharp or unanticipated fluctuations in State unemployment levels and services to transitioning servicemembers (as required by the Act). Economic and unemployment conditions projected at the time of the grant application may not reflect actual conditions. In such cases, program needs may warrant additional funding. These funds will be made available based on need.

## IV. Administrative Information

### *Regulatory Flexibility and Regulatory Impact Analysis*

The Regulatory Flexibility Act of 1980, as amended in 1996 (5 U.S.C. chapter 6), requires the Federal government to anticipate and minimize the impact of rules and paperwork requirements on small entities. "Small entities" are defined as small businesses (those with fewer than 500 employees, except where otherwise provided), small non-profit organizations (those with fewer than 500 employees, except where otherwise provided), and small governmental entities (those in areas with fewer than 50,000 residents). We have assessed the potential impact of this rule on small entities. This proposed rule implements reforms to the funding of the State operated veterans' employment and training services and transitional assistance programs for separating servicemembers. Because the rule affects only the distribution of appropriated funds among the States, we have determined that the rule will not have a significant impact on a substantial number of small governments or other small entities. We are transmitting a copy of our certification to the Chief Counsel for Advocacy for the Small Business Administration. In addition, while these rules govern the distribution and administration of funds appropriated by Congress, the rules themselves do not 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. Accordingly, under the Small Business Regulatory Enforcement Fairness Act (SBREFA) (5 U.S.C. Chapter 8), the Department has determined that these are not "major rules," as defined in 5 U.S.C. 804(2).

### *Paperwork Reduction Act*

This proposed rule does not require any information to be collected, therefore is not subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

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

The Department of Labor has determined that this proposed rule is a "significant regulatory action". However, it is not an economically significant rule, therefore does not fall under Executive Order 12866. While this rule affects the distribution among States of funds appropriated by Congress, the rule itself will not materially alter the rights and obligations of the State recipients, particularly in light of the hold harmless provisions included in the rule. Furthermore, the rule itself will not: Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs; 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; create a serious inconsistency, or otherwise interfere with an action taken or planned by another agency; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

### *Unfunded Mandates*

Executive Order 12875—This proposed rule does not create an unfunded Federal Mandate upon any State, local, or tribal government.

Unfunded Mandate Reform Act of 1995—This proposed rule will not include any Federal mandate that may result in increased expenditures by State, local and tribal governments in the aggregate of \$100 million or more, or increased expenditures by the private sector of \$100 million or more.

### *Executive Order 13132, Federalism*

We have assessed this proposed rule under Executive Order 13132 and found that it will not have substantial direct effects on the States or the relationship

between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, within the meaning of the Executive Order.

### *Executive Order 12988*

This proposed rule has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the Federal court system. The rule has been written so as to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

### **List of Subjects in 20 CFR Part 1001**

Employment, Grant programs, Labor, Reporting and recordkeeping requirements, Veterans.

For the reasons set forth in the preamble, 20 CFR chapter IX is amended as set forth below.

### **PART 1001—SERVICES FOR VETERANS**

1. The authority citation for part 1001 is revised to read as follows:

**Authority:** 29 U.S.C. 49k; 38 U.S.C. chapters 41 and 42. Subpart F is also issued under the authority of Sec. 4(a), Pub. L. 107-288, 38 U.S.C. 4102A.

2. Part 1001 is amended by adding subpart F to read as follows:

#### **Subpart F—Formula for the Allocation of Grant Funds to State Agencies**

Sec.

1001.150 Method of calculating State base grant awards.

1001.151 Other funding criteria.

1001.152 Hold harmless criteria and minimum funding level.

#### **Subpart F—Formula for the Allocation of Grant Funds to State Agencies**

##### **§ 1001.150 Method of calculating State base grant awards.**

(a) In determining the amount of funds available to each State, the ratio of the number of veterans seeking employment in the State to the number of veterans seeking employment in all States will be used.

(b) The number of veterans seeking employment will be determined based on the number of veterans in the civilian labor force and the number of unemployed persons. The civilian labor force data will be obtained from the Current Population Survey (CPS) and the unemployment data will be obtained from the Local Area Unemployment Statistics (LAUS), both of which are compiled by the Department of Labor's Bureau of Labor Statistics.

(c) Each State's allocation will be determined by dividing the number of unemployed persons in each State by the number of unemployed persons across all States (LAUS for the individual States/LAUS for all States) and by dividing the number of veterans in the civilian labor force in each State by the number of veterans in the civilian labor force across all States (CPS for the individual States/CPS for all States). The result of these two ratios will be averaged and converted to a percentage of veterans seeking employment in the State compared to the percentage of veterans seeking employment in all States. Three-year averages of the CPS and LAUS data will be used in calculating the funding formula to stabilize the effect of annual fluctuations in the data in order to avoid

undue fluctuations in the annual amounts allocated to States.

**§ 1001.151 Other funding criteria.**

(a) Four percent of the total amount at the national level will be available based on Transition Assistance Program (TAP) workload and other exigencies.

(b) Funding for TAP workshops will be allocated on a per workshop basis. Funding to the States will be provided pursuant to the approved State Plan.

(c) Funds for exigent circumstances, such as unusually high levels of unemployment, surges in the demand for transitioning services, including the need for TAP workshops, will be allocated based on need.

**§ 1001.152 Hold harmless criteria and minimum funding level.**

(a) A hold harmless rate of 90 percent of the prior year's funding level will be

applied after the funding formula phase-in period is completed (beginning fiscal year 2006 and subsequent years).

(b) A hold harmless rate of 80 percent of the prior year's funding level will be applied for fiscal year 2005.

(c) A minimum funding level is established to ensure that in any year, no State will receive less than 0.28 percent (.0028) of the previous year's total funding for all States.

Signed at Washington, DC, this 29th day of June, 2004.

**Frederico Juarbe Jr.,**

*Assistant Secretary for Veterans' Employment and Training.*

[FR Doc. 04-15078 Filed 7-2-04; 8:45 am]

BILLING CODE 4510-79-P



# Federal Register

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Tuesday,  
July 6, 2004

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**Part III**

## **General Services Administration**

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48 CFR Parts 533 and 552

General Services Acquisition Regulation;  
Disputes and Appeals; Proposed Rule

## GENERAL SERVICES ADMINISTRATION

### 48 CFR Parts 533 and 552

[GSAR 2004-G501]

RIN 3090-AH98

#### General Services Acquisition Regulation; Disputes and Appeals

**AGENCY:** Office of Acquisition Policy, General Services Administration (GSA).

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

**SUMMARY:** The General Services Administration (GSA) is proposing to amend the General Services Acquisition Regulation (GSAR) to add a clause that supplements the Disputes clause in the Federal Acquisition Regulation (see 48 CFR Chapter 1).

**DATES:** Interested parties should submit comments in writing on or before September 7, 2004, to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by GSAR case 2004-G501 by any of the following methods:

- Federal eRulemaking Portal:  
<http://www.regulations.gov>. Follow the instructions for submitting comments.
- Agency Web Site:  
<http://www.acqnet.gov/far/ProposedRules/proposed.htm>. Click on the GSAR Case number to submit comments.
- E-mail: [gsarcase.2004-G501@gsa.gov](mailto:gsarcase.2004-G501@gsa.gov). Include GSAR case 2004-G501 in the subject line of the message.
- Fax: 202-501-4067.
- Mail: General Services Administration, Regulatory Secretariat (MVA), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

*Instructions:* Please submit comments only and cite GSAR case 2004-G501 in all correspondence related to this case. All comments received will be posted without change to <http://www.acqnet.gov/far/ProposedRules/proposed.htm>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** The Regulatory Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 208-7312, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ernest Woodson at (202) 501-3775, or by e-mail at [ernest.woodson@gsa.gov](mailto:ernest.woodson@gsa.gov). Please cite GSAR case 2004-G501.

#### SUPPLEMENTARY INFORMATION:

#### A. Background

Federal Acquisition Regulation (FAR) Subpart 33.2 (48 CFR Subpart 33.2) implements the requirements of the Contract Disputes Act of 1978, as amended (41 U.S.C 601-613)(the Act), which establishes procedures and requirements for asserting and resolving claims subject to the Act. It is the Government's policy to resolve all contractual issues in controversy by mutual agreement at the contracting officer level. The Act provides for Agencies Boards of Contract Appeals (Boards) and the United States Court of Federal Claims (Court) to resolve appeals of a contracting officer's decision. However, the Boards and Court do not have authority to interpret tariffs or tariff related matters established through public hearings in each jurisdiction for regulated utilities. The authority pertaining to these matters lie with state public utility commissions.

As a means to resolve disputes that evolve from a contracting officer's decision, FAR 33.215 requires that the FAR clause at 52.233-1, Disputes, be inserted in all solicitations and contracts except those with a foreign government or agency of that government, or an international organization or subsidiary body of that organization, if the agency head determines that the application of the Act to the contract would not be in the public interest. GSA's Public Building Service awards contracts for public utility services. From time-to-time, disputes may arise from those contracts that involve tariffs and tariff related matters. This proposed rule would provide for a supplement to the FAR clause at 52.233-1, Disputes, allowing for such disputes to be subject to the jurisdiction and regulation of the utility rate commission having jurisdiction. This proposed rule also would provide GSA contracting officers and contractors, acting under a utility service contract, with specific guidance regarding the resolution of disputes involving tariffs and tariff related matters.

This rule is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

#### B. Regulatory Flexibility Act

The General Services Administration does not expect this proposed rule to have a significant economic impact on a substantial number of small entities

within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the majority of small entities that are in the industry were established as a result of deregulation and are not subject to the utility rate commissions. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. GSA will consider comments from small entities concerning the affected GSAR Parts 533 and 552 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (GSAR case 2004-G501), in correspondence.

#### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the GSAR does not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

#### List of Subjects in 48 CFR Parts 533 and 552

Government procurement.

Dated: June 28, 2004

David A. Drabkin,

Deputy Chief Acquisition Officer, Office of Chief Acquisition Officer.

Therefore, GSA proposes amending 48 CFR parts 533 and 552 as set forth below:

1. The authority citation for 48 CFR parts 533 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

#### PART 533—PROTESTS, DISPUTES, AND APPEALS

2. Add section 533.215 to read as follows:

##### 533.215 Contract clause.

Insert the clause at 552.233-71, Disputes (Utility Contracts), in solicitations and contracts for utility services subject to the jurisdiction and regulation of a utility rate commission.

#### PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Add section 552.233-71 to read as follows:

##### 552.233-71 Disputes (utility contracts).

As prescribed in 533.215, insert the following clause:

DISPUTES (UTILITY CONTRACTS) (DATE)

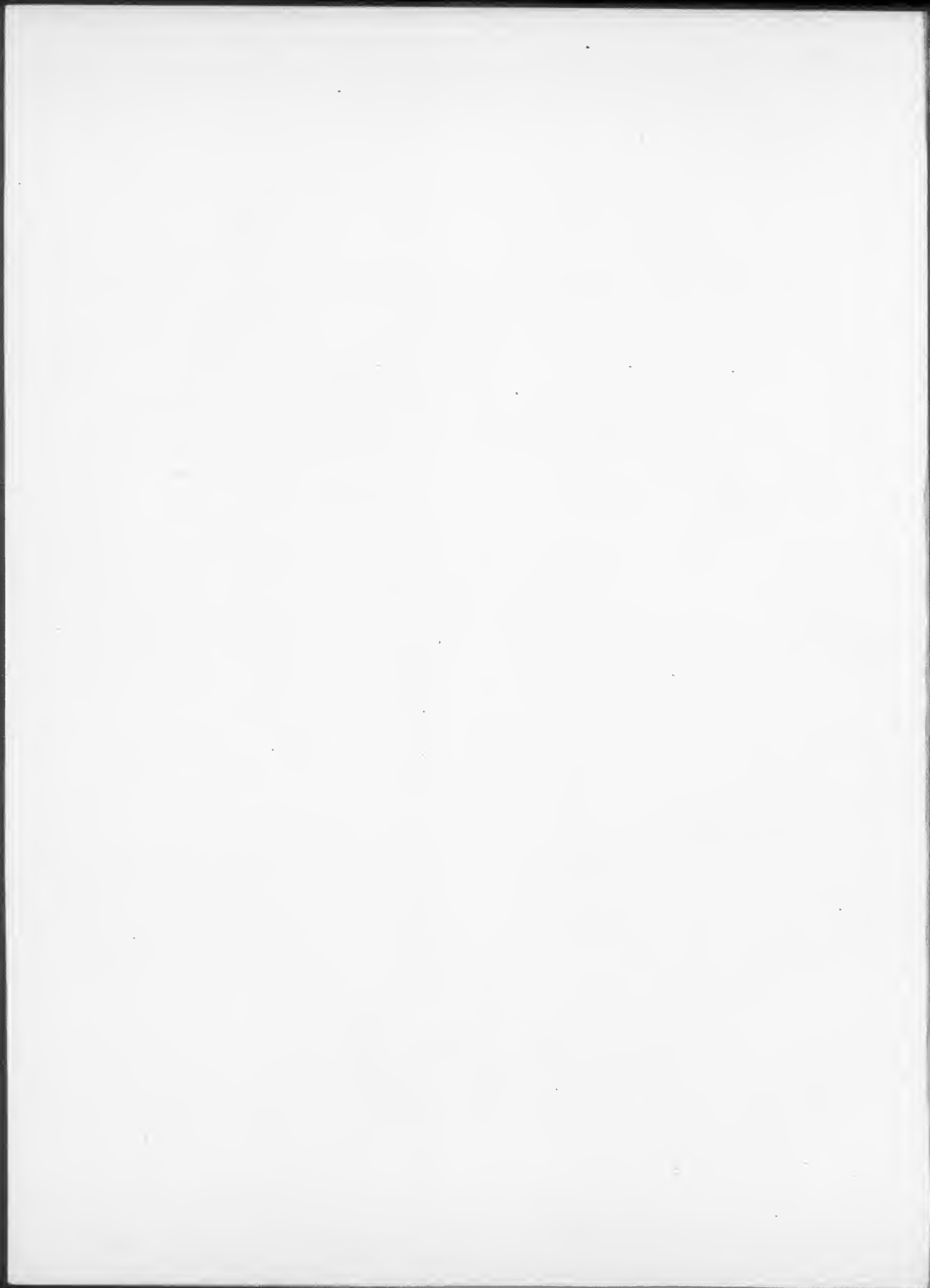
The requirements of the Disputes clause at Federal Acquisition Regulation (FAR)



52.233-1 are supplemented to provide that matters involving the interpretation of tariffed retail rates, tariff rate schedules, and tariffed terms provided under this contract

are subject to the jurisdiction and regulation of the utility rate commission having jurisdiction.

(End of clause)  
[FR Doc. 04-15154 Filed 7-2-04; 8:45 am]  
BILLING CODE 6820-61-S





# Federal Register

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Tuesday,  
July 6, 2004

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Part IV

## Department of Commerce

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National Oceanic and Atmospheric  
Administration

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50 CFR Parts 223 and 635  
Atlantic Highly Migratory Species (HMS);  
Pelagic Longline Fishery; Final Rule

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Parts 223 and 635**

[Docket No. 040202035-4197-02; I.D. 112403A]

RIN 0648-AR80

**Atlantic Highly Migratory Species (HMS); Pelagic Longline Fishery**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule implements new sea turtle bycatch and bycatch mortality mitigation measures for all Atlantic vessels that have pelagic longline (PLL) gear onboard and that have been issued, or are required to have, Federal HMS limited access permits, consistent with the requirements of the Endangered Species Act (ESA), the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act or M-S Act), and other domestic laws. These measures include mandatory circle hook and bait requirements, and mandatory possession and use of sea turtle release equipment to reduce bycatch mortality. This final rule also allows vessels with pelagic longline gear onboard that have been issued, or are required to have, Federal HMS limited access permits to fish in the Northeast Distant (NED) Closed Area, if they possess and/or use certain circle hooks and baits, sea turtle release equipment, and comply with specified sea turtle handling and release protocols.

**DATES:** This final rule is effective August 5, 2004, except for amendment 2 to § 635.2, and amendment 3 to § 635.21(c)(2)(v) and (c)(5)(iv) which are effective June 30, 2004.

**ADDRESSES:** For copies of the Final Supplemental Environmental Impact Statement/Regulatory Impact Review/Final Regulatory Flexibility Analysis (FSEIS/RIR/FRFA) for this regulatory action, and the Final Environmental Impact Statement that the FSEIS supplements (issued by NMFS in April 1999), contact Christopher Rogers, Chief, Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910 or at (301) 713-1917 (fax). These documents are also available on the Internet at <http://www.nmfs.noaa.gov/sfa/hms/>.

**FOR FURTHER INFORMATION CONTACT:** Russell Dunn, Greg Fairclough, or

Richard A. Pearson at 27-570-5447 or 27-570-5656 (fax).

**SUPPLEMENTARY INFORMATION:** The Atlantic tuna and swordfish fisheries are managed under the authority of the Magnuson-Stevens Act and the Atlantic Tunas Convention Act (ATCA). Atlantic sharks are managed under the authority of the Magnuson-Stevens Act. The Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), finalized in 1999, is implemented by regulations at 50 CFR part 635. The Atlantic pelagic longline fishery is also subject to the requirements of the ESA and the Marine Mammal Protection Act (MMPA).

NMFS published a Notice of Intent (NOI) on November 28, 2003, (68 FR 66783) to prepare an SEIS under the National Environmental Policy Act to assess the potential effects of a proposed rule to reduce sea turtle bycatch and bycatch mortality in the Atlantic HMS pelagic longline fishery. On February 11, 2004, NMFS published the proposed rule (69 FR 6621), and on February 13, 2004, the Environmental Protection Agency (EPA) announced the availability of the Draft SEIS (69 FR 7215). NMFS held three public hearings during the public comment period, which closed on March 15, 2004, for both the proposed rule and the Draft SEIS.

Information regarding the management history of sea turtle bycatch reduction efforts in the fishery, 2002 estimates of loggerhead and leatherback sea turtle interactions in the PLL fishery, the results of an NED research experiment, and proposed commercial management measures was provided in the preamble of the proposed rule and is not repeated here. Additional information regarding the alternatives analyzed may be found in the FSEIS/RIR/FRFA, available from NMFS (see **ADDRESSES**).

**Final Management Measures**

As discussed in the Response to Comments section below, NMFS has modified the final management measures. A description of specific changes to the proposed rule may be found after the Response to Comments section. These final management measures best meet the purpose and scope of this rulemaking by providing comprehensive and meaningful protection to Atlantic sea turtles, minimizing adverse economic impacts to the extent practicable, and achieving legal and policy obligations. By providing a successful roadmap for sea turtle bycatch and bycatch mortality reduction, NMFS will provide the impetus for other nations to adopt

similar sea turtle conservation measures, thereby bringing truly meaningful protection to sea turtles throughout their entire ranges.

This final rule allows vessels with pelagic longline gear onboard and that have been issued, or are required to have, Federal HMS limited access permits to fish in the NED Closed Area, if they comply with certain requirements. Vessels are limited, at all times, to possessing onboard and/or using only 18/0 or larger circle hooks with an offset not to exceed 10 degrees. Only whole Atlantic mackerel and squid baits may be possessed and/or utilized with these allowable hooks. Also, only hooks that have been offset by the manufacturer are allowed. Vessels must possess and use sea turtle release equipment, and comply with specified sea turtle handling and release protocols.

Vessels fishing outside of the NED Closed Area with pelagic longline gear onboard and that have been issued, or are required to have, Federal HMS limited access permits are limited, at all times, to possessing onboard and/or using only 16/0 or larger non-offset circle hooks, and 18/0 or larger circle hooks with an offset not to exceed 10 degrees. Only whole finfish and squid baits may be possessed and/or utilized with these allowable hooks. Also, only hooks that have been offset by the manufacturer are allowed. Vessels must possess and use sea turtle release equipment, and comply with specified sea turtle handling and release protocols.

The following circle hooks are known to meet the minimum size requirements specified in the final regulations: Lindgren-Pitman 18/0 circle hook; Mustad model number 39960 18/0 circle hook; and, Mustad model number 39960 16/0 circle hook. Other circle hooks, meeting the size requirements specified in the final regulations, are also allowed. The requirement to use non-stainless steel hooks remains in effect.

The final sea turtle bycatch release equipment requirements, described below, similarly apply to all Atlantic vessels that have pelagic longline gear onboard and that have been issued, or are required to have, Federal HMS limited access permits. Diagrams for several of the pieces of equipment are provided in Appendix B1 to the FSEIS prepared for this final rule in a document entitled, "Requirements and Equipment Needed for the Careful Release of Sea Turtles Caught in Hook and Line Fisheries." This document is available on the HMS website at <http://www.nmfs.noaa.gov/sfa/hms>. Diagrams for some of the equipment are also

provided in the final rule implementing dehooking devices in the shallow-set component of the Hawaii-based longline fishery (69 FR 17329). Minimum design standards for all required equipment are provided in this final rule.

The following new, or newly-revised, release gears are required as a result of this final rule: (A) a long-handled line clipper or cutter; (B) a long-handled dehooker for ingested hooks; (C) a long-handled dehooker for external hooks; (D) a long-handled device to pull an "inverted V"; (E) a dipnet; (F) a standard automobile tire; (G) a short-handled dehooker for ingested hooks; (H) a short-handled dehooker for external hooks; (I) long-nose or needle-nose pliers; (J) a bolt cutter; (K) a monofilament line cutter; and, (L) two different types of mouth openers and mouth gags (including either a block of hard wood, a set of three canine mouth gags, a set of two sturdy dog chew bones, a set of

two rope loops covered with hose, a hank of rope, a set of 4 PVC splice couplings, or a large avian oral speculum).

Items A - D above are intended to be used for turtles that are not boated. Items E - L above are intended to be used for turtles that are brought onboard. The long-handled dehooker for ingested hooks required in Item B would also satisfy the requirement for Item C. If a 6-foot (1.83 m) J-style dehooker is used for Item C, it would also satisfy the requirement for Item D. Similarly, the short-handled dehooker for ingested hooks required for Item G would also satisfy the requirement for Item H. NMFS recommends, but does not require, that one type of mouth opener/mouth gag allow for hands-free operation of the dehooking device or other tool, after the mouth gag is in place. Only a canine mouth gag would satisfy this recommendation. Also, as

described in Appendix B1 of the FSEIS prepared for the final rule, a "turtle tether" and a "turtle hoist" are recommended by NMFS, but are not required.

Table 1 provides the initial list of approved sea turtle bycatch release equipment meeting the minimum design standards. At this time, NMFS is aware of only one manufacturer of long-handled and short-handled dehookers for ingested hooks that meet the minimum design standards. However, this rule allows for approval of other devices, as they become available, if they meet the minimum design standards. Line cutters or line clippers (items A and K) and dehookers (items B, C, G, H) not included on the list must be NMFS-approved before being used. NMFS will publish a notice in the Federal Register of any new items approved as meeting the design standards.

TABLE 1. NMFS-APPROVED MODELS FOR EQUIPMENT NEEDED FOR THE CAREFUL RELEASE OF SEA TURTLES CAUGHT IN HOOK AND LINE FISHERIES.

Required Item	NMFS-Approved Models
(A) Long-handled line cutter*	LaForce Line Cutter; or Arceneaux Line Clipper.
(B) Long-handled dehooker for ingested hooks*	ARC Model LJ6P (6 ft (1.83 m)); or ARC Model LJ36; or ARC Pole Model Deep-Hooked Dehooker (Model BP11).
(C) Long-handled dehooker for external hooks**	ARC Model LJ6P (6 ft (1.83 m)); or ARC Pole Model Deep-Hooked Dehooker (Model BP11); or ARC 6 ft. (1.83 m) Pole Big Game Dehooker (Model P610).
(D) Long-handled device to pull an "inverted V"	ARC Model LJ6P (6 ft.)(1.83 m); or Davis Telescoping Boat Hook to 96 in. (2.44 m) (Model 85002A); or West Marine # F6H5 Hook and # F6-006 Handle.
(E) Dipnet**	ARC 12-ft. (3.66-m) Breakdown Lightweight Dip Net Model DN6P (6 ft. (1.83 m)); or ARC Model DN08 (8 ft.(2.44 m)); or ARC Model DN 14 (12 ft. (3.66 m)); or ARC Net Assembly & Handle (Model DNIN); or Lindgren-Pitman, Inc. Model NMFS Turtle Net.
(F) Standard automobile tire**	Any standard automobile tire free of exposed steel belts.
(G) Short-handled dehooker for ingested hooks**	ARC 17-inch (43.18-cm) Hand-Held Bite Block Deep-Hooked Turtle Dehooking Device (Model ST08).
(H) Short-handled dehooker for external hooks**	ARC Hand-Held Large J-Style Dehooker (Model LJ07); or ARC Hand-Held Large J-Style Dehooker (Model LJ24); or ARC 17-inch (43.18-cm) Hand-Held Bite Block Deep-Hooked Turtle Dehooking Device (Model ST08); or Scotty's Dehooker.
(I) Long-nose or needle-nose pliers**	12-in. (30.48-cm) S.S. NuMark Model #030281109871; or any 12-inch (30.48-cm) stainless steel long-nose or needle-nose pliers.
(J) Bolt cutter**	H.K. Porter Model 1490 AC.
(K) Monofilament line cutter**	Jinkai Model MC-T.
(L) Two of the following Mouth Openers and Mouth Gags**	
(L1) Block of hard wood	Any block of hard wood meeting design standards (e.g., Olympia Tools Long-Handled Wire Brush and Scraper (Model 974174)).
(L2) Set of (3) canine mouth gags	Jorvet Model #4160, 4162, and 4164.
(L3) Set of (2) sturdy dog chew bones	Nylabone® (a trademark owned by T.F.H. Publications, Inc.); or Gumbabone® (a trademark owned by T.F.H. Publications, Inc.); or Galileo® (a trademark owned by T.F.H. Publications, Inc.).
(L4) Set of (2) rope loops covered with hose	Any set of (2) rope loops covered with hose meeting design standards.
(L5) Hank of rope	Any size soft braided nylon rope is acceptable, provided it creates a hank of rope approximately 2 - 4 inches (5.08 cm - 10.16 cm) in thickness.
(L6) Set of (4) PVC splice couplings	A set of (4) Standard Schedule 40 PVC splice couplings (1-inch (2.54-cm), 1 1/4-inch 3.175-cm), 1 1/2-inch (3.81-cm), and 2-inch (5.08-cm).
(L7) Large avian oral speculum	Webster Vet Supply (Model 85408); or Veterinary Specialty Products (Model VSP 216-08); or Jorvet (Model J-512); or Krusse (Model 273117).

\* Items (A) - (D) required for turtles not boated.

\*\* Items (E) - (L) required for boated turtles.

\* The long-handled dehooker for Item B would meet the requirement for Item C.

\*\* If a 6-ft (1.83 m) J-Style dehooker is used to satisfy the requirement for Item C, it would also satisfy the requirement for Item D.

\*\* The short-handled dehooker for Item G would meet the requirement for Item H.

The final management measures pertaining to sea turtle handling and careful release protocols, described below, apply to all Atlantic vessels that have pelagic longline gear onboard and have been issued, or are required to have, Federal HMS limited access

permits. The existing requirement to post a plastic placard inside the wheelhouse describing sea turtle handling and release guidelines remains in effect, as does the requirement to adhere to existing sea turtle handling and resuscitation procedures specified

at 50 CFR 223.206(d)(1). Additional sea turtle handling requirements are contained in this rule to improve the care of sea turtles on deck, and to facilitate the removal of fishing line and hooks from incidentally-captured sea turtles. The newly-required procedures

for hook removal and careful release of sea turtles are described in substantial detail in a document entitled, "Careful Release Protocols for Sea Turtle Release with Minimal Injury." This document is required to be onboard all PLL vessels. It is provided in Appendix B2 of the FSEIS prepared for this final rule, which is available on the HMS website at <http://www.nmfs.noaa.gov/sfa/hms>. The Southeast Fisheries Science Center (SEFSC) has also made the document available as NOAA Technical Memorandum NMFS-SEFSC-524 at <http://www.sefsc.noaa.gov/seaturtletechmemos.jsp>.

To better assist industry in complying with the sea turtle careful release protocols, NMFS has established a Point of Contact (POC) to answer questions regarding the required release equipment, techniques, and problems, and to share solutions and successful experiences. The address for the industry POC is: Charles Bergman, 3209 Frederic Street, P.O. Drawer 1207, Pascagoula, MS, 39568-1207. The POC may also be contacted at 228-762-4591 ext. 259, or at 228-623-0748 (cellular), or via E-mail at [charles.bergman@noaa.gov](mailto:charles.bergman@noaa.gov).

#### ESA Consultation

In November, 2003, NMFS received information that the Incidental Take Statement (ITS) specified for the HMS pelagic longline fishery in the June 14, 2001, Biological Opinion (BiOp) may have been exceeded for loggerheads in 2002, and for leatherbacks in 2001 and 2002. A final report on the estimated bycatch levels in the pelagic longline fishery was issued on December 12, 2003 (NOAA Technical Memorandum NMFS-SEFSC 515 (2003)).

Based upon the termination of the NED research experiment and preliminary information on sea turtle interactions, NMFS began preparation of a proposed rule to address sea turtle bycatch and bycatch mortality in the

fishery. NMFS also requested reinitiation of consultation on the HMS pelagic longline fishery, pursuant to Section 7 of the ESA, in January, 2004. The proposed rule published on February 11, 2004 (69 FR 6621), and the notice of availability (NOA) of the DSEIS published on February 13, 2004 (69 FR 7215).

Based upon comment received during the public comment period, a re-examination of data pertaining to reductions in bycatch and bycatch mortality associated with various hook and bait combinations, and other information on sea turtles, NMFS considered modification of the measures in the proposed rule.

Taking into consideration the proposed modifications, NMFS' Office of Protected Resources issued a BiOp on June 1, 2004, that concluded that the long-term continued operation of the Atlantic HMS PLL fishery is not likely to jeopardize the continued existence of loggerhead, green, hawksbill, Kemp's ridley, or olive ridley sea turtles; and, is likely to jeopardize the continued existence of leatherback sea turtles. The NMFS Southeast Regional Office posted the new BiOp on its website, at <http://sero.nmfs.noaa.gov/>, on June 3, 2004.

The June 1, 2004, BiOp identified a Reasonable and Prudent Alternative (RPA) necessary to avoid jeopardy, and listed the Reasonable and Prudent Measures (RPMs), and Terms and Conditions (T & Cs) necessary to authorize continued take as part of the revised ITS. The RPA includes: (1) maximization of PLL gear removal to maximize post-release survival of incidentally-captured sea turtles; (2) improvement of the accuracy and timeliness of sea turtle reporting and analysis; (3) additional research on hook and bait combinations; and, (4) corrective action to prevent long-term elevated take and mortality. NMFS will undertake additional rulemaking and non-regulatory actions, as necessary, to

implement any other management measures that are required under the BiOp. The regulatory and non-regulatory actions are described below.

Each element of the RPA has several sub-components, which are more fully described in the June 1, 2004, BiOp. Briefly, these include distribution of training materials to demonstrate the careful release of sea turtles, establishment of a fishery outreach point of contact (POC), implementation of training workshops and certification, enhanced observer coverage, quarterly and annual monitoring of take estimates, and further research and evaluation of circle hooks.

In addition, the BiOp specifies that, during the course of each three-year period, NMFS will review each quarterly and annual take estimate report as soon as it becomes available. If these reports indicate that the PLL fishery is not likely to stay within the authorized three-year take levels specified in the BiOp, NMFS will take corrective action to avoid long-term elevations in sea turtle takes and ensure that the ITS is not exceeded. These actions may include time-area closures, additional gear modifications or restrictions, or any other action that is deemed appropriate.

The corrective action described above is intended to ensure that total leatherback takes do not exceed long-term average take rates, over three-year periods. The BiOp also establishes performance standards to ensure that progress in improved sea turtle handling techniques and gear removal is being made by the PLL fleet to reach net mortality ratios of 13.1% for leatherbacks and 17.0% for loggerheads by the beginning of 2007 (the long-term targets). These annual performance targets are based on consistent, annual progress in 2004, 2005, and 2006. They are presented in Table 2.

TABLE 2. NET MORTALITY RATE PERFORMANCE STANDARDS.

Species	Assumed 3rd & 4th Quarters, 2004	Target for 1st Quarter, 2005	Target for 1st Quarter, 2006	Target for 1st Quarter, 2007 and onward
Leatherbacks .....	32.8%	26.2%	19.6%	13.1%
Loggerheads .....	21.8%	20.2%	18.6%	17.0%

To ensure that the net mortality performance targets are attained, NMFS will monitor post-hooking survival through 2006. If fleet-wide annual gear removal rates are not sufficient to meet the performance targets, action must be taken to offset the increased mortality

rates and bring overall anticipated mortality down to the levels specified in Table 2. The June 1, 2004, BiOp specifically mentions the possibility of closing the entire Gulf of Mexico from April through September, if necessary, to offset increased mortality rates and

bring overall anticipated mortality down to the levels specified in Table 2. However, overall, the timing and duration of a closure must be sufficient to offset, through reduced interactions, the effects of the higher post-release mortality associated with the poor gear

removal levels, and may be longer or shorter than six months. If a closure is needed, an alternative closure or closures may be substituted if equally effective at reducing leatherback sea turtle bycatch. Any time-area closure(s), if implemented, would be removed when data collected on gear removal and post-release survival indicate that fleet-wide interaction types and gear

removal rates have met the post-release mortality performance targets specified above.

Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2) of the ESA, taking that is incidental to, and not intended as part of the agency action, is

not considered to be prohibited, provided that such taking is in compliance with the RPMs and T & Cs of the ITS. The June 1, 2004, BiOp established an ITS based upon total takes over three-year periods, beginning in 2004. Table 3 contains the new ITS for Atlantic sea turtles in the HMS PLL fishery.

TABLE 3. ANTICIPATED INCIDENTAL TAKES OF LISTED SPECIES IN THE HMS PELAGIC LONGLINE FISHERY.

Species	Number Captured from 2004-2006	Number Captured each Subsequent 3-Year Period
Leatherback turtle .....	1981	1764
Loggerhead turtle .....	1869	1905
Green, Hawksbill, Kemp's ridley, and Olive ridley turtle, in combination .....	105	105

If the ITS is exceeded, such incidental take represents new information requiring reinitiation of consultation and a review of the RPMs that have been provided for possible modification.

#### Response to Comments

During the public comment period, individuals and groups provided comments on the DSEIS/RIR/IRFA and its proposed rule via letter, fax, E-mail, or participation at public hearings. The comments are summarized below, together with NMFS' responses. The comments and responses are categorized by major subject headings.

##### 1. General Comments

*Comment 1:* Commenters indicated that oceanographic, biological and physical differences between the Northeast Distant (NED) area, south Atlantic, and Gulf of Mexico (GOM) must be taken into consideration. Specifically, commenters stated that the results of an experiment in the NED should not be used to project impacts or implement management measures in other areas, because there are differences in oceanographic conditions, water temperature, currents, thermoclines, turtle abundance, turtle sizes, fish abundance, and fish sizes.

*Response:* For three years, the Agency committed substantial resources to evaluating fishing gear modifications and strategies to reduce and mitigate interactions between endangered and threatened sea turtles and pelagic longline (PLL) fishing gear. The area for the research was the NED statistical reporting area in the Western Atlantic Ocean. Between 2001 and 2003, over 1,200 pelagic longline sets were made to test, among other things, the benefits of using large circle hooks. The research yielded robust and promising results. Based on that research, consideration of

geographical differences, and other available information on sea turtle bycatch reduction efforts, described more in responses to Comments 2-5, the use of large circle hooks (as compared to "J"-hooks) and careful release techniques are expected to be successful in reducing sea turtle interactions and mortality rates throughout the whole fishery.

*Comment 2:* Several commenters stated that the Agency must recognize differences in the prosecution of the PLL fishery in the NED, south Atlantic, and GOM. PLL vessels in the GOM frequently target yellowfin tuna (YFT) and other tuna species; PLL vessels in the mid-Atlantic often engage in mixed trips for smaller tunas (YFT and albacore), swordfish, dolphin, and wahoo; and, PLL vessels in the NED primarily fish for larger swordfish and bigeye tuna (BET). Commenters noted that there may be differences in the fishing gears used, fishing techniques, depth of gear deployed, prey species, target species, and socio-economic factors. For vessels fishing outside the NED, many of these comments opposed preferred alternative A3 in the DSEIS (18/0 offset circle hook with mackerel, or 18/0 non-offset circle hook with squid) and were supportive of non-preferred alternative A5 (16/0 hook with an offset not to exceed 10 degrees). Many commenters supported preferred alternative A10 in the DSEIS (18/0 offset or non-offset circle hook with mackerel or squid bait, respectively) for fishing in the NED.

*Response:* The U.S. PLL fishery for Atlantic HMS is a far-ranging fishery that targets swordfish, YFT, or BET tuna in different areas and in different seasons. Secondary target species include dolphin, albacore tuna, pelagic sharks, and several species of large

coastal sharks. Permit holders range from Maine to Texas, and fishing techniques vary by region according to target species. Vessel operators may be opportunistic, switching gear style and making subtle changes, oftentimes during the same trip, to maximize economic opportunities. In addition, the economic characteristics of vessels fishing in New England (including the NED) and the Caribbean regions differ from those fishing predominantly in the mid-Atlantic, south Atlantic and Gulf of Mexico regions. Economic studies confirm that PLL vessels fishing predominantly in New England and the Caribbean regions generate approximately five times the amount of net revenues per trip when compared to vessels fishing predominantly in the mid-Atlantic, south Atlantic, and GOM regions (Porter *et al.*, 2001).

Extensive public comment indicated that the proposed measures could cause severe economic hardship, leading to possible business foreclosures in the mid-Atlantic, south Atlantic, and GOM. Based upon public comment and a re-examination of data pertaining to reductions in bycatch and bycatch mortalities associated with various hooks and baits (see responses to Comments 3 and 5), the Agency has modified the final regulations to address geographical differences by allowing, outside the NED, either 18/0 circle hooks with an offset not to exceed ten degrees, or 16/0 non-offset circle hooks, and either squid or whole finfish bait. These modifications will provide additional flexibility to target species that are more frequently encountered outside of the NED. The final circle hook and bait regulations, and the requirements to possess and use sea turtle handling and release gears, are expected to significantly reduce sea

turtle interactions and mortalities throughout the PLL fishery. Therefore, to the extent practicable, this final rule minimizes adverse economic impacts on fishing communities, as required by National Standard 8 of the M-S Act, and complies with other applicable Federal law. However, as described in the June 1, 2004, BiOp, if the management measures contained in this final rule do not achieve certain specified levels of reductions in leatherback mortalities, the Agency must initiate a future rulemaking to consider other additional measures, consistent with the 2004 BiOp.

*Comment 3:* Additional research on circle hooks and baits, including their subsequent effects on turtle interactions, post-hooking mortality rates, and target species catches, should be undertaken in areas that more closely exemplify conditions in the south Atlantic and GOM, and the final regulations should be based on these studies.

*Response:* Existing scientific studies, including the NED research experiment, and GOM observer data support the use of large circle hooks and careful release techniques to reduce sea turtle interaction rates and mortality rates throughout the PLL fishery. Based upon a review of available information, the SEFSC's principal investigators for the NED research experiment have advised allowing the use of a 16/0 non-offset circle hook in the GOM and other areas outside the NED. Available data indicate potential adverse impacts of a larger hook on target species (particularly, yellowfin tuna) catches.

A significant reduction in loggerhead sea turtle mortality is anticipated through use of the 16/0 non-offset circle hook. Studies in the Azores PLL fishery in 2000 and 2001 (Bolten *et al.*, 2002) and in Canada (Javitech Ltd., 2002) showed a significant percentage of 16/0 circle hooks hooking loggerhead turtles in the mouth. Circle hooks improve the probability of survival after an interaction, relative to "J"-hooks, because they usually hook in the jaw and are not swallowed; this appears to be true for many marine species and circle hook sizes (Lucy and Studholme, 2002). Observer data from the GOM (Garrison, 2003b), showing no loggerhead turtles observed captured on circle hooks, and a lower average catch rate of leatherback turtles on 15/0 and 16/0 circle hooks compared to 7/0 and 8/0 "J"-hooks, support this conclusion.

Leatherback sea turtle interactions primarily result from "foul hooking," *i.e.*, hooking in the flipper, shoulder, or armpit. Circle hooks are expected to reduce foul hooking because the point turns in towards the shank and is

effectively shielded. The NED experiment demonstrated that 18/0 and 20/0 circle hooks reduce the number of turtles foul hooked by PLL gear. Canadian observer data (Javitech Ltd., 2002) and GOM observer data (Garrison, 2003b) also show reductions in catch rates of leatherback turtles on 16/0 circle hooks as compared to "J"-hooks. SEFSC scientists expect that a 16/0 non-offset circle hook will be just as efficient as an 18/0 circle hook at reducing foul hooking of leatherback turtles, and possibly more efficient, because the gap between the point and the shank on a 16/0 hook is smaller than that of an 18/0 hook. The requirement that 16/0 circle hooks be non-offset is an additional precautionary measure to reduce the likelihood that the smaller hooks will get swallowed or lodged in a turtle's throat or esophagus, or result in foul-hooking.

This final rule, which allows the use of 16/0 or larger non-offset circle hooks outside the NED, is based upon the above-described studies and other data, which constitute the best available scientific information at this time. These measures are expected to have significant conservation benefits for sea turtles. However, the Agency will continue to monitor and conduct research to evaluate bycatch mitigation techniques and impacts on target and non-target species. In fact, there is research currently underway in the GOM to compare target catches using 16/0 and 18/0 circle hooks, but that information was not sufficiently developed in time to be incorporated in the analyses in the FSEIS prepared for this rule. The 2004 BiOp also requires additional research and/or analysis on the effects of different offsets, evaluation of the leatherback bycatch reduction, confirmation of the effectiveness of the hook and bait combinations, and improved data collection and reporting from observed trips to aid in completing these analyses.

*Comment 4:* Some commenters indicated that portions of the GOM and the Northeast Coastal (NEC) area should be closed to PLL fishing (as described in non-preferred alternatives A12, A13, A14, and A15 of the DSEIS) because sea turtles taken in those regions are larger than those taken in the NED, and because the hook and bait treatments tested in the NED are unproven in warmer waters.

*Response:* This final rule will require the use of large circle hooks and the possession and use of specific gear removal equipment. In addition, the Agency will engage in outreach and education efforts, and pursue training and certification in sea turtle handling

and release protocols throughout the PLL fishery. These management actions are expected to provide significant conservation benefits to sea turtles of all sizes. Additional adaptive management measures, including consideration of a Gulf of Mexico or alternative closure(s), would be instituted if monitoring indicates that requirements set forth in the 2004 BiOp for this fishery are not being met.

*Comment 5:* Several comments relating to the data used to develop the DSEIS and proposed rule included: (1) Other studies such as the Azores study (Bolten *et al.*, 2002) and the Garrison analysis (2003) should have been included; (2) the NED data are preliminary and should not be relied upon; (3) the number of observed sea turtle interactions is probably too low; and, (4) there is no information in the DSEIS regarding the number of sea turtle mortalities. Several other data comments are discussed under "protected resources issues" below.

*Response:* The best scientific information available has been used in developing the final rule, including information from Bolten *et al.* (2002) and Garrison (2003). Hook and bait treatments that were found to be effective during the three-year NED research experiment will be directly applied to PLL fishing in the NED closed area. The NED experimental data are robust, and measures to be applied in the NED are expected to replicate the impressive bycatch reduction results that were obtained there. In other areas, slightly smaller (16/0 or larger), non-offset circle hooks, or 18/0 circle hooks with an offset not to exceed 10 degrees, will be required. These measures are supported by the studies and recommendations described in the response to Comment 3.

The number of observed sea turtle interactions is derived directly from trips with observers onboard (3.7 percent of sets were observed with 273 observed interactions in 2001; 8.9 percent of sets were observed with 335 interactions in 2002). The total estimated number of interactions is calculated by determining sea turtle catch per hook using observed sets, and then expanding that by the total number of hooks fished as reported in the mandatory PLL logbook. A total of 1,208 leatherback interactions were estimated during 2001, and 962 during 2002. A total of 312 loggerhead interactions were estimated during 2001, and 575 during 2002. Potential sources of bias and uncertainty in these estimates are provided in "Estimated Bycatch of Marine Mammals and Turtles in the U.S. Atlantic Pelagic Longline Fleet



During 2001 - 2002," (Garrison, 2003a). That report estimates 13 loggerhead instantaneous mortalities (*i.e.*, dead when brought to the boat) and 0 leatherback instantaneous mortalities in 2001. For 2002, 0 loggerhead instantaneous mortalities and 33 leatherback instantaneous mortalities are estimated. Post-interaction mortality estimates are discussed in the 2004 BiOp.

## 2. Proposed Restrictions on Allowable Baits

*Comment 6:* Many commenters stated that requiring only Atlantic mackerel or squid bait, depending upon whether the hook is offset or not, would not provide enough flexibility to adapt to changing conditions that may occur during longer PLL fishing trips. Commenters stated that both types of baits should be allowed to be possessed and used. One commenter requested that there be no bait restrictions, stating that hook type, and not bait, is the most important factor in reducing sea turtle interactions. Several commenters stated that PLL vessels in the GOM typically utilize thread herring and Spanish sardines for bait, thus, requiring non-indigenous bait could result in adverse economic impacts due to the non-availability of such bait or potential reductions in the catches of target species. Other commenters stated the use of any finfish other than whole Atlantic mackerel could significantly reduce turtle conservation benefits.

*Response:* The final rule has been modified to allow the use of both Atlantic mackerel and squid bait inside the NED, and whole finfish and squid bait outside the NED, with specified circle hooks. The NED research experiment demonstrated that significant sea turtle conservation benefits may be obtained using large circle hooks with certain baits (Watson et al., March 2, 2004). Relative to the 9/0 "J"-hook baited with squid, the combination of 18/0 circle hooks and mackerel bait reduced the loggerhead interaction rate by 86 - 90 percent, and the leatherback interaction rate by 65 percent. The 18/0 circle hooks baited with squid reduced the loggerhead interaction rate by 65 - 87 percent, and the leatherback interaction rate by 64 - 90 percent. In 2002, mackerel bait and squid bait were both tested on 9/0 "J" hooks to investigate the effect of bait on turtle interaction rates. When compared to squid bait, mackerel bait reduced loggerhead interactions by 71 percent, and leatherback interactions by 66 percent. Mackerel bait also increased swordfish catch but significantly reduced tuna catch on the control 9/0

"J"-hooks, compared to squid. Because both mackerel and squid are effective at reducing turtle interactions, and there are differences in the effectiveness of the baits with regard to the target species catches, the final rule allows either mackerel and/or squid bait to be possessed and/or used in the NED, but only with 18/0 or larger circle hooks with an offset not to exceed 10 degrees. This modification will allow fishermen to adapt to changing conditions, and replicate the impressive bycatch and bycatch mortality reductions that were achieved in the NED experiment.

The response to Comment 3 explains the significant sea turtle conservation benefits that are anticipated by requiring the use of either 16/0 or larger non-offset circle hooks, or 18/0 circle hooks with an offset not to exceed 10 degrees outside the NED. To provide additional flexibility and to mitigate for potential adverse economic impacts associated with non-availability of Atlantic mackerel or reduced catches due to the use of non-indigenous baits, the final rule allows both whole finfish and squid bait to be used outside the NED, with either of the specified hook types. This rule, along with outreach, education, training and other related actions, are expected to have significant conservation benefits for sea turtles. See the response to Comment 4 for further explanation.

*Comment 7:* One commenter stated that observed PLL sets in the GOM for 1992 - 2002 showed that circle hooks with squid produced the highest interactions with leatherback sea turtles whereas circle hooks with fish (primarily dead Spanish sardines) had the lowest catch rates.

*Response:* While circle hooks baited with squid in the GOM did show higher leatherback interactions than circle hooks baited with fish, there were a very low number of circle hook sets that were baited with squid. Consequently, it is not possible to draw a statistically significant conclusion regarding bait effects from the GOM data (Garrison, 2003). The Agency will continue to examine the effects of bait type throughout the PLL fishery.

*Comment 8:* One commenter indicated that specifying only Atlantic mackerel or squid bait could result in the overfishing of these species.

*Response:* Atlantic mackerel (*Scomber scombrus*), shortfin squid (*Illex illecebrosus*), and longfin squid (*Loligo pealeii*) are managed by the Mid-Atlantic Fishery Management Council under the provisions of the Atlantic Mackerel, Squid and Butterfish Fishery Management Plan (FMP). Any landings of these species for bait in the PLL

fishery must be in accordance with the provisions of this FMP. Atlantic mackerel are managed using an annual quota. Management measures for shortfin squid include limited entry, annual quota specifications, and trip limits when 95 percent of the annual quota is reached. Management measures for longfin squid include limited entry, seasonal quota specifications, and gear restrictions. As of January 2000, the Atlantic mackerel resource was not overfished, and overfishing was not occurring. The stock status of shortfin squid was unknown through 2002; however, overfishing was not likely to be occurring (NEFSC 37<sup>th</sup> SARC). Longfin squid were not likely to be overfished, nor was it likely that overfishing was occurring, as of 2001 (NEFSC 34<sup>th</sup> SARC). Because squid and mackerel are currently being effectively managed through the existing FMP, the Agency does not expect the management measures in this final rule to result in an appreciable increase in fishing effort for these species, or cause overfishing.

## 3. Proposed Restrictions on Allowable Hooks

*Comment 9:* The Agency received a wide range of comments regarding circle hooks, in general. One commenter stated that circle hooks will not reduce sea turtle bycatch or bycatch mortality, and that the existing data are too preliminary to be relied upon. Another comment stated that the recent increase in turtle interactions in the GOM was attributable to many vessels switching from circle hooks to small "J"-hooks following the prohibition on live bait, and that the proper solution is to require circle hooks. Several commented that the most significant benefits to sea turtles would be realized by using circle hooks rather than "J"-hooks, and that the size of hooks is a less important factor. One commenter opposed the use of circle hooks because they are ineffective at catching fish, are difficult to work with, take more time to remove, and may cause more injury to leatherback turtles than "J"-hooks when they are removed. Finally, one commenter applauded the move away from "J"-hooks towards circle hooks and requested that the Agency act as quickly as possible.

*Response:* Requiring the use of circle hooks and removing "J"-hooks throughout the PLL fishery is an important step that will have significant conservation benefits for sea turtles. Several studies described above, including three years of research in the NED, have documented the effectiveness of circle hooks at reducing

bycatch and/or bycatch mortality of sea turtles. In addition, in the GOM, PLL fishermen deployed an appreciable amount of circle hooks for several years, and observer data from that area show that estimated leatherback and loggerhead turtle interactions were generally lower when circle hooks (16/0) were most frequently used (1992, 1998, and 1999), and generally higher when circle hooks (16/0) were least frequently used (1996, 1997, 2000, 2001, and 2002).

The NED experiment conducted 29 sets during 2003 to compare offset 16/0 circle hooks with 18/0 offset circle hooks. Although the results indicated higher interactions with the 16/0 offset hooks than with the 18/0 offset hooks, the Agency anticipates that allowing 16/0 hooks without any offset outside the NED will significantly reduce turtle mortalities, and could result in fewer turtle interactions involving foul hooking. The NED experiment additionally demonstrated that catches of target species can be increased or, at least, remain constant using circle hooks.

As with any new gear, there probably will be period of time during which fishing crews adjust to circle hooks. However, these hooks are not expected to be prohibitively difficult to work with, as some vessels already use them. The final rule additionally requires that pelagic longline vessels possess and use several pieces of sea turtle release gear, and adhere to careful handling and release protocols. When properly used, these gears will facilitate hook removal and reduce sea turtle injuries occurring as a result of interactions. Fishing crews should familiarize themselves with the proper use of the release gear and the careful release protocols, because the final rule requires the removal of as much fishing gear as possible without causing further injury to a sea turtle prior to its release.

*Comment 10:* A large proportion of comments were opposed to the use of 18/0 circle hooks outside the NED, primarily because they are too large to catch some target species, including small YFT, albacore tuna, dolphin, wahoo and other pelagics. For this reason, the commenters stated that requiring 18/0 circle hooks outside the NED would reduce catches and create substantial adverse economic impacts. Many of these comments were supportive of a requirement to use 16/0 circle hooks, as contained in non-preferred alternative A5 of the DSEIS. Some cited studies conducted in the Azores (Bolten *et al.*, 2002) and observer data in the GOM as evidence that a 16/0 hook would be effective at reducing

turtle mortalities. Others stated that a 16/0 hook would pose less risk than an 18/0 hook at foul-hooking leatherback turtles, the species most commonly interacted with in the GOM, because of the smaller gap between the barb and the shank.

*Response:* As described in the responses to comments 1-5, the final management measures have been modified to allow the use of 16/0 or larger non-offset circle hooks outside the NED.

*Comment 11:* Many commented that requiring the use of only either flat or offset circle hooks, depending upon whether squid or mackerel bait is used, would not provide flexibility to adapt to changing conditions on longer PLL trips, thus both types of hooks should be allowed. One commenter stated that maintaining the sharpness of a flat (non-offset) circle hook is more difficult than with offset hooks and could potentially reduce catches if flat hooks (with squid) are used. To the contrary, others stated that offsetting a circle hook greatly reduces its design advantages and that the use of large mackerel bait may have confounded the results obtained with the offset 18/0 circle hook in the NED experiment. These commenters stated that, until a robust experimental design is established to test the impact on loggerheads of the 18/0 non-offset circle hook vs. the 18/0 offset circle hook, the final regulations should only allow for the use of 18/0 non-offset circle hooks.

*Response:* The NED research experiment concluded that there is no significant difference in model-based reduction rates due to non-offset 18/0 circle hooks with squid baits and offset 18/0 circle hooks with squid baits for loggerhead and leatherback sea turtles. Therefore, the final regulations allow vessels to fish within the NED, provided they comply with certain hook and bait requirements. Vessels are limited, at all times, to possessing and/or using only 18/0 or larger circle hooks with an offset not to exceed 10 degrees, and Atlantic mackerel and/or squid bait. Vessels fishing outside the NED are limited, at all times, to possessing and/or using 18/0 or larger circle hooks with an offset not to exceed 10 degrees, and/or 16/0 non-offset (i.e., flat) circle hooks. The requirement that 16/0 circle hooks be non-offset is a precautionary measure to reduce the likelihood that the smaller hooks will get swallowed or lodged in a turtle's throat or esophagus, or result in foul-hooking.

*Comment 12:* Commenters requested that the requirement to use corrodible hooks in the PLL fishery be removed, because there is no scientific or biological rationale to justify their use.

*Response:* The requirement to use corrodible hooks and crimps was implemented as part of the Reasonable and Prudent Alternative (RPA) in the June 14, 2001, BiOp (2001 BiOp). It is intended to improve the survival of sea turtles that are hooked when external hooks cannot be removed, or when hooks are deeply embedded and no attempt to remove the hook can be made. The Agency intends to collect and analyze additional information on hook removal rates resulting from implementation of this final rule and, depending upon those rates, will consider removal of the requirement to use corrodible hooks in a future rulemaking.

#### 4. Sea Turtle Release Gear and Careful Handling Protocols

*Comment 13:* Most of the comments received concerning the requirements to possess sea turtle release gear and to adhere to careful handling protocols (alternative A16) were supportive of the proposed measures. Several commenters suggested either voluntary or mandatory training (in-person, online, or via other media such as CD, DVD, or videotape) for captains and/or crew members to improve the effectiveness of the gear and compliance with the protocols. Another suggestion was that the Agency provide either a certificate of completion or attendance and that a person or persons possessing the certificate be required onboard all PLL vessels.

*Response:* The requirements to possess and use sea turtle release gear and to adhere to careful handling protocols are important components of this final rule. Under this rule, an Agency-approved document describing sea turtle careful release protocols is required to be onboard each PLL vessel. Fishing captains and crew members should familiarize themselves with the proper use of release gear and the protocols, as the final rule requires removal of as much gear as possible without causing further injury to a sea turtle prior to its release. Consistent with the 2004 BiOp, the Agency has established a POC to, among other things, answer questions that fishermen may have regarding the release gear and handling protocols. POC information is provided in this final rule, and also on the HMS website at <http://www.nmfs.noaa.gov/sfa/hms>. In addition, an educational video mpeg file entitled "Removing Fishing Gear from Longline Caught Sea Turtles" is currently available at: <http://www.sefsc.noaa.gov/seaturtlefisheriesobservers.jsp>, and will be distributed to PLL vessels during the

summer of 2004. This video mpeg demonstrates the proper use of the required and recommended release turtle gear in the rule. The Agency will conduct additional education and outreach efforts and pursue mandatory training and certification for the fishery. Workshops or other training programs are already under consideration in the development of Amendment 2 to the HMS FMP.

*Comment 14:* Several commenters stated that the "turtle tether" should be required onboard all PLL vessels in the final regulations, rather than only recommended in the protocols.

*Response:* Further refinements in the design standards and procedural protocols for use of the "turtle tether" are still being developed. After further development and testing, the Agency may reconsider requiring the turtle tether in a future rulemaking.

*Comment 15:* Commenters stated that the proposed regulations only generally address the removal of hooks from sea turtles, and do not specify how to bring turtles onboard, how to restrain them, and how to release them.

*Response:* Because of the many contingencies that may arise when a turtle is encountered, the final rule does not attempt to address every possible contingency. Rather, the rule specifies certain important requirements, such as removing as much gear as possible and releasing the turtle without causing further injury, and refers to the required "Careful Release Protocols" document for additional guidance and requirements. As noted in the response to Comment 13, the Agency will conduct outreach, training, and other educational efforts to demonstrate the safe handling and careful release of turtles.

*Comment 16:* Some commenters wrote that the proposed requirements to possess and utilize sea turtle handling and release gears (alternative A16) were not reasonable, because the gear is difficult to obtain and costly.

*Response:* Sea turtle handling and release equipment will impose initial compliance costs estimated to range from \$485.00 - \$1056.50, depending upon whether the equipment is fabricated from available materials or purchased from suppliers. The design standards for line clippers have changed only slightly, and one model that meets the existing standards also meets the new design standards. The design standards for dipnets have similarly only been slightly modified, by specifying the length and carrying capacity of the handle. Other required equipment, including bolt cutters, monofilament cutters, boat gaffes, and

needle-nosed pliers are relatively inexpensive and available at most hardware or boating supply stores. Dehookers are also available from commercial suppliers. A standard automobile tire to hold boated turtles should not be difficult to obtain. Finally, a variety of mouth openers/gags have been approved, specifically to reduce costs. For example, the two required mouth openers/gags could consist of a block of hard wood and two pieces of rope covered with hose, provided they meet the design specifications in the final rule. Some of the release equipment can be fabricated from readily available materials in order to reduce costs. The Agency acknowledges that the requirements to possess and use this equipment according to the "Careful Release Protocols" document impose both financial and logistical burdens on the public; however they are essential for the PLL fleet to reduce sea turtle mortalities.

#### 5. Environmental Impacts and Analyses

*Comment 17:* Several commenters requested that the Agency prohibit pelagic longlines (alternative A11), implement large "no-fishing" areas for pelagic longlines (alternatives A12, A13, A14, & A15), prohibit swordfishing in the Atlantic basin, or allow only rod and reel or handline fishing for HMS, to provide greater protection for sea turtles and other marine life.

*Response:* Prohibition of PLL gear was considered but not further analyzed, or selected, because other effective sea turtle bycatch and bycatch mortality reduction alternatives are available. See response to Comment 4 regarding possible, future consideration of closures. In addition, prohibition of PLL fishing is not needed to rebuild the Atlantic swordfish stock. Overfishing is not occurring, and the stock is in recovery with biomass at the beginning of 2002 estimated to be at 94 percent (range: 75 to 124 percent) of the biomass needed to produce maximum sustainable yield (MSY). This estimate is up from an estimate of 65 percent of MSY, as provided in the 1998 assessment. The 2001 fishing mortality rate was estimated to be 0.75 times the fishing mortality rate at MSY (range: 0.54 to 1.086) (SCRS, 2002).

It is important to emphasize that unilateral efforts by the U.S. to protect sea turtles and HMS in the Atlantic Ocean would likely be insufficient to rebuild populations of these species, because the U.S. fleet constitutes only a small part of the international fleet that competes on the high seas for catches of swordfish and tunas. In fact, U.S. PLL

landings account for approximately 5.4 percent of total Atlantic landings of HMS (SCRS, 2003). Therefore, the successful adoption and timely implementation of circle hook and release gear technology by the U.S. PLL fleet is of paramount importance. U.S. industry support in demonstrating the success of these technologies, both in reducing turtle mortalities and in maintaining catches of target species, will be vital in future efforts to convince other foreign fishing nations to implement similar management measures.

*Comment 18:* Several commenters stated that the "exportability" of circle hook and release gear technology is the most important aspect of this rule, because U.S. PLL turtle bycatch is relatively small compared to that of foreign vessels Atlantic-wide. If the proposed one hook-type/one bait requirements cause U.S. business foreclosures or economic losses, the technology would likely not be "exportable" to foreign nations. The unintended consequence of the proposed regulations could be increased sea turtle interactions as foreign PLL vessels, which currently account for the largest percentage of sea turtle interactions, increase fishing effort. Similarly, if some U.S. PLL vessels go out of business or reflag to foreign nations, the U.S. could lose part of its ICCAT swordfish quota to foreign nations that do not have such protective requirements, and sea turtle interactions by foreign PLL vessels could increase. Therefore, these commenters stated that it is imperative to implement a final rule that does not result in business closures and is transferable to other ICCAT nations. Some commenters suggested that non-preferred alternative A5 in the DSEIS (16/0 circle hook with an offset not to exceed 10 degrees, outside the NED) would provide an acceptable compromise for both domestic and foreign vessels.

*Response:* As discussed above, international cooperation is critical to reduce overall Atlantic sea turtle interactions and mortalities. For this reason, the Agency committed substantial financial resources and scientific expertise to the NED research experiment to develop cost-effective technologies to reduce sea turtle interactions and mortalities, without negatively impacting catches of target species. The U.S. already has shared the experimental results at ICCAT and in other international fora to promote and encourage sea turtle bycatch reduction measures in international fisheries. In response to public comment, the Agency re-examined the preferred

alternatives and modified the final management measures to provide flexibility regarding the use of offset and non-offset hooks, bait requirements, and hook sizes outside the NED. These modifications are expected to reduce turtle interactions and mortalities significantly, and demonstrate to foreign nations that adoption of circle hook technologies is feasible and will have positive benefits for both sea turtles and the PLL fishery.

*Comment 19:* Several commenters stated that the PLL fishery is only one of many factors affecting the continued existence of sea turtles. Other factors include: chemical water pollution; habitat loss; poaching of nesting sites; artificial beach lighting; shrimp trawling; predation by pets; driving on beaches; beach sweeping activities; outboard motor emissions, and speeding motor boats. Commenters noted that these other factors receive little regulatory attention, yet the PLL fishery is being required to comply with perceived unnecessarily strict proposed regulations. One commenter suggested that turtle hatcheries should be used to augment turtle populations.

*Response:* NMFS and the U.S. Fish and Wildlife Service (USFWS) share responsibility for threatened and endangered sea turtles under a Memorandum of Understanding implementing the ESA. In general, marine-related activities, such as fishing, are within the purview of NMFS, whereas terrestrial activities are within the purview of the USFWS. The ESA requires that federal agencies ensure that the actions that they authorize, fund or carry out do not jeopardize the continued existence of listed species. If there is no federal agency nexus to a proposed action, the action is not subject to section 7 consultation and the production of biological opinions under the ESA. Thus, this final rule focuses upon the protection of adult and sub-adult turtle populations in the marine environment that are affected by fishing activities authorized by this Agency. Other provisions of the ESA, or other laws, may be applicable to other actions that pose threats to sea turtles. For example, recovery plans for leatherback and loggerhead sea turtles have been in place for several years. Many of the activities mentioned by the commenters are addressed within these recovery plans, including marine pollution, habitat protection, beach lighting, beach nourishment, protection of nesting sites, egg poaching, beach driving, and beach sweeping. The management measures contained in this final rule are expected to reduce significantly mortality

attributable to pelagic longlines, both domestically and, through export of circle hook technologies, internationally.

*Comment 20:* One commenter raised concerns that the sea turtle incidental take statement (ITS) was exceeded, even with the NED closed.

*Response:* Recent increases in sea turtle interactions occurred mainly in the GOM and other areas outside the NED. This final rule would prohibit "J"-hooks and require gear modifications and the use of release gear throughout the entire fishery, and is expected to have significant conservation benefits for sea turtles. Because of the termination of the NED experiment, this rulemaking, and the exceedance of the ITS from the 2001 BiOp, the Agency reinitiated consultation on the fishery. The new consultation, finalized in the 2004 BiOp, analyzed the circumstances and potential causes of the exceedance, as well as the expected impacts of the fishery on sea turtle populations, and is incorporated into this final rule.

*Comment 21:* A commenter stated that the number of boats fishing in the NED could increase beyond the 12 vessels that were analyzed in the DSEIS, because of a recent bilateral agreement that would allow U.S. vessels to land their catch in Canada.

*Response:* Data over the last six years indicate that less than 12 vessels, on average, have fished in the NED. The Agency will continue to monitor changes in the fishery and, if a significant increase in the number of vessels occurs in the NED, will take other action as needed. Moreover, sea turtle interactions have been documented throughout the PLL fishery. As overall effort in the PLL fishery is restricted by limited access permits, any additional fishing effort in the NED would necessarily result in less fishing effort elsewhere. Furthermore, vessels fishing in the NED will be required to use larger circle hooks than vessels fishing outside the NED.

## 6. Social/Economic Impacts and Analyses

*Comment 22:* Many commenters stated that there would be potentially reduced revenues from the preferred alternatives due to: (1) the lack of flexibility for fishermen to select various hook and bait combinations; (2) potentially reduced catches of target species, both inside and outside the NED, due to the proposed 18/0 circle hooks; and, (3) potentially reduced catches outside the NED due to the proposed "exotic" baits (*i.e.*, squid or Atlantic mackerel only). Several commenters stated that more concern

should be focused on the potential loss of jobs and social costs. Regarding the economic analyses in the DSEIS/RIR/IRFA, two commenters stated that the ex-vessel prices presented in the analyses were not up to date. Another commenter stated that the analyses overstate potential increases in target catches and understates potential losses in target catches. Commenters also requested that the following additional factors be considered: (1) overhead costs will increase because of the need to buy new hooks and more expensive, non-indigenous baits outside the NED; (2) there would be irretrievable lost costs because existing inventories of fishing hooks would become obsolete; and, (3) U.S. PLL fishermen could be put at a competitive disadvantage to foreign vessels because of potentially increased costs and decreased revenues.

*Response:* As explained in the responses to Comments 1–12, the Agency has modified the final rule, in response to public comment, to provide more flexibility regarding baits, offset and non-offset circle hooks, and minimum hook sizes outside the NED. However, pursuant to the 2004 BiOp, additional rulemaking may be necessary to consider a new time and area closure(s), which could have adverse economic impacts. The economic impacts of such a closure, if necessary, would be analyzed and addressed in that rulemaking.

In response to the comment that the IRFA used outdated ex-vessel price information, the Agency has updated the RIR and FRFA using actual 2002 ex-vessel prices. The IRFA utilized 2001 ex-vessel prices adjusted to 2002 dollars, using the Consumer Price Index on-line adjustment calculator. The result of this adjustment is that the 2002 annual gross vessel revenue estimate used in the economic analyses has been lowered from \$187,074 to \$178,619, due to generally lower ex-vessel prices received in 2002.

With regard to estimated potential losses or gains in target species catches and ex-vessel revenue, the estimated changes in catches were derived directly from the results of the NED research experiment and then multiplied by ex-vessel prices to estimate changes in ex-vessel revenue. The DSEIS/RIR/IRFA and final documents each provide a range of impacts to illustrate the variability associated with the different hook and bait combinations and their effects on catches of target species. A range of economic impacts is necessary because the final regulations provide flexibility in the choice of different hook and bait combinations. The ranges of impacts associated with each alternative

in the FSEIS have changed somewhat from the ranges that were provided in the DSEIS. This is because, since publication of the DSEIS, the reduction rates associated with experimental treatments (hook and bait combinations) have been standardized to control for several variables, including sea surface temperature, daylight soak time, total soak time, vessel effect, and pairing effect in case of matched-paired hook types per set. Also, as described above, the estimate of annual gross vessel revenue changed.

This action would result in initial compliance costs associated with the purchase of new hooks (between \$675.25 - \$1,650.00 for 2,500 18/0 hooks, and \$697.50 - \$1,241.75 for 2,500 16/0 hooks). However, after initial hook purchase, replacement costs for circle hooks are expected to be comparable to, or less than, the replacement costs for "J"-hooks. The DSEIS originally estimated annual hook costs at approximately \$20,176 per vessel for a years supply. However, this estimate has been removed from the FSEIS because not every hook is expected to be lost on every set. NMFS acknowledges that there may be irretrievable lost costs due to existing inventories of "J"-hooks becoming obsolete. However, a 30-day delay in the effective date of the final measures outside the NED may help vessel owners retrieve some of the costs associated with the prior purchase of "J"-hooks by providing time to use them. The compliance costs for the purchase of release equipment are estimated to range from \$485.00 to \$1056.50. As discussed in the response to Comment 16, some of the release equipment can be fabricated from readily available materials in order to reduce costs.

While there are short term costs associated with the final rule, this action is not expected to place U.S. PLL vessels at a competitive disadvantage relative to foreign vessels. If fishermen choose an appropriate combination of circle hooks and bait, the NED research has shown that catches of target species can be increased or, at least, remain constant by using circle hooks.

**Comment 23:** Several commenters stressed that it is important for NMFS to reopen the NED to PLL fishing (as contained in alternatives A6, A7, A8, A9, and preferred alternative A10 of the DSEIS), because several vessels are very dependent upon income derived from fishing in that area.

**Response:** This final rule will allow PLL vessels to fish in the NED closed area, provided that they comply with specified hook, bait, and release gear requirements that were proven to be

effective at reducing sea turtle interactions and mortalities during the three-year NED research experiment.

**Comment 24:** One commenter stated that the Community Profiles section of the DSEIS relies upon old data. For example, an annual Blessing of the Fleet no longer occurs in one fishing community.

**Response:** The Community Profiles sections of the DSEIS and FSEIS (Chapter 9) draw upon a variety of sources, including census data, logbook data, local Chamber of Commerce information, academic studies, and professional observations. Information contained in the DSEIS and FSEIS constitute the best available information at this time.

**Comment 25:** A commenter stated that the cost-earning analyses are outdated and should be corrected so that the Agency can properly evaluate the economic impacts of its regulations.

**Response:** The economic analyses in the DSEIS and FSEIS use the best available information. The Agency strives to improve its information collection, and in 2003, initiated mandatory cost-earnings reporting for selected vessels, specifically to improve the economic data available for all HMS fisheries. However, this new economic information was not available at the time of preparation of the DSEIS or FSEIS, because the data are still being collated and checked for accuracy. Additional economic data, including cost and earnings information, will continue to be collected from vessels to further evaluate the impacts of this final rule.

#### 7. Additional Comments Regarding the Alternatives and Other Management Measures

**Comment 26:** Several commenters expressed support for the proposed regulations (preferred alternatives A3, A10, and A16 in the DSEIS), stating that they would be effective at reducing sea turtle bycatch and post-hooking mortality. One commenter stated that the measures provide the most environmentally advantageous and socially just approach to lessening impacts on sea turtles while safeguarding human interests. The proposed regulations are based upon three years of meticulous research and should provide a commonsense and practical model for both domestic and foreign PLL fleets.

**Response:** As discussed above, the proposed measures have been modified after considering public comment, the NED experiment, and other available information. The final rule is expected to have significant ecological benefits

while mitigating for potentially adverse economic impacts. Successful implementation of this rule will provide a catalyst for promoting the adoption of similar measures by foreign fishing nations.

**Comment 27:** Many commenters opposed the continued use of traditional "J"-hooks (contained in alternatives A1, A4, and A9 of the DSEIS), because they do not reduce the bycatch and bycatch mortality of sea turtles.

**Response:** Under this final rule, "J"-hooks will no longer be allowed in the U.S. Atlantic PLL fishery.

**Comment 28:** Several commenters indicated that other, more general, fishery-related factors should have been examined in the DSEIS, such as further efforts to eliminate overfishing of swordfish and tunas and an overall reduction in the number of PLL permits.

**Response:** The purpose of this rulemaking is to reduce interactions with, and post-release mortality of, threatened and endangered sea turtles in the PLL fishery. Addressing overfishing of HMS and the permitting of PLL vessels is beyond the scope of this action; however, these issues are being addressed in other actions. Management and conservation of Atlantic HMS requires international cooperation. The U.S. participates in negotiations at the International Commission for the Conservation of Atlantic Tunas (ICCAT) to develop recommendations on quota allocations and other measures. As part of the international rebuilding efforts, the U.S. implements ICCAT-adopted recommendations. The Agency has issued a proposed rule to implement an ICCAT swordfish quota recommendation (68 Fed. Reg. 36967 (June 30, 2003)), and in Amendment 2 to the HMS FMP, currently in development, will examine additional HMS management measures, including permitting issues.

**Comment 29:** Several commenters suggested that other alternatives should have been considered in the DSEIS including: (1) allowing nighttime longline sets only; (2) using water temperature guidelines to restrict PLL fishing activity; (3) implementing 100-percent observer coverage and a hard cap on turtle takes, whereby the PLL fishery would be closed if the turtle cap is reached; (4) "real time" observer reporting to monitor for ITS exceedances; and (5) implementing effort controls in the NED on numbers of vessels, trips, sets, or hooks. One commenter stated that effort controls are needed because of the possibility of increased effort in the NED resulting from a recent agreement that would

allow U.S. vessels to land fish in Canada.

*Response:* Several alternatives mentioned in this comment, including 100 percent observer coverage, a hard cap on turtle takes, and limits on numbers of sets, were recently implemented in the shallow-set component of the Hawaii-based longline fishery. There are notable differences between the Hawaii-based and Atlantic PLL fisheries. For example, the Hawaii-based shallow-set fishery is predominantly a swordfish fishery. In the Atlantic Ocean, however, swordfish and tuna PLL fishing is generally managed as a single fishery, with the exception of quotas, size limits, retention limits, and other species-specific measures, because the Atlantic PLL fleet is mobile and may target a variety of species on the same trip. Because sea turtles are regularly captured on both swordfish sets and tuna sets in the Atlantic Ocean and GOM, management measures are necessary for the PLL fishery as a whole, regardless of target species. Another difference is that the Atlantic fishery is managed under certain species and country-specific ICCAT quotas, whereas the Hawaii fishery is not.

An alternative prohibiting daytime sets was not considered because the NED research experiment and the Azores study (Bolten *et al.*, 2002) both found that loggerheads are becoming hooked mainly during daylight, and the NED experiment found that leatherbacks become hooked during the night. A prohibition on either daylight or nighttime sets would not be effective at protecting both of these species. Therefore, this alternative was not included in the DSEIS, especially when other measures (*i.e.*, circle hooks) are available.

For enforcement, operational, administrative, and other reasons, the other suggested alternatives were not included in the DSEIS. Although turtle catch rates can be influenced by water temperature, it would be extremely difficult to enforce regulations restricting vessels to fishing within certain specified temperatures. In addition, a "real time" hard cap on the number of turtle takes is not practicable without 100 percent observer coverage. At this time, it would be operationally difficult, and expensive, to implement 100 percent observer coverage for the 148 active PLL vessels fishing in the Atlantic Ocean and GOM, because this is a large geographical area with several remote ports. In 2002, observer coverage averaged 8.9 percent (NED - 100 percent, non-NED - 3.7 percent), and coverage has averaged 3.6 percent for

the years 1995 - 2001. The Agency is continuing to explore options in Amendment 2 to the HMS and Billfish FMPs to enhance existing observer coverage, including industry funding, increased permit fees, and quota set-asides. The Agency also will endeavor to improve its monitoring in other ways. The VMS requirement for all PLL vessels, implemented in September 2003, may provide the ability to gather more timely information about apparent effort. In addition, the Agency will take steps to enhance its monitoring of turtle interactions.

Fishing effort controls are not being implemented in the NED, at this time, because sea turtle interactions occur throughout the Atlantic basin. The final regulations requiring circle hooks and release equipment throughout the fishery are anticipated to have significant turtle conservation benefits. As discussed in the response to Comment 4, the Agency also will engage in outreach, education, and training activities and take further action, as necessary, to conserve and protect sea turtles.

*Comment 30:* A commenter indicated that there was no alternative in the DSEIS that would keep the NED closed and require circle hooks, bait requirements, and release equipment in the remainder of the fishery.

*Response:* The DSEIS and FSEIS include alternatives that would impose hook and bait and release gear requirements on the Atlantic pelagic longline fishery and keep the NED closed. Specifically, in Section 4.0 of the FSEIS, the analyses for alternatives A2 - A5(b) indicate the ecological, economic, and social impacts of requiring circle hook and bait requirements for the fishery, excluding the NED.

*Comment 31:* A commenter suggested that a small number of "J"-hooks (less than 30) should be allowed to accommodate a handline fishery by PLL vessels when fish are schooling.

*Response:* The final regulations do not allow any "J"-hooks to be possessed and/or used onboard HMS PLL vessels. To allow any "J"-hooks would compromise the enforceability and effectiveness of this rule. The final regulations have been modified to provide more flexibility with regards to allowable circle hook and bait combinations, and circle hook sizes outside the NED. The required use of circle hooks throughout the PLL fishery is a significant and important step that will have significant conservation benefits for sea turtles.

*Comment 32:* One commenter stated that the Agency had indicated that the

goal of the rulemaking is to reduce interactions below the ITS, yet the June 14, 2001, BiOp stated that the objective is to reduce mortalities of sea turtles. Because there were no dead sea turtles in the NED experiment, alternative A5 in the DSEIS (16/0 hooks outside the NED) should be adopted because it would be effective at reducing mortalities.

*Response:* Because of the recently concluded NED experiment and the exceedance of the ITS in the 2001 BiOp, the Agency reinitiated consultation and began developing a proposed rule using the ITS as an initial guide in developing its alternatives. Management actions should first try to eliminate or reduce the likelihood of interactions between the fishery and sea turtles. For interactions that cannot be avoided, management actions should reduce the likelihood of sea turtles being injured or killed during, or as a result of, the interaction. These reductions must be made so that the fishery is not jeopardizing the continued existence of listed species. The mandatory possession and use of circle hooks and careful release gear, along with training and certification programs are expected to accomplish these objectives in the long-term, while the adaptive management strategies outlined in the RPA in the 2004 BiOp are expected to help ensure that these objectives are met in the short-term. As noted above, the final rule has been modified to allow the use of 16/0 or larger, non-offset circle hooks outside the NED.

#### 8. Bycatch Issues

*Comment 33:* Many commenters recommended circle hooks, bait restrictions, release gear requirements, and other similar or equivalent management measures for recreational fisheries to reduce bycatch.

*Response:* The bycatch of fishery resources, marine mammals, sea turtles, sea birds and other living marine resources has become a central concern of the commercial and recreational fishing industries, resource managers, conservation organizations, scientists and the public, both nationally and globally. Accordingly, the Agency recently announced a National Bycatch Strategy to reduce bycatch through fishing gear improvements, standardized reporting, education and outreach. As part of that strategy, the HMS Management Division has identified the improvement of recreational fishery data and angler education as items to be considered in Amendment 2 to the HMS and Billfish FMPs. In addition, the Agency has established an angler outreach program

to promote the use of circle hooks in the recreational fishery.

*Comment 34:* Several commenters stated that requiring an 18/0 circle hook with squid and/or mackerel could increase the bycatch of other non-target species, including billfish, bluefin tuna and large coastal sharks. There was also a concern that levels of bycatch in the PLL fishery, including seabirds and marine mammals, are too high regardless of hook and bait treatments, and that these interactions should be further considered before implementing final regulations.

*Response:* As described above, the Agency recently announced a National Bycatch Strategy to further reduce bycatch through fishing gear improvements, standardized reporting, education and outreach. Other initiatives underway include the U.S. Plan of Action for Reducing the Incidental Catch of Sea Birds in Longline Fisheries, which was jointly developed by this agency, the U.S. Fish and Wildlife Service, and the Department of State. The plan involves conducting an assessment of longline fisheries to determine if a seabird bycatch problem exists, and implementing measures to reduce impacts on seabirds to the maximum extent practicable. Because interactions with seabirds appear to be relatively low in Atlantic HMS longline fisheries, measures have not been implemented. This Agency will continue to monitor bycatch in the PLL fishery to determine if any of the measures contained in this final rule contribute to increased levels of bycatch of billfish, bluefin tuna, large coastal sharks, seabirds, or marine mammals.

#### 9. Technical and Implementation Issues

*Comment 35:* Some commenters recommended redefining circle hooks by specifying the allowable gap between the hook point and the hook shank, providing a minimum length, specifying that the hook should be generally circular in shape, and not including a reference to the gauge of the wire (e.g., 16/0 or 18/0) used in the hook.

*Response:* The final rule has been clarified to specify the allowable gap between the hook point and the shank and a minimum length, and to specify that the required hooks should be generally circular or oval-shaped from point to shank. A gauge specification is being retained in the final regulations because the NED research experiment tested hooks of different gauges, and because fishing hooks are typically referred to by their gauge size. However, in recognition that there may be some variability, the final rule provides

clarification of overall size dimensions, and the preamble of the final rule identifies circle hooks by manufacturer and model number that are known to meet the dimensions.

*Comment 36:* Numerous fishermen commented that they would not be able to obtain an adequate supply of the proposed circle hooks in a timely manner.

*Response:* The Agency considered delaying the effective date of the final regulations beyond 30 days, for vessels fishing outside the NED. However, due to the urgent need to reduce turtle interactions, an additional delay is not possible. An adequate supply of circle hooks for at least a few trips is expected to be available by the effective date of this rule. Hook manufacturers have recently increased production of circle hooks in response to the recent implementation of a similar rule in Hawaii.

#### 10. Protected Resources Issues

*Comment 37:* Commenters stated that the June 14, 2001, BiOp and its associated incidental take statement (ITS) are not based upon the best available science. One commenter stated that the BiOp should be based upon the population status of southern loggerhead turtles, rather than the northern population which the Agency is trying to protect. Also, the 2001 BiOp incorrectly states that 100 percent of sea turtle interactions in the NED are with the northern nesting population. Recent DNA testing shows that over 80 percent of NED loggerhead interactions were with turtles originating from the southern nesting population, which is increasing at 4 percent a year. In addition, loggerhead sea turtle population data should not be used to develop the leatherback sea turtle ITS. Some commenters stated there is no modeling of loggerhead and leatherback sea turtle populations, so the population estimates are uncertain.

*Response:* As reflected in comments 37-40, the Agency received public comments directed at the 2004 BiOp. The Agency is not required to provide for, or respond to, public comments while developing a BiOp. However, to the extent that these comments relate to the analyses required under the National Environmental Policy Act (NEPA), responses are provided below.

The June 1, 2004, BiOp and associated ITS supercede the previous opinion and analyze pertinent information related to this rulemaking. The information in the 2004 BiOp represents the latest, best available science, and has undergone numerous levels of review. The opinion analyzes potential impacts on the

loggerhead species as a whole, with attention paid to the impacts on the individual subpopulations, each of which are important to the survival and recovery of the species and require protections in order to ensure the species' future. Based upon data from the NED research experiment, and the fact the fishery is widespread throughout the pelagic waters of the Atlantic and GOM, it is assumed that the overall interaction of loggerhead sea turtles with the pelagic longline fishery is in proportion with the overall stock sizes of each nesting aggregation. That is, the fishery is not believed to be affecting any stock disproportionately, which was a factor considered when the threat of any individual stock being extirpated was examined. In addition, the latest nesting trend data for the South Florida nesting assemblage indicate that there is no discernible trend in the population. The uncertainty of population estimates and trends are acknowledged and taken into account.

*Comment 38:* Several commenters stated that post-hooking mortality estimates of sea turtles were overestimated in the ITS, and should be revised based upon more recent data from a mortality workshop that the Agency held. Other commenters stated that the use of Spanish research studies to develop post-hooking mortality estimates in the BiOp is not appropriate. The current estimates of post-hooking mortality are based upon the use of "J"-hooks, which are more likely to cause gut-hooking than circle hooks. Circle hooks will better ensure that hooked and entangled sea turtles survive. These factors should be considered in the new BiOp.

*Response:* The 2004 BiOp uses refined post-interaction mortality estimates from the January 2004, Workshop on Marine Turtle Longline Post-Interaction Mortality. These estimates take into consideration hooking locations, which are largely a function of the hook type. The Spanish mortality studies were only one of many data sources considered by the participants of the workshop, and any potential limitations of those studies were understood and taken into account.

*Comment 39:* Commenters stated that sea turtle interactions are increasing because their populations are increasing. Therefore, the BiOp and proposed regulations should consider this as baseline information.

*Response:* The baseline information analyzed in this rulemaking and the 2004 BiOp includes the latest sea turtle population and trends data.

*Comment 40:* Commenters questioned how the PLL fleet could be found to be

jeopardizing the continued existence of leatherback and loggerhead sea turtles when the fleet accounts for hundreds of interactions, while the shrimp fleet accounts for over 100,000 turtle interactions.

*Response:* Fisheries may impact life stages of sea turtles in different ways and have varying bycatch and bycatch mortality reduction measures available depending on the gear used. This rulemaking focuses on the impacts of the PLL fishery on protected sea turtles and expected reductions in interactions and mortality from the preferred alternatives. The Southeast shrimp trawl fishery underwent a separate consultation which resulted in a December 2, 2002, biological opinion. Although the shrimp fishery interacts with more sea turtles, the December 2002 biological opinion determined that revised regulations on Turtle Excluder Devices (68 FR 8456, February 21, 2003) would be expected to reduce related mortality significantly in that fishery. See the December 2002 BiOp for specifics of the shrimp trawl consultation. The June 1, 2004, BiOp prepared for this rulemaking found jeopardy for leatherbacks only, as a result of the expected levels of mortality. The RPA in the June 2004 BiOp is expected to reduce mortality to levels which will not jeopardize the continued existence of the species.

#### 11. Other Comments

*Comment 41:* Commenters stated that the proposed regulations violate National Standard 4 of the M-S Act, because they discriminate between residents of different states, especially North Carolina, where there are few sea turtle interactions off the coast and residents catch smaller fish.

*Response:* The proposed and final management measures consist of conservation measures that are intended to protect threatened and endangered sea turtles. These measures are consistent with National Standard 4 because they apply bycatch reduction and mitigation requirements throughout the whole PLL fishery, are not direct allocations of fishing privileges, and do not discriminate between residents of different states. Circle hooks are necessary for U.S. PLL vessels for the entire Atlantic basin because turtle interactions can, and do, occur over this entire area, albeit at different rates. The PLL fleet is generally mobile, so vessels may opportunistically choose to fish in areas where any potential adverse impacts are lower. Fishery management actions often have inherently differential geographic impacts, and these are largely due to differences in

species composition and abundance. In consideration of this, the Agency has modified the final rule to account for some geographical variation in the PLL fishery by implementing different management measures within the NED closed area and in other areas.

*Comment 42:* One commenter stated that the Agency has not adequately analyzed the cumulative effects of this action on PLL vessels, as required by NEPA.

*Response:* The DSEIS and FSEIS have adequately analyzed the cumulative effects of this action on PLL vessels. The analyses describe all major management actions that have occurred since 1985 and the potential effects of this action when added to other past, present or reasonably foreseeable future actions.

*Comment 43:* Commenters stated that there was no scoping process as required under NEPA and that the rulemaking was proceeding too quickly with little consideration being given to public concerns. One commenter requested consideration as an "applicant" in the development of the BiOp. Other commenters requested more public involvement in the ESA consultation, specifically, copies of the draft and final BiOp for the proposed rule.

*Response:* Although scoping hearings can be beneficial, they are not required under NEPA. Because of the urgent need to implement sea turtle bycatch mitigation measures, scoping hearings were not held. However, the Agency has provided ample opportunity for public participation throughout the rulemaking. The Agency published a Notice of Intent of Proposed Rulemaking (NOI) in the Federal Register on November 28, 2003 (68 FR 66783), identifying significant issues related to the action and requesting public comment through December 29, 2003. The Agency also distributed a FAX notice on December 3, 2003, to solicit comment. Taking public comment into consideration, the Agency published a proposed rule in the Federal Register on February 11, 2004 (69 FR 6621), then held public hearings in North Dartmouth, MA (March 2, 2004), New Orleans, LA (March 4, 2004), and Manteo, NC (March 9, 2004). Over 100 people attended these public hearings. The comment period on the proposed rule closed on March 15, 2004, and the Agency received approximately 175 written and electronic comment letters. With regard to the ESA consultation, the Agency does not consider there to be an applicant for this action. Moreover, the Agency is not required to provide for public comment on a draft or final biological opinion. Copies of the final,

2004 BiOp are available upon request from the NMFS Southeast Regional Office, Division of Protected Resources (9721 Executive Center Drive North, St. Petersburg, FL 33702. 727-570-5312). The BiOp may also be obtained online at: <http://sero.nmfs.noaa.gov/>.

*Comment 44:* One commenter stated that the impacts of the proposed regulations on "other important organizations," including trade associations, have not been fully analyzed in the Community Profiles section of the DSEIS.

*Response:* Chapters 4, 6, 7, 8, and 9 of the DSEIS and the FSEIS identify affected entities and provided an assessment of the likely economic impacts associated with each of the alternatives. The analysis primarily focuses upon fishing vessels, as they would be most directly impacted by the action. The analysis was very complete and indicated a range of potential economic impacts on vessels, from negative to positive, depending upon a variety of factors including target species and hook and bait choices. In addition, potential impacts on dealers, processors, bait houses, and gear manufacturers who might be indirectly affected by the measures are identified. By providing information on these direct and indirect impacts, with a focus on those most directly impacted by the action, other entities, including trade associations, should be able to reasonably assess the impacts in consideration of their unique situations.

*Comment 45:* Commenters noted that the Atlantic Tunas Conservation Act (ATCA) provides that the U.S. PLL fleet should have a reasonable opportunity to catch its full ICCAT quota of swordfish; however, the fleet is currently harvesting only 29 percent of its quota. The proposed regulations would further prevent full utilization of the quota.

*Response:* The final management measures are expected to provide the U.S. PLL fleet with a reasonable opportunity to catch its ICCAT quota allocation, consistent with the ATCA, Magnuson-Stevens Act, ESA, and other domestic law. The NED experiment demonstrated that target species catches can be increased, or at least remain constant, using circle hooks if an appropriate combination of hooks and bait is deployed. The DSEIS noted that the proposed measures are most likely to impact adversely mixed target trips, and that impacts on catches in warmer waters are not fully known. Public comment affirmed these potential impacts, and in response, the final rule provides more flexibility in hook and bait choices and hook sizes to minimize



adverse impacts, to the extent practicable.

*Comment 46:* A commenter stated that the Secretary of Commerce does not have the jurisdictional authority to apply the Magnuson-Stevens Act to HMS fisheries outside the U.S. exclusive economic zone (EEZ), including the NED.

*Response:* The Secretary of Commerce does have the authority to regulate U.S.-permitted vessels fishing outside the U.S. EEZ. The Secretary's authority with regard to the NED was specifically addressed and upheld in *Blue Water Fishermen's Association, et al., v. National Marine Fisheries Service, et al.*, 226 F.Supp.2d 330 (D. Mass. 2002).

#### Changes From the Proposed Rule

NMFS has made several changes to the proposed rule. These changes are outlined below.

(1) In § 635.21(c)(5)(iii)(C), the hook size, type and bait requirements have been modified. In the proposed rule, all pelagic longline vessels were limited, at all times, to possessing on board and/or using only either 18/0 or larger offset circle hooks with whole Atlantic mackerel; or 18/0 or larger non-offset circle hooks with squid. The final rule contains different regulations for vessels fishing inside and outside of the NED. In the final rule, § 635.21(c)(5)(iii)(C) limits pelagic longline vessels, fishing outside of the NED closed area, at all times, to possessing on board and/or using only 18/0 or larger circle hooks with an offset not to exceed 10 degrees, and/or 16/0 or larger non-offset circle hooks. Only whole finfish and/or squid baits may be possessed and/or utilized with the allowable hooks. Section 635.21(c)(2)(v) allows vessels with pelagic longline gear on board to fish in the NED closed area under certain requirements. Vessels are limited, at all times, to possessing onboard and/or using only 18/0 or larger circle hooks with an offset not to exceed 10 degrees. Only whole Atlantic mackerel and/or squid baits may be possessed and/or utilized with the allowable hooks inside the NED closed area. As indicated in the response to comments, the final rule was modified to address regional differences in target species catches and bait availability, and to provide additional flexibility for vessels to switch hooks and baits to target different species at different times during a trip.

(2) Consistent with the above changes for the hook and bait requirements, the final rule also makes changes to §§ 635.2 and 635.21(c)(2)(v). The proposed rule removed the definition for "Northeast Distant closed area" in § 635.2, and

removed the prohibition on fishing in the NED closed area in § 635.21(c)(2)(v). The final rule retains the NED closed area definition and prohibition on PLL fishing (except under certain conditions, described above), to clarify that differing hook and bait requirements would apply in the NED closed area and elsewhere in the fishery. Removing the NED definition and its coordinates also would have affected other regulations, not directly related to this rulemaking, that refer to the NED closed area. Thus, this modification provides for consistency and clarity throughout the HMS regulations.

(3) In § 635.2, in response to public comment, the definition of "Circle hook" has been clarified to specify that the barbed end of the hook should, as originally designed, generally be circular or oval-shaped.

(4) In the final rule, NMFS has refined the proposed minimum width specifications and added a minimum gap measurement (from barb to shank) for 18/0 circle hooks to provide clarification of the requirements. In addition, because 16/0 non-offset circle hooks are to be allowed outside of the NED closed area, the final rule includes minimum size specifications (width and gap) for these hooks. To better ensure that hooks are not offset beyond ten degrees, the final rule specifies that allowable hooks may only be offset by the hook manufacturer.

(5) In the final rule, the specifications for the long-handled dehooker for external hooks, and the long-handled device to pull an inverted "v", at § 635.21(c)(5)(i), have been modified from those that were proposed. The minimum length of the extended reach handle for both pieces of equipment must be equal to the freeboard of the vessel or 6 ft (1.83 m), whichever is greater. In the proposed rule, the handle length of the long-handled dehooker for external hooks was specified as 3 ft (0.91 m), but this length was determined to be too short for most vessels. The specifications for the long-handled device to pull an inverted "v" were changed to be consistent with those for the long-handled dehooker for external hooks, so that the same piece of equipment could be used for both purposes.

(6) In the final rule, §§ 635.23(f)(3) and 635.27(a)(3) are amended, consistent with the above changes, to remove references to the NED experimental fishery.

(7) The definition of "Freeboard" has been moved from the proposed regulations in § 635.21(c)(5), to the definitions section in § 635.2. The

definition remains unchanged from that in the proposed rule.

(8) In the final rule, § 223.206(d)(1)(ii) has been modified from the proposed regulatory text to be more consistent with the terminology used in the HMS regulations.

#### Alternative NEPA Procedures

To more rapidly reduce sea turtle interactions and to mitigate the economic impact of sea turtle bycatch mitigation measures, NMFS has requested and been authorized to execute alternative procedures for the preparation and completion of an SEIS. The Council on Environmental Quality (CEQ) authorized a waiver of 14 of the standard 45 days for the DSEIS comment period, and 26 of the standard 30 days for the waiting period between the date of publication of the NOA for the FSEIS and signature of the record of decision (ROD) for this action. The FSEIS was posted on the HMS website on June 22, 2004, at <http://www.nmfs.noaa.gov/sfa/hms/>. NMFS distributed an e-mail to its HMS ACTION network regarding the availability of the FSEIS for comment. The FSEIS comment period closed on June 29, 2004.

#### Classification

This final rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and ATCA, 16 U.S.C. 971 *et seq.*

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

Because this rule relieves a restriction by allowing vessels to fish in the NED closed area, those portions of the rule relating to the NED exemption, at § 635.2 and §§ 635.21(c)(2)(v) and (c)(5)(iv), are not subject to the 30-day delayed effectiveness provision of the Administrative Procedure Act pursuant to 5 U.S.C. 553(d)(1). Currently the NED is closed to all pelagic longline fishing for HMS. Under this rule, vessels complying with specified hooks, baits, and release gear requirements would be allowed to fish in the NED closed area.

As required under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, NMFS has prepared a Final Regulatory Flexibility Analysis (FRFA) that examines the economic impact this final rule is expected to have on small entities, in order to determine ways to minimize significant economic impacts. The Initial Regulatory Flexibility Analysis (IRFA) was summarized in the proposed rule, which published on February 11, 2004 (69 FR 6621). The FSEIS prepared for this rule provides additional discussion of the biological,

social, and economic impacts of all the alternatives considered. A copy of the FSEIS/RIR/FRFA is available from NMFS (see ADDRESSES). A summary of the FRFA follows:

A description of why this action is being considered, the objectives and legal basis for the action, and a description of the action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble.

NMFS considers all permit holders to be small entities. The final management measures could potentially affect all vessels currently permitted to participate in the HMS pelagic longline fishery, although only about half (148) of all permit holders are actually active in this fishery. As of November 2003, approximately 235 tuna longline limited access permits had been issued. In addition, approximately 203 directed swordfish limited access permits, 100 incidental swordfish limited access permits, 249 directed shark limited access permits, and 357 incidental shark limited access permits had been issued. Because vessels authorized to fish for swordfish and tunas with pelagic longline gear must possess a tuna longline permit, a swordfish permit (directed or incidental), and a shark permit (directed or incidental), the maximum number of vessels potentially affected by this final rule is 303 (the number of swordfish permits issued).

Other sectors of HMS fisheries such as dealers, processors, bait houses, and gear manufacturers, some of which are considered small entities, might be indirectly affected by the preferred alternatives. However, because the final rule does not apply directly to them, economic impacts on these other sectors are discussed in the FSEIS, but not in the FRFA.

As described in the Comments and Responses section of the preamble, NMFS received many comments on the potential for substantial economic impacts associated with the proposed regulations, and two comments

specifically related to the IRFA. See Comment 22 for IRFA-specific comments.

The IRFA/DSEIS/RIR acknowledged that the proposed measures could potentially result in adverse economic impacts for small entities, depending upon which hook and bait combination was used for particular target species, and that the impacts were generally more severe for mixed target species trips. In summary, a large portion of the public comments confirmed these statements, and presented three primary reasons for why the proposed measures would result in significant adverse economic impacts. First, the proposed measures would not provide flexibility to change hook-types and baits in reaction to changing conditions that may occur on longer trips (i.e., species availability and market prices). Second, limiting vessels to possessing and/or using only 18/0 or larger circle hooks outside the NED would substantially reduce catches of target species in the south Atlantic and GOM regions (i.e., small yellowfin tuna, dolphin and wahoo). Finally, the requirement limiting vessels to possessing and/or using only either whole Atlantic mackerel or squid baits would be detrimental to vessels fishing in areas outside the NED because Atlantic mackerel is either unavailable, prohibitively expensive, or ineffective at catching target species in the south Atlantic or GOM.

The proposed regulations required fishermen to make a decision, prior to departing port, regarding the hook and bait combination that would be deployed during the trip. In general, hook and bait combinations that increase swordfish catches (18/0 offset circle hook with mackerel) would simultaneously decrease tuna catches, and combinations that increase tuna catches (18/0 non-offset circle hook with squid) would simultaneously decrease swordfish catches. Impacts on catches of shark, dolphin, and wahoo were unknown. The consequence of

choosing an inappropriate hook and bait combination for a specific target species could have resulted in substantially reduced revenues. Public comment, to a large extent, indicated that changes in revenue associated with the proposed regulations would be substantially negative, rather than positive, within the range of impacts that were presented in the IRFA. In consideration of these public comments, the Agency modified the final regulations to provide more flexibility regarding allowable baits, offset and non-offset circle hooks, and minimum hook sizes outside the NED. These modifications will mitigate for potential adverse economic impacts, increase flexibility, address geographical differences within the fishery, and ease the compliance burden associated with the purchase and use of non-indigenous bait, while ensuring significant conservation benefits for sea turtles.

#### Alternatives to the Rule

NMFS considered sixteen alternatives in developing the IRFA. These alternatives included: no action (alternative A1), hook and bait modifications outside the NED (alternatives A2 - A5), reopening the NED without hook and bait restrictions (Alternative A6), reopening the NED with hook and bait modifications (alternatives A7 - A10), a total prohibition on pelagic longline gear in Atlantic HMS fisheries (alternative A11), pelagic longline time and area closures (alternatives A12 - A15), and sea turtle careful handling protocols and release gear design standards (alternative A16). In response to public comments, NMFS considered modifications to alternatives A5 and A10. The FSEIS and FRFA describe alternatives A5 and A10 as alternatives A5(a) and A10(b), and the modifications as alternatives A5(b) and A10(b).

Table 4 provides a summary of the net economic benefits and costs associated with each of alternatives.

TABLE 4. SUMMARY OF THE NET BENEFITS AND COSTS FOR EACH ALTERNATIVE

Alternative	Estimated Net Economic Benefits	Estimated Net Economic Costs
A1 .....	None .....	None.
A2 .....	Vessels able to successfully target swordfish may realize an increase in gross revenues of between 3.57 and 11.72%.	Vessels may experience a decrease in gross revenues of between 47.93 and 51.74%, attributable to potential declines in tuna catches. Vessels embarking on mixed target trips (swordfish and tuna) may experience a decrease in gross revenues of between 36.20 and 48.17%. Vessels would incur an estimated hook compliance cost of approximately \$1,044.

TABLE 4. SUMMARY OF THE NET BENEFITS AND COSTS FOR EACH ALTERNATIVE—Continued

Alternative	Estimated Net Economic Benefits	Estimated Net Economic Costs
A3 ..... Option i .....	Vessels able to successfully target swordfish may realize an increase in gross revenues of between 3.57 and 11.72%.	Vessels may experience a decrease in gross revenues of between 47.93 and 51.74%, attributable to potential declines in tuna catches. Vessels embarking on mixed target trips (swordfish and tuna) may experience a decrease in gross revenues of between 36.20 and 48.17%. Vessels would incur an estimated hook compliance cost of approximately \$1,044.
A3 ..... Option ii .....	Vessels able to successfully target tuna may realize an increase in gross revenues of between 11.95 and 17.25%. Vessels embarking on mixed target trips (swordfish and tuna) may experience an increase in gross revenues of as much as 6.19%.	Vessels may experience a decrease in gross revenues of between 11.06 and 12.63%, stemming from potential declines in swordfish landings. Vessels embarking on mixed target trips (swordfish and tuna) may experience a decrease in gross revenues of as much as 0.68%. Vessels would incur an estimated hook compliance cost of approximately \$1,044.
A4 ..... Option i .....	Vessels able to successfully target swordfish may realize an increase in gross revenues of between 3.57 and 13.01%.	Vessels may experience a decrease in gross revenues of between 47.93 and 51.74%, attributable to potential declines in tuna catches. Vessels embarking on mixed target trips (swordfish and tuna) may experience a decrease in gross revenues of between 36.20 and 48.17%. Vessels would incur an estimated hook compliance cost of approximately \$1,044.
A4 ..... Option ii .....	Vessels able to successfully target tuna may realize an increase in gross revenues of between 11.95 and 17.25%. Vessels embarking on mixed target trips (swordfish and tuna) may experience an increase in gross revenues of as much as 6.19%.	Vessels may experience a decrease in gross revenues of between 11.06 and 12.63%, stemming from potential declines in swordfish landings. Vessels embarking on mixed target trips (swordfish and tuna) may experience a decrease in gross revenues of as much as 0.68%. Vessels would incur an estimated hook compliance cost of approximately \$1,044.
A4 ..... Option iii .....	Vessels able to successfully target swordfish may realize an increase in gross revenues of as much as 24.58%.	Vessels may experience a decrease in gross revenues of as much as 53.28%, attributable to potential declines in tuna catches. Vessels embarking on mixed target trips (swordfish and tuna) may experience a decrease in gross revenues of 28.70%. Vessels would incur an estimated hook compliance cost of approximately \$1,433.
A5 (a) .....	No change is expected in gross revenues attributable to tuna.	Vessels may experience a decrease in gross revenues of between 3.88 and 7.75%, attributable to potential declines in swordfish catches. Vessels embarking on mixed target trips (swordfish and tuna) may experience a decrease in gross revenues of between 3.87 and 7.75%. Vessels would incur an estimated hook compliance cost of approximately \$885.
A5 (b) .....	No change is expected in gross revenues attributable to tuna.	Vessels may experience a decrease in gross revenues of between 3.88 and 7.75%, attributable to potential declines in swordfish catches. Vessels embarking on mixed target trips (swordfish and tuna) may experience a decrease in gross revenues of between 3.87 and 7.75%. Vessels would incur an estimated hook compliance cost of approximately \$885.
A7 .....	Vessels able to successfully target swordfish may realize an increase in gross revenues of between 8.13 and 26.65%. Vessels embarking on mixed target trips (swordfish and tuna) may experience an increase in gross revenues of as much as 17.50%.	Vessels may experience a decrease in gross revenues of between 9.15 and 9.88%, attributable to potential declines in tuna catches. Vessels embarking on mixed target trips (swordfish and tuna) may experience a decrease in gross revenues of as much as 1.75%. Vessels would incur an estimated hook compliance cost of approximately \$1,044.

TABLE 4. SUMMARY OF THE NET BENEFITS AND COSTS FOR EACH ALTERNATIVE—Continued

Alternative	Estimated Net Economic Benefits	Estimated Net Economic Costs
A8 .....	Vessels able to successfully target swordfish may realize an increase in gross revenues of as much as 5.11%.	Vessels may experience a decrease in gross revenues of as much as 10.47%, attributable to potential declines in tuna catches. Vessels embarking on mixed target trips (swordfish and tuna) may experience a decrease in gross revenues of 5.36%. Vessels would incur an estimated hook compliance cost of approximately \$2,400.
A9 .....		
Option i .....	Vessels able to successfully target swordfish may realize an increase in gross revenues of as much as 55.88%. Vessels embarking on mixed target trips (swordfish and tuna) may experience an increase in gross revenues of 45.71%.	Vessels may experience a decrease in gross revenues of as much as 10.17%, attributable to potential declines in tuna catches. Vessels would incur an estimated hook compliance cost of approximately \$1,433.
A9 .....		
Option ii .....	Vessels able to successfully target swordfish may realize an increase in gross revenues of between 8.13 and 26.65%. Vessels embarking on mixed target trips (swordfish and tuna) may experience an increase in gross revenues of as much as 17.50%.	Vessels may experience a decrease in gross revenues of between 9.15 and 9.88%, attributable to potential declines in tuna catches. Vessels embarking on mixed target trips (swordfish and tuna) may experience a decrease in gross revenues of as much as 1.75%. Vessels would incur an estimated hook compliance cost of approximately \$1,044.
A10 (a) .....		
Option i .....	Vessels able to successfully target swordfish may realize an increase in gross revenues of between 8.13 and 26.65%. Vessels embarking on mixed target trips (swordfish and tuna) may experience an increase in gross revenues of as much as 17.50%.	Vessels may experience a decrease in gross revenues of between 9.15 and 9.88%, attributable to potential declines in tuna catches. Vessels embarking on mixed target trips (swordfish and tuna) may experience a decrease in gross revenues of as much as 1.75%. Vessels would incur an estimated hook compliance cost of approximately \$1,044.
A10 (a) .....		
Option ii .....	Vessels able to successfully target tuna may realize an increase in gross revenues of between 2.28 and 3.29%.	Vessels may experience a decrease in gross revenues of between 25.16 and 28.72%, stemming from potential declines in swordfish landings. Vessels embarking on mixed target trips (swordfish and tuna) may experience a decrease in gross revenues of between 21.86 and 26.44%. Vessels would incur an estimated hook compliance cost of approximately \$1,044.
A10 (b) .....	Vessels able to successfully target swordfish may realize an increase in gross revenues of as much as 26.65%. Vessels able to successfully target tuna may realize an increase in gross revenues of as much as 3.29%. Vessels embarking on mixed target trips (swordfish and tuna) may experience an increase in gross revenues of as much as 29.95%.	Vessels may experience a decrease in gross revenues of as much as 28.72%, stemming from potential declines in swordfish landings and a decrease in gross revenues of as much as 9.88%, attributable to potential declines in tuna catches. Vessels embarking on mixed target trips (swordfish and tuna) may experience a decrease in gross revenues of as much as 38.59%. Vessels would incur an estimated hook compliance cost of approximately \$1,044.
A13 .....	Vessels would likely increase catches of swordfish by 17% and bigeye tuna by 32% (in numbers of fish).	Vessels would likely experience a 2% decrease in yellowfin tuna catches (in numbers of fish). Vessels may experience increased fuel costs associated with an increase in distances vessels may need to travel to reach open areas.
A14 .....	Vessels would likely increase catches of swordfish by 18% and bigeye tuna by 33% (in numbers of fish).	Vessels would likely experience a 2% decrease in yellowfin tuna catches (in numbers of fish). Vessels may also experience increased fuel costs associated with an increase in distances vessels may need to travel to reach open areas.
A15 .....	Vessels would likely increase catches of swordfish by 5% and yellowfin tuna by 3%, and bigeye tuna by 17% (in numbers of fish).	Vessels may experience increased fuel costs associated with an increase in distances vessels may need to travel to reach open areas.
A16 .....	Minor positive benefit from reduced hook replacement costs (if hooks are retrieved undamaged). May increase profits for suppliers who provide release equipment.	Vessels would incur an estimated compliance cost of approximately \$485.00 - \$1056.50.

Alternative A1 (no action) has been rejected because it would not provide for any additional sea turtle bycatch and bycatch mortality reduction measures. Further, it would allow the full adverse economic impacts of the NED closure to be realized, given the termination of the NED experiment and its attendant economic benefits.

Alternative A2 (limit vessels with pelagic longline gear onboard, at all times, in all areas open to pelagic longline fishing excluding the NED, to possessing onboard and/or using only 18/0 or larger circle hooks with an offset not to exceed 10 degrees and whole mackerel bait) would likely have produced significant positive ecological impacts. However, it would also likely increase adverse socio-economic impacts on fishermen, compared to selected alternative A5(b), by limiting flexibility in selecting a more efficient hook and bait treatment for use in targeting tuna. As such, those fishermen outside the NED unable to successfully target swordfish would have been adversely impacted to a greater extent, because of the expected loss in tuna revenues associated with this hook and bait treatment. Further, many commenters stated that 18/0 circle hooks would be too large to catch some target species encountered outside the NED. For these reasons, alternative A2 was rejected at this time.

Alternative A3 (limit vessels with pelagic gear onboard, in areas open to pelagic longline fishing, excluding the NED, to possessing onboard and/or using only one of the following combinations: (i) 18/0 or larger circle hooks with an offset not to exceed 10 degrees and whole mackerel bait; or (ii) 18/0 or larger non-offset circle hooks and squid bait) would likely produce significant positive ecological impacts. However, many commenters stated that this alternative would not provide enough flexibility for fishermen to adjust to changing market conditions, change target species while at sea, or employ traditional baits. Commenters also stated that 18/0 circle hooks may be too large to catch some target species encountered outside the NED. Alternative A3 was rejected, at his time, because it would likely result in greater negative socio-economic impacts than selected alternative A5(b).

Alternative A4 (limit vessels with pelagic longline gear onboard, at all times, in all areas open to pelagic longline fishing excluding the NED, to possessing onboard and/or using only one of the following combinations: (i) 18/0 or larger circle hook with an offset not to exceed 10 degrees and whole mackerel bait; or, (ii) 18/0 or larger non-

offset circle hooks and squid bait; or, (iii) 9/0 "J"-hook with an offset not to exceed 25 degrees and whole mackerel bait) may produce either greater or lesser adverse economic impacts than selected alternative A5(b), depending upon the hook and bait combination chosen and the target species of a specific trip. However, this alternative was rejected because "J"-hooks are likely to have a higher post-mortality rate than circle hooks. Interactions with "J"-hooks have a higher incidence of deep hooking and tend to result in more serious injuries for sea turtles.

Alternative A5(a) (limit vessels with pelagic longline gear onboard, at all times, in all areas open to pelagic longline fishing excluding the NED, to possessing onboard and/or using only 16/0 or larger circle hooks with an offset not to exceed 10 degrees) was rejected because the use of offset 16/0 circle hooks, as opposed to non-offset 16/0 circle hooks, would likely result in higher rates of throat or stomach hooked loggerhead sea turtles and associated mortalities. Alternative A5(a) would likely have minor to moderate adverse economic impacts on fishermen, given potential decreases in swordfish catch.

Alternative A6 (allow pelagic longline fishing for Atlantic HMS in the NED, maintaining existing restrictions) would have positive social and economic benefits. This alternative would not provide for any additional sea turtle bycatch and bycatch mortality reduction measures or ensure compliance with the ESA. Therefore, it was rejected.

Alternative A7 (open the NED to pelagic longline fishing and limit vessels with pelagic longline gear onboard in that area, at all times, to possessing onboard and/or using only 18/0 or larger circle hooks with an offset not to exceed 10 degrees and whole mackerel bait) would be effective at reducing sea turtle interactions, and would have positive social and economic effects as compared to the status quo or historical perspectives. However, it was rejected because allowing only a single hook and bait in the NED would limit the ability of fishermen to target swordfish or tunas, more so than selected alternatives A10(a) and A10(b).

Alternative A8 (limit vessels with pelagic longline gear onboard, at all times, in the NED to possessing onboard and/or using only 20/0 or larger circle hooks with an offset not to exceed 10 degrees) would be effective at reducing sea turtle interactions, and would have positive social and economic benefits over the status quo. However, it would have adverse economic impacts when viewed historically. This alternative was

rejected because it would have a greater adverse impact on revenues associated with landings of tuna, and a less positive impact on revenues associated with landings of swordfish when compared to selected alternative A10(b).

Alternative A9 (limit vessels with pelagic longline gear onboard in the NED, to possessing and/or using no more than one of the following hook and bait combinations: (i) 9/0 "J"-hooks with an offset not to exceed 25 degrees and whole mackerel bait; or (ii) 18/0 or larger circle hooks with an offset not to exceed 10 degrees and whole mackerel bait) may provide greater positive or negative economic impacts than selected alternative A10(b), given the sizable anticipated changes in both swordfish and tuna catches. However, this alternative was rejected because the use of "J"-hooks is expected to result in sea turtle higher post-release mortality rates than circle hooks.

Alternative A10(a) (limit vessels with pelagic longline gear onboard in the NED, to possessing and/or using no more than one of the following hook and bait combinations: (i) 18/0 or larger circle hook with an offset not to exceed 10 degrees and whole mackerel bait; or (ii) 18/0 or larger non-offset circle hook and squid bait) would be effective at reducing sea turtle interactions and would have positive social and economic impacts over the status quo. However, many commenters stated that alternative A10(a) would not provide enough flexibility for fishermen to adjust to changing market conditions or change target species while at sea. Alternative A10(a) was rejected because it would likely result in greater negative socio-economic impacts than selected alternative A10(b).

Alternative A11 (prohibit the use of pelagic longline gear in Atlantic HMS fisheries) would afford the greatest protection to sea turtles domestically, but it was rejected, at this time, because other bycatch and bycatch mortality reduction alternatives are available, and alternative A11 would impose the most significant adverse economic impacts of all the alternatives.

Alternative A12 (close the western GOM year-round) would likely have severe adverse economic impacts on a distinct segment of the fishery. Alternative A12 was rejected, at this time, because other bycatch and bycatch mortality reduction alternatives are available. A GOM or alternative closure may be considered in a future rulemaking, as necessary, consistent with the June 1, 2004, BiOp for the fishery. Additional analyses would be necessary to incorporate changes in the environmental baseline resulting from

selected circle hook and sea turtle release and disentanglement gear alternatives.

The time/area closures in alternatives A13, A14, and A15 were each analyzed with and without a redistribution of fishing effort. For this reason, the results may indicate increases in target and non-target species catches for certain alternatives.

Alternative A13 (close an area of the central GOM year-round) would likely have substantial economic impacts on a large and distinct segment of the U.S. pelagic longline fleet, communities, buyers, and dealers in the Gulf of Mexico. While data indicate potential increases in catches of swordfish and bigeye tuna of 17 and 32 percent in numbers of fish, respectively, and a decrease of yellowfin tuna catches of two percent in numbers of fish, the actual impacts are unclear, as potential changes in the weight of landings remain unknown. Loggerhead sea turtle interactions are projected to increase due to relocation of fishing effort under this alternative. While the impacts have not been quantified, NMFS anticipates that the overall social and economic impacts of a closure of this size would likely be adverse. Because a high percentage of the historical fishing effort has been located in the area considered for the time/area closure, a substantial number of fishing vessels may need to travel greater distances to reach favorable fishing grounds and spending longer periods at sea, which could potentially increase fuel, bait, ice, and crew costs. In combination with other alternatives, such as hook and bait restrictions, this alternative would have even greater adverse impacts, and more substantial adverse impacts on the GOM segment of the fleet, than the preferred alternatives. Alternative A13 was rejected, at this time, because other bycatch and bycatch mortality reduction alternatives are available. A GOM or alternative closure may be considered in a future rulemaking, as necessary, consistent with the June 1, 2004, BiOp for the fishery. Additional analyses would be necessary to incorporate changes in the environmental baseline resulting from selected circle hook and sea turtle release and disentanglement gear alternatives.

Alternative A14 (prohibit the use of pelagic longline gear in HMS Fisheries in areas of the Central GOM and NEC year-round) was rejected because, at this time, other bycatch and bycatch mortality reduction alternatives are available. A GOM or alternative closure may be considered in a future rulemaking, as necessary, consistent with the June 1, 2004, BiOp for the

fishery. Additional analyses would be necessary to incorporate changes in the environmental baseline resulting from selected circle hook and sea turtle release and disentanglement gear alternatives. Under alternative A14, swordfish and bigeye tuna catches could potentially increase 18 and 33 percent in numbers of fish, respectively, and catches of yellowfin tuna could potentially decrease by two percent. However, the actual impacts are unclear because changes in the weight of landings is not known. Because a high percentage of the historical fishing effort has been located in the area considered for the time/area closure, a substantial number of fishing vessels may need to travel greater distances to reach favorable fishing grounds and spending longer periods at sea, which could potentially increase fuel, bait, ice, and crew costs. In combination with other alternatives, such as hook and bait restrictions, alternative A14 would be expected to have even greater adverse impacts, and more substantial adverse impacts than the selected alternatives.

Alternative 15 (prohibit the use of pelagic longline gear in HMS Fisheries in areas of the Central GOM and NEC from May through October) was rejected, at this time, because other bycatch and bycatch mortality reduction alternatives are available. A GOM or alternative closure may be considered in a future rulemaking, as necessary, consistent with the June 1, 2004, BiOp for the fishery. Additional analyses would be necessary to incorporate changes in the environmental baseline resulting from selected circle hook and sea turtle release and disentanglement gear alternatives. Under alternative A15, swordfish, yellowfin tuna, and bigeye tuna catches could potentially increase five percent, three percent, and 17 percent in numbers of fish, respectively. However, the actual impacts are unclear because changes in the weight of landings are not known. Because a high percentage of the historical fishing effort has been located in the area considered for the time/area closure, a substantial number of fishing vessels may need to travel greater distances to reach favorable fishing grounds and spending longer periods at sea, which could potentially increase fuel, bait, ice, and crew costs. In combination with other alternatives, such as hook and bait restrictions, alternative A15 would be expected to have even greater adverse impacts, and more substantial adverse impacts than the preferred alternatives.

#### Reasons for Selecting Final Management Measures

The selected alternatives (A5(b), A10(b) and A16) are intended to reduce sea turtle interaction and mortality levels while minimizing adverse economic impacts to the extent practicable, consistent with the ESA, Magnuson-Stevens Act, and other applicable law. Alternatives A5(b) and A10(b) both provide flexibility to utilize circle hooks and baits that are effective at reducing sea turtle interactions and post-hooking mortality, without adversely impacting catches of swordfish and tunas. The projected economic impacts associated with these alternatives are presented below. An average annual vessel gross revenue estimate of \$178,619 was assumed for these analyses.

Alternative A5(b) limits vessels with pelagic longline gear onboard, at all times, in all areas open to pelagic longline fishing, excluding the NED, to possessing onboard and/or using only 16/0 or larger non-offset circle hooks and/or 18/0 or larger circle hooks with an offset not to exceed 10 degrees. Only whole finfish and squid baits may be possessed and/or utilized with allowable hooks. Under this alternative, fishermen may experience little or no change in catches of tunas (*i.e.*, tuna catch remains at 58.6 percent by weight), and a 10 to 20 percent decrease in catches of swordfish. Based on this, vessel revenues attributable to tunas would likely remain at approximately \$104,670. Vessel revenues attributable to swordfish may possibly decrease by 3.88 (\$6,925) to 7.75 (\$13,850) percent to between \$171,694 and \$164,769. However, because fishermen have the option of using a hook and bait combination shown to be more effective at catching swordfish, this reduction in revenues is not expected to occur. Actual impacts of this alternative would depend on the frequency with which particular hook and bait combinations are employed and species targeted.

Alternative A10(b) allows pelagic longline vessels to fish in the NED, but requires vessels in that area, at all times, to possess onboard and/or use only 18/0 or larger circle hooks with an offset not to exceed 10 degrees. Only whole mackerel and squid baits may be possessed and/or utilized with the allowable hooks. Depending upon whether fishermen use the 18/0 offset circle hook with whole mackerel bait or the 18/0 non-offset circle hook with squid, respectively, there may be a -32.58 percent to +30.24 percent change in swordfish catches (by weight) and a -87.64 to possibly as much as +29.22

percent (by weight) change in tuna catches. (Note: Increases in tuna landings during the NED experiment were substantial but, given limited data, were determined to be not statistically significant.) Thus, the portion of landings of historically attributable to swordfish may shift from 88.54 percent (by weight) of landings to between 59.69 and 115 percent. Gross revenues attributable to swordfish may vary between -28.72 percent (-\$51,292) and +26.65 percent (\$47,608), resulting in overall gross vessel revenues of between \$127,327 and \$226,227. The portion of vessel landings historically attributable to tuna may shift from 9.85 percent of landings to between 1.22 and 12.73 percent. Gross revenues of vessels attributable to tuna may vary by -9.88 percent (-\$17,642) to +3.29 percent (\$5,882), resulting in overall gross vessel revenues of between \$160,997 and \$184,501. For vessels engaging in mixed target trips, estimated gross vessel revenues could range between \$109,685 and \$232,109. These figures likely represent over estimates of both losses and gains. The actual impact would likely fall between these estimates, depending on the frequency with which particular hook and bait combinations are employed and species targeted. Given that no pelagic longline vessels can currently fish in the NED, any revenues generated from fishing in that area under A10(b), would increase gross vessel revenues, compared with the status quo.

Alternative A16 requires the possession and use of sea turtle release gear, and compliance with careful handling protocols. This alternative would likely have only minor initial adverse economic impacts, as there are currently similar requirements in the pelagic longline fishery, with some positive long-term impacts resulting from reduced hook replacement costs. NMFS estimates that a full suite of release gear could cost between \$485.00 and \$1056.50. These costs could be reduced if fishermen were able to construct some pieces of equipment themselves, rather than purchasing pre-assembled gear from commercial suppliers.

The final regulations do not duplicate, overlap, or conflict with any other relevant regulations, federal or otherwise (5 U.S.C. 603(b)(5)). In addition, the final regulations do not contain additional reporting or record-keeping requirements, but will result in additional compliance requirements, including the possession and use of specific hook types, baits, and sea turtle release equipment.

The final measures will likely result in an initial increase in costs, but may result in longer-term cost savings because circle hooks have lower replacement costs than "J"-hooks, and because the newly-required release gears may result in increased hook retention. An informal internet and telephone survey of hook suppliers provides a range in price of approximately \$0.28 to \$0.50 (\$0.3539 avg) per hook for 16/0 circle hooks, and \$0.26 to \$0.66 (\$0.4176 avg) per hook for 18/0 commercial grade circle hooks. Large commercial grade "J"-hooks range from approximately \$0.26 to \$1.00 (avg. \$0.5733) per hook. Assuming that an average of 2,500 hooks per vessel are needed to initially comply with the hook requirements (equip vessels with enough hooks for one trip), the compliance cost for 16/0 circle hooks, on a per vessel basis, may range from \$697.50 to \$1241.75 with an anticipated average cost of approximately \$884.75. Similarly, assuming that an average of 2,500 18/0 circle hooks per vessel are needed to initially comply with the hook requirements, the compliance cost, on a per vessel basis, may range from \$657.25 to \$1,650.00, with an anticipated average cost of approximately \$1,044.00. The circle hook requirements should not increase the needed skill level required for HMS fisheries, as the physical act of switching hook types is a normal aspect of commercial fishing operations. However, there probably will be a period of time during which fishing crews adjust, as with any new gear. Circle hooks are not expected to be prohibitively difficult to work with, as some vessels are already utilizing them.

The requirement to purchase and use sea turtle release gear would require additional skills and would impose a compliance cost for purchase of the gear of between \$485.00 and \$1,056.50. These costs may be reduced if fishermen are able to construct various pieces of equipment themselves, rather than purchasing pre-assembled gear from a commercial supplier. In addition, specific protocols regarding the proper use of sea turtle release equipment and onboard turtle handling procedures are being implemented. These protocols may increase the needed skill level required for HMS fisheries. A document containing the sea turtle careful release protocols will be issued, and will be required to be onboard. Also, NMFS will conduct training on the proper use of the release equipment.

Traditionally, bait accounts for 16 to 26 percent of the total costs per trip. Any fluctuations in the price and availability of mackerel, whole finfish,

or squid baits could have a substantial positive or negative impact on profitability. These baits are generally abundant, but availability will likely depend upon harvesting and distributional capacities. There could also be unquantifiable compliance costs as fishing crews who have not traditionally fished with a particular hook and bait combination familiarize themselves with the most efficient techniques.

NMFS has determined that the list of actions in this rule, which seeks to reduce bycatch and bycatch mortality of sea turtles in the Atlantic pelagic longline fishery, are consistent, to the maximum extent practicable with the enforceable policies of the coastal states in the Atlantic, Gulf of Mexico, and Caribbean that have Federally approved coastal zone management programs under the Coastal Zone Management Act (CZMA). This determination was submitted for review by the responsible state agencies under section 307 of the CZMA during the proposed rule stage. Seven states replied affirmatively regarding the consistency determination. NMFS presumes that the remaining states also concur with this determination.

A formal section 7 consultation under the ESA was prepared for this final action. A summary of the BiOp, dated June 1, 2004, along with its RPA, RPMs, and T & Cs is provided in the preamble of this final rule.

#### List of Subjects

##### 50 CFR Part 223

Endangered and threatened species, Fisheries, Fishing, Fishing vessels.

##### 50 CFR Part 635

Endangered and threatened species, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Statistics, Treaties.

Dated: June 30, 2004.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR parts 223 and 635 are amended as follows:

#### **PART 223—THREATENED MARINE AND ANADROMOUS SPECIES**

■ 1. The authority citation for part 223 continues to read as follows:

**Authority:** 16 U.S.C. 1531 *et seq.*

■ 2. In § 223.206, paragraph (d)(1)(ii) is revised to read as follows:

§ 223.206 Exceptions to prohibitions relating to sea turtles.

\* \* \* \* \*

- (d) \* \* \*
(1) \* \* \*

(ii) In addition to the provisions of paragraph (d)(1)(i) of this section, a person aboard a vessel in the Atlantic, including the Caribbean Sea and the Gulf of Mexico, that has pelagic longline gear on board and that has been issued, or is required to have, a limited access permit for highly migratory species under 50 CFR 635.4, must comply with the handling and release requirements specified in 50 CFR 635.21.

\* \* \* \* \*

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 et seq.; 16 U.S.C. 1801 et seq.

■ 2. Effective June 30, 2004, in § 635.2, new definitions for "Circle hook," "Freeboard," and "Offset circle hook" are added in alphabetical order to read as follows:

§ 635.2 Definitions.

\* \* \* \* \*

Circle hook means a fishing hook originally designed and manufactured so that the point is turned perpendicularly back to the shank to form a generally circular, or oval, shape.

\* \* \* \* \*

Freeboard is defined as the working distance between the top rail of the gunwale to the water's surface, and will vary based on the vessel design.

\* \* \* \* \*

Offset circle hook means a circle hook originally designed and manufactured so that the barbed end of the hook is displaced relative to the parallel plane of the eyed-end, or shank, of the hook when laid on its side.

\* \* \* \* \*

■ 3. Effective June 30, 2004, in § 635.21, paragraph (c)(2)(v) is revised, and paragraph (c)(5)(iv) is added to read as follows:

§ 635.21 Gear operation and deployment restrictions.

\* \* \* \* \*

- (c) \* \* \*
(2) \* \* \*

(v) In the Northeast Distant closed area at any time, unless persons onboard the vessel comply with the following:

(A) The vessel is limited, at all times, to possessing onboard and/or using only 18/0 or larger circle hooks with an offset not to exceed 10°. The outer diameter of

the hook at its widest point must be no smaller than 2.16 inches (55 mm) when measured with the eye of the hook on the vertical axis (y-axis) and perpendicular to the horizontal axis (x-axis), and the distance between the hook point and the shank (i.e., the gap) must be no larger than 1.13 inches (28.8 mm). The allowable offset is measured from the barbed end of the hook, and is relative to the parallel plane of the eyed-end, or shank, of the hook when laid on its side. The only allowable offset circle hooks are those that are offset by the hook manufacturer; and,

(B) The vessel is limited, at all times, to possessing onboard and/or using only whole Atlantic mackerel and/or squid bait; and,

(C) Vessels must possess, inside the wheelhouse, a document provided by NMFS entitled, "Careful Release Protocols for Sea Turtle Release with Minimal Injury," and must post, inside the wheelhouse, sea turtle handling and release guidelines provided by NMFS; and,

(D) Required sea turtle bycatch mitigation gear, which NMFS has approved under paragraph (c)(5)(iv) of this section, on the initial list of "NMFS-Approved Models For Equipment Needed For The Careful Release of Sea Turtles Caught In Hook And Line Fisheries," must be carried on board, and must be used in accordance with the handling requirements specified in paragraphs (c)(2)(v)(E) - (G) of this section; and,

(E) Sea turtle bycatch mitigation gear, specified in paragraph (c)(2)(v)(D) of this section, must be used to disengage any hooked or entangled sea turtles that cannot be brought on board, and to facilitate access, safe handling, disentanglement, and hook removal or hook cutting of sea turtles that can be brought on board, where feasible. Sea turtles must be handled, and bycatch mitigation gear must be used, in accordance with the careful release protocols and handling/release guidelines specified in paragraph (c)(2)(v)(C) of this section, and in accordance with the onboard handling and resuscitation requirements specified in § 223.206(d)(1).

(F) Boated turtles. When practicable, active and comatose sea turtles must be brought on board, with a minimum of injury, using a dipnet approved on the initial list specified in paragraph (c)(2)(v)(D) of this section. All turtles less than 3 ft (.91 m) carapace length should be boated, if sea conditions permit. A boated turtle should be placed on a standard automobile tire, or cushioned surface, in an upright orientation to immobilize it and

facilitate gear removal. Then, it should be determined if the hook can be removed without causing further injury. All externally embedded hooks should be removed, unless hook removal would result in further injury to the turtle. No attempt to remove a hook should be made if the hook has been swallowed and the insertion point is not visible, or if it is determined that removal would result in further injury. If a hook cannot be removed, as much line as possible should be removed from the turtle using approved monofilament line cutters from the initial list specified in paragraph (c)(2)(v)(D) of this section, and the hook should be cut as close as possible to the insertion point before releasing the turtle using bolt cutters from that list. If a hook can be removed, an effective technique may be to cut off either the barb, or the eye, of the hook using bolt cutters, and then to slide the hook out. When the hook is visible in the front of the mouth, an approved mouth-opener from the initial list specified in paragraph (c)(2)(v)(D) of this section may facilitate opening the turtle's mouth, and an approved gag from that list may facilitate keeping the mouth open. Short-handled dehookers for ingested hooks, long-nose pliers, or needle-nose pliers from the initial list specified in paragraph (c)(2)(v)(D) of this section should be used to remove visible hooks from the mouth that have not been swallowed on boated turtles, as appropriate. As much gear as possible must be removed from the turtle without causing further injury prior to its release. Refer to the careful release protocols and handling/release guidelines required in paragraph (c)(2)(v)(C) of this section, and the handling and resuscitation requirements specified in § 223.206(d)(1) of this title, for additional information.

(G) Non-boated turtles. If a sea turtle is too large, or hooked in a manner that precludes safe boating without causing further damage or injury to the turtle, sea turtle bycatch mitigation gear, specified in paragraph (c)(2)(v)(D) of this section, must be used to disentangle sea turtles from fishing gear and disengage any hooks, or to clip the line and remove as much line as possible from a hook that cannot be removed, prior to releasing the turtle, in accordance with the protocols specified in paragraph (c)(2)(v)(C) of this section. Non-boated turtles should be brought close to the boat and provided with time to calm down. Then, it must be determined whether or not the hook can be removed without causing further injury. All externally embedded hooks must be removed, unless hook removal



would result in further injury to the turtle. No attempt should be made to remove a hook if it has been swallowed, or if it is determined that removal would result in further injury. If the hook cannot be removed and/or if the animal is entangled, as much line as possible must be removed prior to release, using an approved line cutter from the initial list specified in paragraph (c)(2)(v)(D) of this section. If the hook can be removed, it must be removed using a long-handled dehooker from the initial list specified in paragraph (c)(2)(v)(D) of this section. Without causing further injury, as much gear as possible must be removed from the turtle prior to its release. Refer to the careful release protocols and handling/release guidelines required in paragraph (c)(2)(v)(C) of this section, and the handling and resuscitation requirements specified in § 223.206(d)(1) of this title, for additional information.

\* \* \* \* \*

(5) \* \* \*

(iv) *Approval of sea turtle bycatch mitigation gear.* NMFS will file with the Office of the Federal Register for publication an initial list of required sea turtle bycatch mitigation gear that NMFS has approved as meeting the minimum design standards specified under paragraph (c)(5)(i) of this section. Other devices proposed for use as line clippers or cutters or dehookers, as specified under paragraphs (c)(5)(i)(A), (B), (C), (G), (H), and (K) of this section, must be approved as meeting the minimum design standards before being used. NMFS will examine new devices, as they become available, to determine if they meet the minimum design standards, and will file with the Office of the Federal Register for publication notification of any new devices that are approved as meeting the standards.

\* \* \* \* \*

■ 4. In § 635.21, paragraphs (a)(3), (c)(5)(i), and (c)(5)(ii) are revised; and paragraph (c)(5)(iii)(C) is added to read as follows:

**§ 635.21 Gear operation and deployment restrictions.**

(a) \* \* \*

(3) All vessels that have pelagic or bottom longline gear on board and that have been issued, or are required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of Mexico must possess, inside the wheelhouse, the document provided by NMFS entitled, "Careful Release Protocols for Sea Turtle Release with Minimal Injury" and must post inside the wheelhouse

the sea turtle handling and release guidelines provided by NMFS.

\* \* \* \* \*

(c) \* \* \*

(5) \* \* \*

(i) *Possession and use of required mitigation gear.* Required sea turtle bycatch mitigation gear, which NMFS has approved under paragraph (c)(5)(iv) of this section as meeting the minimum design standards specified in paragraphs (c)(5)(i)(A) through (c)(5)(i)(L) of this section, must be carried on board, and must be used to disengage any hooked or entangled sea turtles in accordance with the handling requirements specified in paragraph (c)(5)(ii) of this section.

(A) *Long-handled line clipper or cutter.* Line cutters are intended to cut high test monofilament line as close as possible to the hook, and assist in removing line from entangled sea turtles to minimize any remaining gear upon release. NMFS has established minimum design standards for the line cutters. The LaForce line cutter and the Arceneaux line clipper are models that meet these minimum design standards, and may be purchased or fabricated from readily available and low-cost materials. One long-handled line clipper or cutter and a set of replacement blades are required to be onboard. The minimum design standards for line cutters are as follows:

(1) *A protected and secured cutting blade.* The cutting blade(s) must be capable of cutting 2.0–2.1 mm (0.078 in. - 0.083 in.) monofilament line (400-lb test) or polypropylene multistrand material, known as braided or tarred mainline, and must be maintained in working order. The cutting blade must be curved, recessed, contained in a holder, or otherwise designed to facilitate its safe use so that direct contact between the cutting surface and the sea turtle or the user is prevented. The cutting instrument must be securely attached to an extended reach handle and be easily replaceable. One extra set of replacement blades meeting these standards must also be carried on board to replace all cutting surfaces on the line cutter or clipper.

(2) *An extended reach handle.* The line cutter blade must be securely fastened to an extended reach handle or pole with a minimum length equal to, or greater than, 150 percent of the freeboard, or a minimum of 6 feet (1.83 m), whichever is greater. It is recommended, but not required, that the handle break down into sections. There is no restriction on the type of material used to construct this handle as long as it is sturdy and facilitates the secure attachment of the cutting blade.

(B) *Long-handled dehooker for ingested hooks.* A long-handled dehooking device is intended to remove ingested hooks from sea turtles that cannot be boated. It should also be used to engage a loose hook when a turtle is entangled but not hooked, and line is being removed. The design must shield the barb of the hook and prevent it from re-engaging during the removal process. One long-handled device to remove ingested hooks is required onboard. The minimum design standards are as follows:

(1) *Hook removal device.* The hook removal device must be constructed of 5/16-inch (7.94 mm) 316 L stainless steel and have a dehooking end no larger than 1 7/8-inches (4.76 cm) outside diameter. The device must securely engage and control the leader while shielding the barb to prevent the hook from re-engaging during removal. It may not have any unprotected terminal points (including blunt ones), as these could cause injury to the esophagus during hook removal. The device must be of a size appropriate to secure the range of hook sizes and styles used in the pelagic longline fishery targeting swordfish and tuna.

(2) *Extended reach handle.* The dehooking end must be securely fastened to an extended reach handle or pole with a minimum length equal to or greater than 150 percent of the freeboard, or a minimum of 6 ft (1.83 m), whichever is greater. It is recommended, but not required, that the handle break down into sections. The handle must be sturdy and strong enough to facilitate the secure attachment of the hook removal device.

(C) *Long-handled dehooker for external hooks.* A long-handled dehooker is required for use on externally-hooked sea turtles that cannot be boated. The long-handled dehooker for ingested hooks described in paragraph (c)(5)(i)(B) of this section would meet this requirement. The minimum design standards are as follows:

(1) *Construction.* A long-handled dehooker must be constructed of 5/16-inch (7.94 mm) 316 L stainless steel rod. A 5-inch (12.7-cm) tube T-handle of 1-inch (2.54 cm) outside diameter is recommended, but not required. The design should be such that a fish hook can be rotated out, without pulling it out at an angle. The dehooking end must be blunt with all edges rounded. The device must be of a size appropriate to secure the range of hook sizes and styles used in the pelagic longline fishery targeting swordfish and tuna.

(2) *Extended reach handle.* The handle must be a minimum length equal

to the freeboard of the vessel or 6 ft (1.83 m), whichever is greater.

(D) *Long-handled device to pull an "inverted V"*. This tool is used to pull a "V" in the fishing line when implementing the "inverted V" dehooking technique, as described in the document entitled "Careful Release Protocols for Sea Turtle Release With Minimal Injury," required under paragraph (a)(3) of this section, for disentangling and dehooking entangled sea turtles. One long-handled device to pull an "inverted V" is required onboard. If a 6-ft (1.83 m) J-style dehooker is used to comply with paragraph (c)(5)(i)(C) of this section, it will also satisfy this requirement. Minimum design standards are as follows:

(1) *Hook end*. This device, such as a standard boat hook or gaff, must be constructed of stainless steel or aluminum. A sharp point, such as on a gaff hook, is to be used only for holding the monofilament fishing line and should never contact the sea turtle.

(2) *Extended reach handle*. The handle must have a minimum length equal to the freeboard of the vessel, or 6 ft (1.83 m), whichever is greater. The handle must be sturdy and strong enough to facilitate the secure attachment of the gaff hook.

(E) *Dipnet*. One dipnet is required onboard. Dipnets are to be used to facilitate safe handling of sea turtles by allowing them to be brought onboard for fishing gear removal, without causing further injury to the animal. Turtles must not be brought onboard without the use of a dipnet. The minimum design standards for dipnets are as follows:

(1) *Size of dipnet*. The dipnet must have a sturdy net hoop of at least 31 inches (78.74 cm) inside diameter and a bag depth of at least 38 inches (96.52 cm) to accommodate turtles below 3 ft (0.914 m) carapace length. The bag mesh openings may not exceed 3 inches (7.62 cm) 3 inches (7.62 cm). There must be no sharp edges or burrs on the hoop, or where it is attached to the handle.

(2) *Extended reach handle*. The dipnet hoop must be securely fastened to an extended reach handle or pole with a minimum length equal to, or greater than, 150 percent of the freeboard, or at least 6 ft (1.83 m), whichever is greater. The handle must be made of a rigid material strong enough to facilitate the sturdy attachment of the net hoop and able to support a minimum of 100 lbs (34.1 kg) without breaking or significant bending or distortion. It is recommended, but not required, that the extended reach handle break down into sections.

(F) *Tire*. A minimum of one tire is required for supporting a turtle in an upright orientation while it is onboard, although an assortment of sizes is recommended to accommodate a range of turtle sizes. The required tire must be a standard passenger vehicle tire, and must be free of exposed steel belts.

(G) *Short-handled dehooker for ingested hooks*. One short-handled device for removing ingested hooks is required onboard. This dehooker is designed to remove ingested hooks from boated sea turtles. It can also be used on external hooks or hooks in the front of the mouth. Minimum design standards are as follows:

(1) *Hook removal device*. The hook removal device must be constructed of 1/4-inch (6.35 mm) 316 L stainless steel, and must allow the hook to be secured and the barb shielded without re-engaging during the removal process. It must be no larger than 1 5/16 inch (3.33 cm) outside diameter. It may not have any unprotected terminal points (including blunt ones), as this could cause injury to the esophagus during hook removal. A sliding PVC bite block must be used to protect the beak and facilitate hook removal if the turtle bites down on the dehooking device. The bite block should be constructed of a 3/4-inch (1.91 cm) inside diameter high impact plastic cylinder (e.g., Schedule 80 PVC) that is 10 inches (25.4 cm) long to allow for 5 inches (12.7 cm) of slide along the shaft. The device must be of a size appropriate to secure the range of hook sizes and styles used in the pelagic longline fishery targeting swordfish and tuna.

(2) *Handle length*. The handle should be approximately 16 - 24 inches (40.64 cm - 60.69 cm) in length, with approximately a 5-inch (12.7 cm) long tube T-handle of approximately 1 inch (2.54 cm) in diameter.

(H) *Short-handled dehooker for external hooks*. One short-handled dehooker for external hooks is required onboard. The short-handled dehooker for ingested hooks required to comply with paragraph (c)(5)(i)(G) of this section will also satisfy this requirement. Minimum design standards are as follows:

(1) *Hook removal device*. The dehooker must be constructed of 5/16-inch (7.94 cm) 316 L stainless steel, and the design must be such that a hook can be rotated out without pulling it out at an angle. The dehooking end must be blunt, and all edges rounded. The device must be of a size appropriate to secure the range of hook sizes and styles used in the pelagic longline fishery targeting swordfish and tuna.

(2) *Handle length*. The handle should be approximately 16 - 24 inches (40.64 cm - 60.69 cm) long with approximately a 5-inch (12.7 cm) long tube T-handle of approximately 1 inch (2.54 cm) in diameter.

(I) *Long-nose or needle-nose pliers*. One pair of long-nose or needle-nose pliers is required on board. Required long-nose or needle-nose pliers can be used to remove deeply embedded hooks from the turtle's flesh that must be twisted during removal. They can also hold PVC splice couplings, when used as mouth openers, in place. Minimum design standards are as follows:

(1) *General*. They must be approximately 12 inches (30.48 cm) in length, and should be constructed of stainless steel material.

(2) [Reserved]

(J) *Bolt cutters*. One pair of bolt cutters is required on board. Required bolt cutters may be used to cut hooks to facilitate their removal. They should be used to cut off the eye or barb of a hook, so that it can safely be pushed through a sea turtle without causing further injury. They should also be used to cut off as much of the hook as possible, when the remainder of the hook cannot be removed. Minimum design standards are as follows:

(1) *General*. They must be approximately 17 inches (43.18 cm) in total length, with 4-inch (10.16 cm) long blades that are 2 1/4 inches (5.72 cm) wide, when closed, and with 13-inch (33.02 cm) long handles. Required bolt cutters must be able to cut hard metals, such as stainless or carbon steel hooks, up to 1/4-inch (6.35 mm) diameter.

(2) [Reserved]

(K) *Monofilament line cutters*. One pair of monofilament line cutters is required on board. Required monofilament line cutters must be used to remove fishing line as close to the eye of the hook as possible, if the hook is swallowed or cannot be removed. Minimum design standards are as follows:

(1) *General*. Monofilament line cutters must be approximately 7 1/2 inches (19.05 cm) in length. The blades must be 1 in (4.45 cm) in length and 5/8 in (1.59 cm) wide, when closed, and are recommended to be coated with Teflon (a trademark owned by E.I. DuPont de Nemours and Company Corp.).

(2) [Reserved]

(L) *Mouth openers/mouth gags*. Required mouth openers and mouth gags are used to open sea turtle mouths, and to keep them open when removing ingested hooks from boated turtles. They must allow access to the hook or line without causing further injury to

the turtle. Design standards are included in the item descriptions. At least two of the seven different types of mouth openers/gags described below are required:

(1) *A block of hard wood.* Placed in the corner of the jaw, a block of hard wood may be used to gag open a turtle's mouth. A smooth block of hard wood of a type that does not splinter (e.g. maple) with rounded edges should be sanded smooth, if necessary, and soaked in water to soften the wood. The dimensions should be approximately 11 inches (27.94 cm) 1 inch (2.54 cm) 1 inch (2.54 cm). A long-handled, wire shoe brush with a wooden handle, and with the wires removed, is an inexpensive, effective and practical mouth-opening device that meets these requirements.

(2) *A set of three canine mouth gags.* Canine mouth gags are highly recommended to hold a turtle's mouth open, because the gag locks into an open position to allow for hands-free operation after it is in place. A set of canine mouth gags must include one of each of the following sizes: small (5 inches)(12.7 cm), medium (6 inches)(15.24 cm), and large (7 inches)(17.78 cm). They must be constructed of stainless steel. A 1-inch (4.45 cm) piece of vinyl tubing (3/4-inch (1.91 cm) outside diameter and 5/8-inch (1.59 cm) inside diameter) must be placed over the ends to protect the turtle's beak.

(3) *A set of two sturdy dog chew bones.* Placed in the corner of a turtle's jaw, canine chew bones are used to gag open a sea turtle's mouth. Required canine chews must be constructed of durable nylon, zylene resin, or thermoplastic polymer, and strong enough to withstand biting without splintering. To accommodate a variety of turtle beak sizes, a set must include one large (5 1/2 - 8 inches)(13.97 cm - 20.32 cm) in length), and one small (3 1/2 - 4 1/2 inches (8.89 cm - 11.43 cm) in length) canine chew bones.

(4) *A set of two rope loops covered with hose.* A set of two rope loops covered with a piece of hose can be used as a mouth opener, and to keep a turtle's mouth open during hook and/or line removal. A required set consists of two 3-foot (0.91 m) lengths of poly braid rope (3/8-inch (9.52 mm) diameter suggested), each covered with an 8-inch (20.32 cm) section of 1/2 inch (1.27 cm) or 3/4 inch (1.91 cm) light-duty garden hose, and each tied into a loop. The upper loop of rope covered with hose is secured on the upper beak to give control with one hand, and the second piece of rope covered with hose is secured on the lower beak to give control with the user's foot.

(5) *A hank of rope.* Placed in the corner of a turtle's jaw, a hank of rope can be used to gag open a sea turtle's mouth. A 6-foot (1.83 m) lanyard of approximately 3/16-inch (4.76 mm) braided nylon rope may be folded to create a hank, or looped bundle, of rope. Any size soft-braided nylon rope is allowed, however it must create a hank of approximately 2 - 4 inches (5.08 cm - 10.16 cm) in thickness.

(6) *A set of four PVC splice couplings.* PVC splice couplings can be positioned inside a turtle's mouth to allow access to the back of the mouth for hook and line removal. They are to be held in place with the needle-nose pliers. To ensure proper fit and access, a required set must consist of the following Schedule 40 PVC splice coupling sizes: 1 inch (2.54 cm), 1 1/4 inch (3.18 cm), 1 1/2 inch (3.81 cm), and 2 inches (5.08 cm).

(7) *A large avian oral speculum.* A large avian oral speculum provides the ability to hold a turtle's mouth open and to control the head with one hand, while removing a hook with the other hand. The avian oral speculum must be 9-inches (22.86 cm) long, and constructed of 3/16-inch (4.76 mm) wire diameter surgical stainless steel (Type 304). It must be covered with 8 inches (20.32 cm) of clear vinyl tubing (5/16-inch (7.9 mm) outside diameter, 3/16-inch (4.76 mm) inside diameter).

(ii) *Handling and release requirements.* (A) Sea turtle bycatch mitigation gear, as required by paragraphs (c)(5)(i)(A) - (D) of this section, must be used to disengage any hooked or entangled sea turtles that cannot be brought on board. Sea turtle bycatch mitigation gear, as required by paragraphs (c)(5)(i)(E) - (L) of this section, must be used to facilitate access, safe handling, disentanglement, and hook removal or hook cutting of sea turtles that can be brought on board, where feasible. Sea turtles must be handled, and bycatch mitigation gear must be used, in accordance with the careful release protocols and handling/release guidelines specified in paragraph (a)(3) of this section, and in accordance with the onboard handling and resuscitation requirements specified in § 223.206(d)(1) of this title.

(B) *Boated turtles.* When practicable, active and comatose sea turtles must be brought on board, with a minimum of injury, using a dipnet as required by paragraph (c)(5)(i)(E) of this section. All turtles less than 3 ft (.91 m) carapace length should be boated, if sea conditions permit.

(1) A boated turtle should be placed on a standard automobile tire, or cushioned surface, in an upright

orientation to immobilize it and facilitate gear removal. Then, it should be determined if the hook can be removed without causing further injury. All externally embedded hooks should be removed, unless hook removal would result in further injury to the turtle. No attempt to remove a hook should be made if it has been swallowed and the insertion point is not visible, or if it is determined that removal would result in further injury. If a hook cannot be removed, as much line as possible should be removed from the turtle using monofilament cutters as required by paragraph (c)(5)(i) of this section, and the hook should be cut as close as possible to the insertion point before releasing the turtle, using boltcutters as required by paragraph (c)(5)(i) of this section. If a hook can be removed, an effective technique may be to cut off either the barb, or the eye, of the hook using bolt cutters, and then to slide the hook out. When the hook is visible in the front of the mouth, a mouth-opener, as required by paragraph (c)(5)(i) of this section, may facilitate opening the turtle's mouth and a gag may facilitate keeping the mouth open. Short-handled dehookers for ingested hooks, long-nose pliers, or needle-nose pliers, as required by paragraph (c)(5)(i) of this section, should be used to remove visible hooks from the mouth that have not been swallowed on boated turtles, as appropriate. As much gear as possible must be removed from the turtle without causing further injury prior to its release. Refer to the careful release protocols and handling/release guidelines required in paragraph (a)(3) of this section, and the handling and resuscitation requirements specified in § 223.206(d)(1) of this title, for additional information.

(2) [Reserved]

(C) *Non-boated turtles.* If a sea turtle is too large, or hooked in a manner that precludes safe boating without causing further damage or injury to the turtle, sea turtle bycatch mitigation gear required by paragraphs (c)(5)(i)(A) - (D) of this section must be used to disentangle sea turtles from fishing gear and disengage any hooks, or to clip the line and remove as much line as possible from a hook that cannot be removed, prior to releasing the turtle, in accordance with the protocols specified in paragraph (a)(3) of this section.

(1) Non-boated turtles should be brought close to the boat and provided with time to calm down. Then, it must be determined whether or not the hook can be removed without causing further injury. All externally embedded hooks must be removed, unless hook removal would result in further injury to the

turtle. No attempt should be made to remove a hook if it has been swallowed, or if it is determined that removal would result in further injury. If the hook cannot be removed and/or if the animal is entangled, as much line as possible must be removed prior to release, using a line cutter as required by paragraph (c)(5)(i) of this section. If the hook can be removed, it must be removed using a long-handled dehooker as required by paragraph (c)(5)(i) of this section. Without causing further injury, as much gear as possible must be removed from the turtle prior to its release. Refer to the careful release protocols and handling/release guidelines required in paragraph (a)(3) of this section, and the handling and resuscitation requirements specified in § 223.206(d)(1) for additional information.

(2) [Reserved]

(iii) \* \* \*

(C) *Hook size, type, and bait.* Vessels fishing outside of the NED closed area, as defined at § 635.2, that have pelagic longline gear on board, and that have been issued, or are required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean, including the Caribbean Sea and the Gulf of Mexico, are limited, at all times, to possessing on board and/or using only whole finfish and/or squid bait, and the following types and sizes of fishing hooks:

(1) 18/0 or larger circle hooks with an offset not to exceed 10°; and/or,

(2) 16/0 or larger non-offset circle hooks.

(i) For purposes of paragraphs (c)(5)(iii)(C)(1), and (c)(5)(iii)(C)(2) of

this section, the outer diameter of an 18/0 circle hook at its widest point must be no smaller than 2.16 inches (55 mm), and the outer diameter of a 16/0 circle hook at its widest point must be no smaller than 1.74 inches (44.3 mm), when measured with the eye of the hook on the vertical axis (y-axis) and perpendicular to the horizontal axis (x-axis). The distance between the hook point and the shank (*i.e.*, the gap) on an 18/0 circle hook must be no larger than 1.13 inches (28.8 mm), and the gap on a 16/0 circle hook must be no larger than 1.01 inches (25.8 mm). The allowable offset is measured from the barbed end of the hook, and is relative to the parallel plane of the eyed-end, or shank, of the hook when laid on its side. The only allowable offset circle hooks are those that are offset by the hook manufacturer.

(ii) [Reserved]

■ 5. In § 635.23, paragraph (f)(3) is revised as follows:

**§ 635.23 Retention limits for BFT.**

\* \* \* \* \*

(f) \* \* \*

(3) For pelagic longline vessels fishing in the Northeast Distant closed area, as defined under § 635.2, under the exemption specified at § 635.21(c)(2)(v), all BFT taken incidental to fishing for other species while in the Northeast Distant closed area may be retained up to a maximum of 25 mt for all vessels so authorized, notwithstanding the retention limits and target catch requirements specified in paragraph (f)(1) of this section.

\* \* \* \* \*

■ 6. In § 635.27, paragraph (a)(3) is revised as follows:

**§ 635.27 Quotas.**

\* \* \* \* \*

(a) \* \* \*

(3) *Longline category quota.* The total amount of large medium and giant BFT that may be caught incidentally and retained, possessed, or landed by vessels for which Longline category Atlantic tunas permits have been issued is 8.1 percent of the overall U.S. BFT quota. In the initial quota specifications issued under paragraph (a) of this section, no more than 60.0 percent of the Longline category quota may be allocated for landing in the area south of 31° 00' N. lat. In addition, 25 mt shall be allocated for incidental catch by pelagic longline vessels fishing in the Northeast Distant closed area, as defined under § 635.2, under the exemption specified at § 635.21(c)(2)(v).

\* \* \* \* \*

■ 7. In § 635.71, paragraph (a)(33) is revised as follows:

**§ 635.71 Prohibitions.**

\* \* \* \* \*

(a) \* \* \*

(33) Fish with or deploy any fishing gear from a vessel with pelagic longline gear on board without carrying the required sea turtle bycatch mitigation gear, as specified at § 635.21(c)(5)(i).

\* \* \* \* \*

[FR Doc. 04-15180 Filed 6-30-04; 2:43 pm]

BILLING CODE 3510-22-S



# Federal Register

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Tuesday,  
July 6, 2004

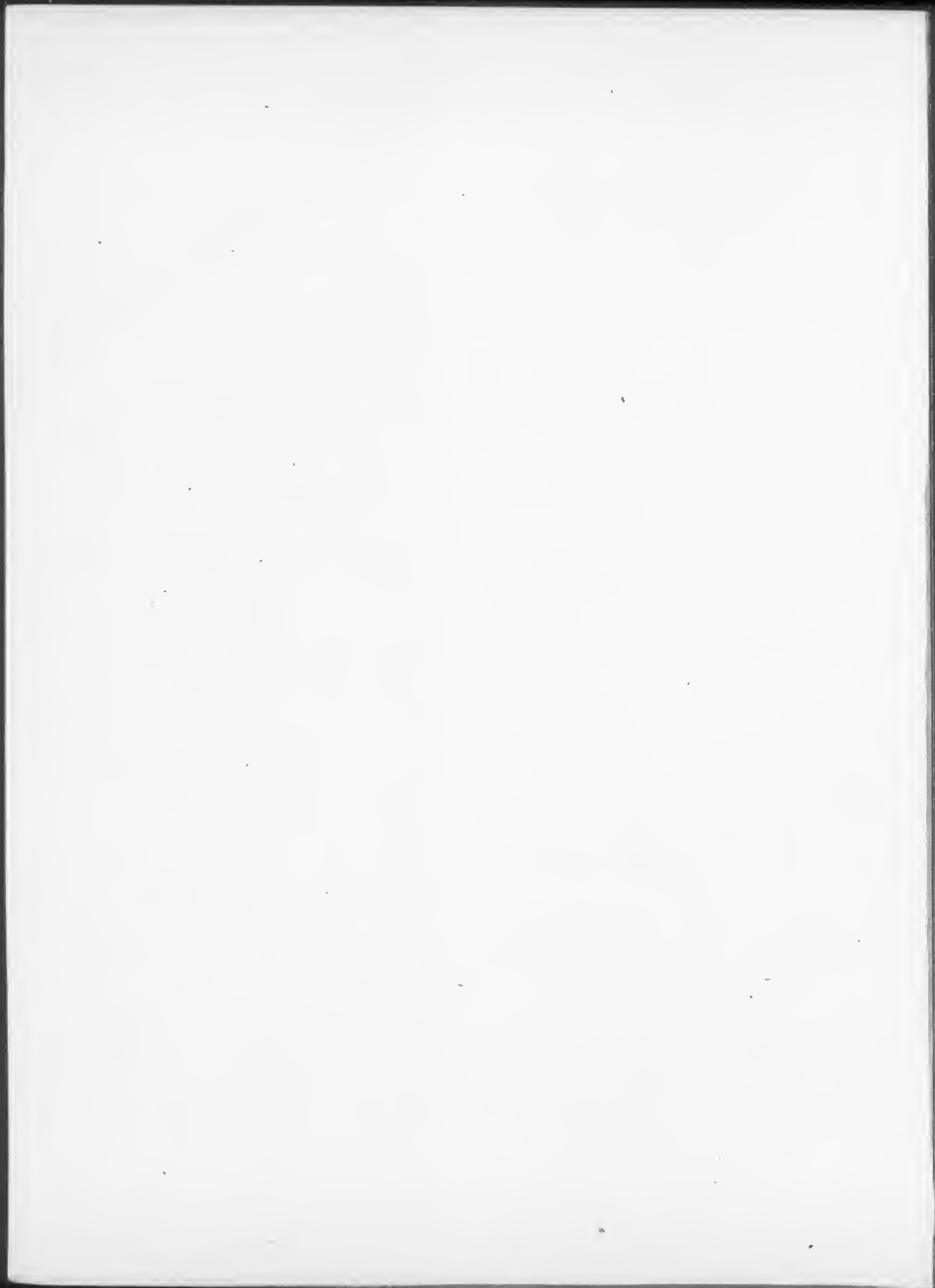
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Part V

## The President

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Presidential Determination No. 2004-39 of  
June 25, 2004—Imposition and Waiver of  
Sanctions Under Section 604 of the FY  
2003 Foreign Relations Authorization Act  
(Public Law 107-228)



Federal Register

Vol. 69, No. 128

Tuesday, July 6, 2004

**Presidential Documents**

Title 3—

Presidential Determination No. 2004-39 of June 25, 2004

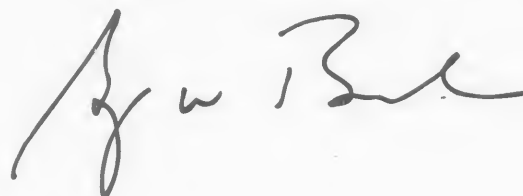
The President

**Imposition and Waiver of Sanctions Under Section 604 of the FY 2003 Foreign Relations Authorization Act (Public Law 107-228)****Memorandum for the Secretary of State**

Consistent with the authority contained in section 604 of the FY 2003 Foreign Relations Authorization Act (Public Law 107-228) (the "Act"), and with reference to the determinations set out in the report to Congress transmitted herewith, consistent with section 603 of that Act, regarding non-compliance by the PLO and the Palestinian Authority with certain commitments, I hereby impose the sanction set out in section 604(a)(2) "Downgrade in Status of the PLO Office in the United States." This sanction is imposed for a period of 180 days from the date hereof or until such time as the next report required by section 603 of the Act is transmitted to the Congress, whichever is later.

You are authorized and directed to transmit to the appropriate Congressional committees the initial report described in section 603 of the Act.

Furthermore, I hereby determine that it is in the national security interest of the United States to waive that sanction, pursuant to section 604 of the Act. This waiver shall be effective for a period of 180 days from the date hereof or until such time as the next report required by section 603 of the Act is transmitted to the Congress, whichever is later. You are hereby authorized and directed to transmit this determination to the Congress and to publish it in the **Federal Register**.



THE WHITE HOUSE,  
Washington, June 25, 2004.

[FR Doc. 04-15364

Filed 7-2-04; 9:28 am]

Billing code 4710-10-M







**40 CFR**

51.....40274, 40278  
 52.....39854, 39856, 39858,  
 39860, 40274, 40278, 40321,  
 40324  
 63.....39862  
 81.....39860  
 93.....40004  
 152.....39862  
 154.....39862  
 158.....39862  
 159.....39862  
 168.....39862  
 178.....39862

**Proposed Rules:**

52.....39892  
 271.....40568

**42 CFR**

414.....40288

**43 CFR**

3830.....40294  
 3834.....40294

**44 CFR**

64.....40324

**45 CFR**

**Proposed Rules:**

46.....40584

**47 CFR**

1.....39864, 40326  
 27.....39864  
 64.....40326  
 73.....39868, 39869  
 90.....39864  
 95.....39864

**Proposed Rules:**

73.....39893

**48 CFR**

**Proposed Rules:**

16.....40514  
 39.....40514  
 533.....40730  
 552.....40730

**50 CFR**

17.....40084  
 100.....40174  
 223.....40734  
 635.....40734

**Proposed Rules:**

402.....40346

**REMINDERS**

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

**RULES GOING INTO EFFECT JULY 6, 2004****AGRICULTURE DEPARTMENT****Animal and Plant Health Inspection Service**

Plant-related quarantine, domestic:  
Japanese beetle; published 7-6-04

**COMMERCE DEPARTMENT National Oceanic and Atmospheric Administration****Marine mammals:**

Taking and importation—  
Transient killer whales; AT1 group designation as depleted stock; published 6-3-04

**EDUCATION DEPARTMENT****Grants:**

Faith-based organizations; eligibility to participate in direct grant, State-administered, and other such programs; published 6-4-04

**ENVIRONMENTAL PROTECTION AGENCY**

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

New York and Connecticut; published 6-3-04

Air quality implementation plans; approval and promulgation; various States:

West Virginia; published 5-5-04

**FEDERAL COMMUNICATIONS COMMISSION**

Radio stations; table of assignments:

Kentucky; published 6-22-04

**HEALTH AND HUMAN SERVICES DEPARTMENT****Food and Drug Administration**

Public Health Security and Bioterrorism Preparedness and Response Act of 2002; implementation:

Food for human or animal consumption—

Administrative detention; published 6-4-04

**INTERIOR DEPARTMENT Fish and Wildlife Service**

Endangered and threatened species:

Critical habitat designations—

Braun's rock-cress; published 6-3-04

**INTERIOR DEPARTMENT Minerals Management Service**

Royalty management:

Crude oil produced from Federal leases; valuation and reporting provisions; published 5-5-04

**TRANSPORTATION DEPARTMENT****Federal Aviation Administration**

Airworthiness directives:

Alexander Schleicher GmbH & Co.; published 5-21-04

Robinson Helicopter Co.; rescission; published 7-6-04

**TRANSPORTATION DEPARTMENT****Federal Motor Carrier Safety Administration**

Motor carrier safety standards:

Parts and accessories necessary for safe operation—  
Fuel systems; published 6-3-04

**COMMENTS DUE NEXT WEEK****AGRICULTURE DEPARTMENT****Agricultural Marketing Service**

Cotton classing, testing and standards:

Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

**AGRICULTURE DEPARTMENT****Animal and Plant Health Inspection Service**

Livestock and poultry disease control:

Spring viremia of carp; indemnity payment; comments due by 7-16-04; published 5-17-04 [FR 04-11085]

Plant-related quarantine, domestic:

Karnal bunt; comments due by 7-16-04; published 5-17-04 [FR 04-11086]

**COMMERCE DEPARTMENT National Oceanic and Atmospheric Administration**

Fishery conservation and management:

West Coast States and Western Pacific fisheries—

Bottomfish and seamount groundfish; comments due by 7-12-04; published 6-25-04 [FR 04-14472]

International fisheries regulations:

Pacific tuna—

Purse seine and longline fisheries; management measures; comments due by 7-12-04; published 6-25-04 [FR 04-14473]

**COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA**

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

**DEFENSE DEPARTMENT**

Acquisition regulations:

Berry Amendment changes; comments due by 7-12-04; published 5-13-04 [FR 04-10880]

Pilot Mentor-Protege Program; comments due by 7-12-04; published 5-13-04 [FR 04-10883]

**ENERGY DEPARTMENT****Federal Energy Regulatory Commission**

Electric rate and corporate regulation filings:

Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

**ENVIRONMENTAL PROTECTION AGENCY**

Air quality implementation plans; approval and promulgation; various States:

Iowa; comments due by 7-12-04; published 6-10-04 [FR 04-13177]

Maryland; comments due by 7-14-04; published 6-14-04 [FR 04-13285]

Texas; comments due by 7-12-04; published 6-10-04 [FR 04-13175]

Environmental statements; availability, etc.:

Coastal nonpoint pollution control program—  
Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Phosphomannose isomerase; comments due

by 7-13-04; published 5-14-04 [FR 04-10877]

Pyraflufen-ethyl; comments due by 7-12-04; published 5-12-04 [FR 04-10455]

Thifensulfuron-methyl; comments due by 7-12-04; published 5-12-04 [FR 04-10780]

Solid Wastes:

State underground storage tank program approvals—

Virginia; comments due by 7-15-04; published 6-15-04 [FR 04-13283]

Virginia; comments due by 7-15-04; published 6-15-04 [FR 04-13284]

West Virginia; comments due by 7-15-04; published 6-15-04 [FR 04-13281]

West Virginia; comments due by 7-15-04; published 6-15-04 [FR 04-13282]

Water pollution; effluent guidelines for point source categories:

Meat and poultry products processing facilities; Open for comments until further notice; published 12-30-99 [FR 04-12017]

Water supply:

National primary drinking water regulations—

Long Term I Enhanced Surface Water Treatment Rule, etc.; corrections and clarification; comments due by 7-13-04; published 6-29-04 [FR 04-14604]

**FEDERAL COMMUNICATIONS COMMISSION**

Digital television stations; table of assignments:

Alaska; comments due by 7-15-04; published 6-1-04 [FR 04-12281]

Mississippi; comments due by 7-12-04; published 6-1-04 [FR 04-12280]

Montana; comments due by 7-15-04; published 6-1-04 [FR 04-12282]

Frequency allocations and radio treaty matters:

World Radiocommunication Conference concerning frequency bands between 5900 kHz and 27.5 GHz; comments due by 7-16-04; published 6-16-04 [FR 04-12167]

Radio broadcasting:

Broadcast and cable EEO rules and policies—

- Revision; comments due by 7-14-04; published 6-23-04 [FR 04-14121]
- Radio services, special:
- Aviation services—
- Aviation Radio Service; technological advances, operational flexibility, and spectral efficiency; comments due by 7-12-04; published 4-12-04 [FR 04-08121]
- FEDERAL DEPOSIT INSURANCE CORPORATION**
- Practice and procedure:
- Funds at insured depository institutions underlying stored value cards; deposit definition; comments due by 7-15-04; published 4-16-04 [FR 04-08613]
- FEDERAL RESERVE SYSTEM**
- Membership of State banking institutions and bank holding companies and change in bank control (Regulations H and Y):
- Trust preferred securities and definition of capital; risk-based capital standards; comments due by 7-11-04; published 5-19-04 [FR 04-10728]
- HEALTH AND HUMAN SERVICES DEPARTMENT**
- Centers for Medicare & Medicaid Services
- Medicare:
- Hospital inpatient prospective payment systems and 2005 FRY rates; comments due by 7-12-04; published 5-18-04 [FR 04-10932]
- HEALTH AND HUMAN SERVICES DEPARTMENT**
- Food and Drug Administration
- Public Health Security and Bioterrorism Preparedness Response Act of 2002:
- Food importation notice to FDA; comments due by 7-13-04; published 5-18-04 [FR 04-11247]
- Reports and guidance documents; availability, etc.:
- Evaluating safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]
- HOVELAND SECURITY DEPARTMENT**
- Coast Guard
- Anchorage regulations:
- Maryland; Open for comments until further notice; published 1-14-04 [FR 04-00749]
- Massachusetts; comments due by 7-15-04; published 4-16-04 [FR 04-08498]
- Drawbridge operations:
- District of Columbia; comments due by 7-16-04; published 5-17-04 [FR 04-11149]
- Maryland; comments due by 7-16-04; published 5-17-04 [FR 04-11151]
- HOUSING AND URBAN DEVELOPMENT DEPARTMENT**
- Mortgage and loan insurance programs:
- Federal National Mortgage Association and Federal Home Loan Mortgage Corporation; 2005-2008 housing goals; comments due by 7-16-04; published 7-1-04 [FR 04-14948]
- INTERIOR DEPARTMENT**
- Fish and Wildlife Service
- Endangered and threatened species:
- Critical habitat designations—
- California red-legged frog; comments due by 7-14-04; published 6-14-04 [FR 04-13400]
- NATIONAL CREDIT UNION ADMINISTRATION**
- Credit unions:
- Fair and Accurate Credit Transactions Act (2003) implementation—
- Consumer information disposal; comments due by 7-12-04; published 5-28-04 [FR 04-11902]
- NUCLEAR REGULATORY COMMISSION**
- Environmental statements; availability, etc.:
- Fort Wayne State Developmental Center; Open for comments until further notice; published 5-10-04 [FR 04-10516]
- Public records:
- Predisclosure notification to submitters of confidential information; comments due by 7-12-04; published 4-27-04 [FR 04-09488]
- POSTAL SERVICE**
- Domestic Mail Manual:
- Nonprofit standard mail material; eligibility requirements; comments due by 7-15-04; published 6-15-04 [FR 04-13347]
- SECURITIES AND EXCHANGE COMMISSION**
- Securities:
- Asset-backed securities; registration, disclosure, and reporting requirements; comments due by 7-12-04; published 5-13-04 [FR 04-10467]
- Ownership by securities intermediaries; issuer restrictions or prohibitions; comments due by 7-12-04; published 6-10-04 [FR 04-13084]
- SMALL BUSINESS ADMINISTRATION**
- Disaster loan areas:
- Maine; Open for comments until further notice; published 2-17-04 [FR 04-03374]
- HUBZone program:
- Agricultural commodities issues and definitions; comment request; comments due by 7-12-04; published 5-13-04 [FR 04-10853]
- OFFICE OF UNITED STATES TRADE REPRESENTATIVE**
- Trade Representative, Office of United States
- Generalized System of Preferences:
- 2003 Annual Product Review, 2002 Annual Country Practices Review, and previously deferred product decisions; petitions disposition; Open for comments until further notice; published 7-6-04 [FR 04-15361]
- TRANSPORTATION DEPARTMENT**
- Federal Aviation Administration
- Airworthiness directives:
- Airbus; comments due by 7-16-04; published 6-16-04 [FR 04-13562]
- Bell; comments due by 7-12-04; published 5-12-04 [FR 04-10745]
- Bombardier; comments due by 7-14-04; published 6-14-04 [FR 04-13224]
- Dassault; comments due by 7-12-04; published 6-17-04 [FR 04-13702]
- General Electric Co.; comments due by 7-12-04; published 5-11-04 [FR 04-10371]
- McDonnell Douglas; comments due by 7-12-04; published 5-27-04 [FR 04-11960]
- Short Brothers; comments due by 7-14-04; published 6-14-04 [FR 04-13223]
- Airworthiness standards:
- Special conditions—
- Gulfstream Aerospace LP Model Gulfstream 200 (Galaxy) airplanes; comments due by 7-14-04; published 6-14-04 [FR 04-13308]
- Raytheon Aircraft Co. Model MU-300-10 and 400 airplanes; comments due by 7-16-04; published 6-16-04 [FR 04-13577]
- Raytheon Aircraft Co. Model MU-300 airplanes; comments due by 7-14-04; published 6-14-04 [FR 04-13306]
- Sabreliner Corp. Model NA-265-65 airplanes; comments due by 7-14-04; published 6-14-04 [FR 04-13311]
- Class E airspace; comments due by 7-15-04; published 6-18-04 [FR 04-13831]
- Restricted areas; comments due by 7-12-04; published 5-28-04 [FR 04-12064]
- TRANSPORTATION DEPARTMENT**
- Research and Special Programs Administration
- Pipeline safety:
- Gas pipeline safety standards; pressure limiting and regulation stations; comments due by 7-16-04; published 5-17-04 [FR 04-11005]
- TREASURY DEPARTMENT**
- Community Development Financial Institutions Fund
- Grants:
- Community Development Financial Institutions Program; comments due by 7-12-04; published 5-11-04 [FR 04-10646]

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## LIST OF PUBLIC LAWS

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(phone, 202-512-1808). The text will also be made available on the Internet from GPO Access at <http://www.gpoaccess.gov/plaws/index.html>. Some laws may not yet be available.

**H.R. 4589/P.L. 108-262**

TANF and Related Programs Continuation Act of 2004 (June 30, 2004; 118 Stat. 696)

**H.R. 4635/P.L. 108-263**

Surface Transportation Extension Act of 2004, Part III (June 30, 2004; 118 Stat. 698)

**S. 2238/P.L. 108-264**

Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 (June 30, 2004; 118 Stat. 712)

**S. 2507/P.L. 108-265**

Child Nutrition and WIC Reauthorization Act of 2004

(June 30, 2004; 118 Stat. 729)

Last List June 29, 2004

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-052-00001-9)	9.00	Jan. 1, 2004
3 (2003 Compilation and Parts 100 and 101)	(869-052-00002-7)	35.00	Jan. 1, 2004
4	(869-052-00003-5)	10.00	Jan. 1, 2004
<b>5 Parts:</b>			
1-699	(869-052-00004-3)	60.00	Jan. 1, 2004
700-1199	(869-052-00005-1)	50.00	Jan. 1, 2004
1200-End	(869-052-00006-0)	61.00	Jan. 1, 2004
6	(869-052-00007-8)	10.50	Jan. 1, 2004
<b>7 Parts:</b>			
1-26	(869-052-00008-6)	44.00	Jan. 1, 2004
27-52	(869-052-00009-4)	49.00	Jan. 1, 2004
53-209	(869-052-00010-8)	37.00	Jan. 1, 2004
210-299	(869-052-00011-6)	62.00	Jan. 1, 2004
300-399	(869-052-00012-4)	46.00	Jan. 1, 2004
400-699	(869-052-00013-2)	42.00	Jan. 1, 2004
700-899	(869-052-00014-1)	43.00	Jan. 1, 2004
900-999	(869-052-00015-9)	60.00	Jan. 1, 2004
1000-1199	(869-052-00016-7)	22.00	Jan. 1, 2004
1200-1599	(869-052-00017-5)	61.00	Jan. 1, 2004
1600-1899	(869-052-00018-3)	64.00	Jan. 1, 2004
1900-1939	(869-052-00019-1)	31.00	Jan. 1, 2004
1940-1949	(869-052-00020-5)	50.00	Jan. 1, 2004
1950-1999	(869-052-00021-3)	46.00	Jan. 1, 2004
2000-End	(869-052-00022-1)	50.00	Jan. 1, 2004
8	(869-052-00023-0)	63.00	Jan. 1, 2004
<b>9 Parts:</b>			
1-199	(869-052-00024-8)	61.00	Jan. 1, 2004
200-End	(869-052-00025-6)	58.00	Jan. 1, 2004
<b>10 Parts:</b>			
1-50	(869-052-00026-4)	61.00	Jan. 1, 2004
51-199	(869-052-00027-2)	58.00	Jan. 1, 2004
200-499	(869-052-00028-1)	46.00	Jan. 1, 2004
500-End	(869-052-00029-9)	62.00	Jan. 1, 2004
11	(869-052-00030-2)	41.00	Feb. 3, 2004
<b>12 Parts:</b>			
1-199	(869-052-00031-1)	34.00	Jan. 1, 2004
200-219	(869-052-00032-9)	37.00	Jan. 1, 2004
220-299	(869-052-00033-7)	61.00	Jan. 1, 2004
300-499	(869-052-00034-5)	47.00	Jan. 1, 2004
500-599	(869-052-00035-3)	39.00	Jan. 1, 2004
600-899	(869-052-00036-1)	56.00	Jan. 1, 2004
900-End	(869-052-00037-0)	50.00	Jan. 1, 2004

Title	Stock Number	Price	Revision Date
13	(869-052-00038-8)	55.00	Jan. 1, 2004
<b>14 Parts:</b>			
1-59	(869-052-00039-6)	63.00	Jan. 1, 2004
60-139	(869-052-00040-0)	61.00	Jan. 1, 2004
140-199	(869-052-00041-8)	30.00	Jan. 1, 2004
200-1199	(869-052-00042-6)	50.00	Jan. 1, 2004
1200-End	(869-052-00043-4)	45.00	Jan. 1, 2004
<b>15 Parts:</b>			
0-299	(869-052-00044-2)	40.00	Jan. 1, 2004
300-799	(869-052-00045-1)	60.00	Jan. 1, 2004
800-End	(869-052-00046-9)	42.00	Jan. 1, 2004
<b>16 Parts:</b>			
0-999	(869-052-00047-7)	50.00	Jan. 1, 2004
1000-End	(869-052-00048-5)	60.00	Jan. 1, 2004
<b>17 Parts:</b>			
1-199	(869-050-00049-1)	50.00	Apr. 1, 2003
200-239	(869-050-00050-4)	58.00	Apr. 1, 2003
240-End	(869-050-00051-2)	62.00	Apr. 1, 2003
<b>18 Parts:</b>			
1-399	(869-050-00052-1)	62.00	Apr. 1, 2003
400-End	(869-052-00054-0)	26.00	Apr. 1, 2004
<b>19 Parts:</b>			
1-140	(869-050-00054-7)	60.00	Apr. 1, 2003
141-199	(869-050-00055-5)	58.00	Apr. 1, 2003
200-End	(869-050-00056-3)	30.00	Apr. 1, 2003
<b>20 Parts:</b>			
1-399	(869-050-00057-1)	50.00	Apr. 1, 2003
400-499	(869-050-00058-0)	63.00	Apr. 1, 2003
500-End	(869-050-00059-8)	63.00	Apr. 1, 2003
<b>21 Parts:</b>			
1-99	(869-052-00061-2)	42.00	Apr. 1, 2004
100-169	(869-050-00061-0)	47.00	Apr. 1, 2003
170-199	(869-050-00062-8)	50.00	Apr. 1, 2003
200-299	(869-052-00064-7)	17.00	Apr. 1, 2004
300-499	(869-050-00064-4)	29.00	Apr. 1, 2003
500-599	(869-052-00066-3)	47.00	Apr. 1, 2004
600-799	(869-052-00067-1)	15.00	Apr. 1, 2004
800-1299	(869-050-00067-9)	58.00	Apr. 1, 2003
1300-End	(869-052-00069-8)	24.00	Apr. 1, 2004
<b>22 Parts:</b>			
1-299	(869-050-00069-5)	62.00	Apr. 1, 2003
300-End	(869-050-00070-9)	44.00	Apr. 1, 2003
23	(869-050-00071-7)	44.00	Apr. 1, 2003
<b>24 Parts:</b>			
0-199	(869-050-00072-5)	58.00	Apr. 1, 2003
200-499	(869-050-00073-3)	50.00	Apr. 1, 2003
500-699	(869-052-00075-2)	30.00	Apr. 1, 2004
700-1699	(869-050-00075-0)	61.00	Apr. 1, 2003
1700-End	(869-050-00076-8)	30.00	Apr. 1, 2003
25	(869-050-00077-6)	63.00	Apr. 1, 2003
<b>26 Parts:</b>			
§§ 1.0-1-1.60	(869-050-00078-4)	49.00	Apr. 1, 2003
§§ 1.61-1.169	(869-050-00079-2)	63.00	Apr. 1, 2003
§§ 1.170-1.300	(869-050-00080-6)	57.00	Apr. 1, 2003
§§ 1.301-1.400	(869-050-00081-4)	46.00	Apr. 1, 2003
§§ 1.401-1.440	(869-052-00083-3)	62.00	Apr. 1, 2004
§§ 1.441-1.500	(869-050-00083-1)	50.00	Apr. 1, 2003
§§ 1.501-1.640	(869-050-00084-9)	49.00	Apr. 1, 2003
§§ 1.641-1.850	(869-050-00085-7)	60.00	Apr. 1, 2003
§§ 1.851-1.907	(869-050-00086-5)	60.00	Apr. 1, 2003
§§ 1.908-1.1000	(869-052-00088-4)	60.00	Apr. 1, 2004
§§ 1.1001-1.1400	(869-050-00088-1)	61.00	Apr. 1, 2003
§§ 1.1401-1.1503-2A	(869-050-00089-0)	50.00	Apr. 1, 2003
§§ 1.1551-End	(869-052-00091-4)	55.00	Apr. 1, 2004
2-29	(869-050-00091-1)	60.00	Apr. 1, 2003
30-39	(869-050-00092-0)	41.00	Apr. 1, 2003
40-49	(869-052-00094-9)	28.00	Apr. 1, 2004
50-299	(869-050-00094-6)	41.00	Apr. 1, 2003
300-499	(869-050-00095-4)	61.00	Apr. 1, 2003

Title	Stock Number	Price	Revision Date	Title	Stock Number	Price	Revision Date
500-599	(869-050-00096-2)	12.00	<sup>5</sup> Apr. 1, 2003	72-80	(869-050-00149-7)	61.00	July 1, 2003
600-End	(869-050-00097-1)	17.00	Apr. 1, 2003	81-85	(869-050-00150-1)	50.00	July 1, 2003
<b>27 Parts:</b>				86 (86.1-86.599-99)	(869-050-00151-9)	57.00	July 1, 2003
1-199	(869-050-00098-9)	63.00	Apr. 1, 2003	86 (86.600-1-End)	(869-050-00152-7)	50.00	July 1, 2003
200-End	(869-050-00099-7)	25.00	Apr. 1, 2003	87-99	(869-050-00153-5)	60.00	July 1, 2003
<b>28 Parts:</b>				100-135	(869-050-00154-3)	43.00	July 1, 2003
0-42	(869-050-00100-4)	61.00	July 1, 2003	136-149	(869-150-00155-1)	61.00	July 1, 2003
43-End	(869-050-00101-2)	58.00	July 1, 2003	150-189	(869-050-00156-0)	49.00	July 1, 2003
<b>29 Parts:</b>				190-259	(869-050-00157-8)	39.00	July 1, 2003
0-99	(869-050-00102-1)	50.00	July 1, 2003	260-265	(869-050-00158-6)	50.00	July 1, 2003
100-499	(869-050-00103-9)	22.00	July 1, 2003	266-299	(869-050-00159-4)	50.00	July 1, 2003
500-899	(869-050-00104-7)	61.00	July 1, 2003	300-399	(869-050-00160-8)	42.00	July 1, 2003
900-1899	(869-050-00105-5)	35.00	July 1, 2003	400-424	(869-050-00161-6)	56.00	July 1, 2003
1900-1910 (§§ 1900 to 1910.999)	(869-050-00106-3)	61.00	July 1, 2003	425-699	(869-050-00162-4)	61.00	July 1, 2003
1910 (§§ 1910.1000 to end)	(869-050-00107-1)	46.00	July 1, 2003	700-789	(869-050-00163-2)	61.00	July 1, 2003
1911-1925	(869-050-00108-0)	30.00	July 1, 2003	790-End	(869-050-00164-1)	58.00	July 1, 2003
1926	(869-050-00109-8)	50.00	July 1, 2003	<b>41 Chapters:</b>			
1927-End	(869-050-00110-1)	62.00	July 1, 2003	1, 1-1 to 1-10		13.00	<sup>3</sup> July 1, 1984
<b>30 Parts:</b>				1, 1-11 to Appendix, 2 (2 Reserved)		13.00	<sup>3</sup> July 1, 1984
1-199	(869-050-00111-0)	57.00	July 1, 2003	3-6		14.00	<sup>3</sup> July 1, 1984
200-699	(869-050-00112-8)	50.00	July 1, 2003	7		6.00	<sup>3</sup> July 1, 1984
700-End	(869-050-00113-6)	57.00	July 1, 2003	8		4.50	<sup>3</sup> July 1, 1984
<b>31 Parts:</b>				9		13.00	<sup>3</sup> July 1, 1984
0-199	(869-050-00114-4)	40.00	July 1, 2003	10-17		9.50	<sup>3</sup> July 1, 1984
200-End	(869-050-00115-2)	64.00	July 1, 2003	18, Vol. I, Parts 1-5		13.00	<sup>3</sup> July 1, 1984
<b>32 Parts:</b>				18, Vol. II, Parts 6-19		13.00	<sup>3</sup> July 1, 1984
1-39, Vol. I		15.00	<sup>2</sup> July 1, 1984	18, Vol. III, Parts 20-52		13.00	<sup>3</sup> July 1, 1984
1-39, Vol. II		19.00	<sup>2</sup> July 1, 1984	19-100		13.00	<sup>3</sup> July 1, 1984
1-39, Vol. III		18.00	<sup>2</sup> July 1, 1984	1-100	(869-050-00165-9)	23.00	July 1, 2003
1-190	(869-050-00116-1)	60.00	July 1, 2003	101	(869-050-00166-7)	24.00	July 1, 2003
191-399	(869-050-00117-9)	63.00	July 1, 2003	102-200	(869-050-00167-5)	50.00	July 1, 2003
400-629	(869-050-00118-7)	50.00	July 1, 2003	201-End	(869-050-00168-3)	22.00	July 1, 2003
630-699	(869-050-00119-5)	37.00	<sup>7</sup> July 1, 2003	<b>42 Parts:</b>			
700-799	(869-050-00120-9)	46.00	July 1, 2003	1-399	(869-050-00169-1)	60.00	Oct. 1, 2003
800-End	(869-050-00121-7)	47.00	July 1, 2003	400-429	(869-050-00170-5)	62.00	Oct. 1, 2003
<b>33 Parts:</b>				430-End	(869-050-00171-3)	64.00	Oct. 1, 2003
1-124	(869-050-00122-5)	55.00	July 1, 2003	<b>43 Parts:</b>			
125-199	(869-050-00123-3)	61.00	July 1, 2003	1-999	(869-050-00172-1)	55.00	Oct. 1, 2003
200-End	(869-050-00124-1)	50.00	July 1, 2003	1000-end	(869-050-00173-0)	62.00	Oct. 1, 2003
<b>34 Parts:</b>				44	(869-050-00174-8)	50.00	Oct. 1, 2003
1-299	(869-050-00125-0)	49.00	July 1, 2003	<b>45 Parts:</b>			
300-399	(869-050-00126-8)	43.00	<sup>7</sup> July 1, 2003	1-199	(869-050-00175-6)	60.00	Oct. 1, 2003
400-End	(869-050-00127-6)	61.00	July 1, 2003	200-499	(869-050-00176-4)	33.00	Oct. 1, 2003
<b>35</b>	(869-050-00128-4)	10.00	<sup>6</sup> July 1, 2003	500-1199	(869-050-00177-2)	50.00	Oct. 1, 2003
<b>36 Parts:</b>				1200-End	(869-050-00178-1)	60.00	Oct. 1, 2003
1-199	(869-050-00129-2)	37.00	July 1, 2003	<b>46 Parts:</b>			
200-299	(869-050-00130-6)	37.00	July 1, 2003	1-40	(869-050-00179-9)	46.00	Oct. 1, 2003
300-End	(869-050-00131-4)	61.00	July 1, 2003	41-69	(869-050-00180-2)	39.00	Oct. 1, 2003
<b>37</b>	(869-050-00132-2)	50.00	July 1, 2003	70-89	(869-050-00181-1)	14.00	Oct. 1, 2003
<b>38 Parts:</b>				90-139	(869-050-00182-9)	44.00	Oct. 1, 2003
0-17	(869-050-00133-1)	58.00	July 1, 2003	140-155	(869-050-00183-7)	25.00	Oct. 1, 2003
18-End	(869-050-00134-9)	62.00	July 1, 2003	156-165	(869-050-00184-5)	34.00	Oct. 1, 2003
<b>39</b>	(869-050-00135-7)	41.00	July 1, 2003	166-199	(869-050-00185-3)	46.00	Oct. 1, 2003
<b>40 Parts:</b>				200-499	(869-050-00186-1)	39.00	Oct. 1, 2003
1-49	(869-050-00136-5)	60.00	July 1, 2003	500-End	(869-050-00187-0)	25.00	Oct. 1, 2003
50-51	(869-050-00137-3)	44.00	July 1, 2003	<b>47 Parts:</b>			
52 (52.01-52.1018)	(869-050-00138-1)	58.00	July 1, 2003	0-19	(869-050-00188-8)	61.00	Oct. 1, 2003
52 (52.1019-End)	(869-050-00139-0)	61.00	July 1, 2003	20-39	(869-050-00189-6)	45.00	Oct. 1, 2003
53-59	(869-050-00140-3)	31.00	July 1, 2003	40-69	(869-050-00190-0)	39.00	Oct. 1, 2003
60 (60.1-End)	(869-050-00141-1)	58.00	July 1, 2003	70-79	(869-050-00191-8)	61.00	Oct. 1, 2003
60 (Apps)	(869-050-00142-0)	51.00	<sup>8</sup> July 1, 2003	80-End	(869-050-00192-6)	61.00	Oct. 1, 2003
61-62	(869-050-00143-8)	43.00	July 1, 2003	<b>48 Chapters:</b>			
63 (63.1-63.599)	(869-050-00144-6)	58.00	July 1, 2003	1 (Parts 1-51)	(869-050-00193-4)	63.00	Oct. 1, 2003
63 (63.600-63.1199)	(869-050-00145-4)	50.00	July 1, 2003	1 (Parts 52-99)	(869-050-00194-2)	50.00	Oct. 1, 2003
63 (63.1200-63.1439)	(869-050-00146-2)	50.00	July 1, 2003	2 (Parts 201-299)	(869-050-00195-1)	55.00	Oct. 1, 2003
63 (63.1440-End)	(869-050-00147-1)	64.00	July 1, 2003	3-6	(869-050-00196-9)	33.00	Oct. 1, 2003
64-71	(869-050-00148-9)	29.00	July 1, 2003	7-14	(869-050-00197-7)	61.00	Oct. 1, 2003
				15-28	(869-050-00198-5)	57.00	Oct. 1, 2003
				29-End	(869-050-00199-3)	38.00	<sup>9</sup> Oct. 1, 2003
				<b>49 Parts:</b>			
				1-99	(869-050-00200-1)	60.00	Oct. 1, 2003

Title	Stock Number	Price	Revision Date
100-185 .....	(869-050-00201-9) .....	63.00	Oct. 1, 2003
186-199 .....	(869-050-00202-7) .....	20.00	Oct. 1, 2003
200-399 .....	(869-050-00203-5) .....	64.00	Oct. 1, 2003
400-599 .....	(869-050-00204-3) .....	63.00	Oct. 1, 2003
600-999 .....	(869-050-00205-1) .....	22.00	Oct. 1, 2003
1000-1199 .....	(869-050-00206-0) .....	26.00	Oct. 1, 2003
1200-End .....	(869-048-00207-8) .....	33.00	Oct. 1, 2003
<b>50 Parts:</b>			
1-16 .....	(869-050-00208-6) .....	11.00	Oct. 1, 2003
17.1-17.95 .....	(869-050-00209-4) .....	62.00	Oct. 1, 2003
17.96-17.99(h) .....	(869-050-00210-8) .....	61.00	Oct. 1, 2003
17.99(i)-end .....	(869-050-00211-6) .....	50.00	Oct. 1, 2003
18-199 .....	(869-050-00212-4) .....	42.00	Oct. 1, 2003
200-599 .....	(869-050-00213-2) .....	44.00	Oct. 1, 2003
600-End .....	(869-050-00214-1) .....	61.00	Oct. 1, 2003
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<sup>1</sup> Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

<sup>2</sup> The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

<sup>3</sup> The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

<sup>4</sup> No amendments to this volume were promulgated during the period January 1, 2003, through January 1, 2004. The CFR volume issued as of January 1, 2002 should be retained.

<sup>5</sup> No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2003. The CFR volume issued as of April 1, 2000 should be retained.

<sup>6</sup> No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2003. The CFR volume issued as of July 1, 2000 should be retained.

<sup>7</sup> No amendments to this volume were promulgated during the period July 1, 2002, through July 1, 2003. The CFR volume issued as of July 1, 2002 should be retained.

<sup>8</sup> No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2003. The CFR volume issued as of July 1, 2001 should be retained.

<sup>9</sup> No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2003. The CFR volume issued as of October 1, 2001 should be retained.











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